

# **R-CALF USA's 2023 Farm Bill Platform**

## ***The U.S. Cattle Industry Is Facing a Severe and Unprecedented Crisis***

### **EXECUTIVE SUMMARY**

Below this summary is a detailed introduction and preamble evincing the scope and severity of the crisis facing the U.S. cattle industry. Then farther below are the specific reforms R-CALF USA recommends Congress include in the 2023 Farm Bill, followed by this paper's conclusion.

The U.S. cattle industry is marked for failure – just as occurred to its sister sheep industry that no longer provides even half the volume of lamb needed to satisfy America's consumers – unless Congress acts decisively to enact meaningful reforms in the 2023 Farm Bill that restore competition to U.S. cattle markets and profitable opportunities for independent cattle producers.

The combination of decades of unrestrained industry concentration and globalization has fueled long, steep declines in the cattle industry's competitive infrastructure, including its number of participants, size of its cattle herd, and availability of marketing outlets and opportunities.

Unsurprisingly, the economic viability of all segments of the live cattle supply chain is in peril as evidenced by prolonged declines in cow/calf producers' returns, returns to cattle feeders, and the overall share of the consumer's beef dollar allocated to the live cattle segment of the beef supply chain, which as shown below was flipped on its head in just over a generation.

These declines are associated with an ever-increasing average age of the U.S. farmer and rancher, and a steep decline in average annual net cash income for cattle operations. The very heart of the U.S. cattle industry is in peril – its cattle operations with an economically viable herd size upon which the independent operator is exclusively or almost exclusively dependent for his/her livelihood.

The long-term, negative trajectories associated with the decline of the cattle industry's competitive infrastructure and economic viability portend a dismal future if the status quo is maintained, meaning if Congress does not intervene by enacting meaningful reforms.

However, Congress now has the opportunity to reverse the disastrous decline of the U.S. cattle industry before it reaches the point of no return, as has already occurred in the U.S. hog and poultry industries, and likely the U.S. sheep industry.

Below is an abbreviated outline of the recommendations R-CALF USA urges Congress to include in the 2023 Farm Bill to preserve for future generations the U.S. cattle industry as it is known today. These recommendations along with their justifications are explained in greater detail farther below.

## **ABBREVIATED RECOMMENDATIONS**

*Address the Four Corners of Market Failure Pervading the U.S. Cattle industry.*

### **A. Address Lack of Competition in the U.S. Cattle Industry's Crucial Cattle Market**

1. Restore mandatory country of origin labeling for beef by enacting the American Beef Labeling Act (S.52).
2. Force dominant beef packers to begin competing in the cattle industry's most important price-discovery market – the fed cattle cash market.

### **B. Address Market Power Disparity Between Packers and Disaggregated Producers**

1. Prohibit the following cattle procurement practices known to distort the value of domestic cattle.
  - a. Packer ownership, feeding, or control of cattle for more than seven days prior to slaughter.
  - b. Alternative Marketing Arrangements (AMAs) that do not contain a firm base price that can equate to a fixed dollar amount at the time of the transaction.
  - c. Top-of-the-market pricing (TOMP) pricing schemes.
2. Prohibit the following cattle procurement practices that are known to mask the competitive value of domestic cattle.
  - a. Providing monetary compensation not related to the market value of cattle to select feedlots (e.g., bonuses for total volume or weight, or for any other reason).
  - b. Providing financing for feeder cattle purchases, feed, or feeding to select cattle feeders while denying others the same financing terms.
  - c. Providing risk-sharing terms to some cattle feeders while denying others of the same, including but not limited to cost-plus contracts, stop-loss contracts, profit-sharing, loss-sharing, agreements to pay for feed or feeding, or other arrangements that effectively reduce the financial risk of feeding cattle.
3. Provide meaningful price transparency by requiring all cattle procurement agreements offered by each packing plant to be in writing, to require disclosure of those agreements to the U.S. Department of Agriculture (USDA) Agriculture Marketing Service (AMS), and require periodic audits by AMS to determine contract fulfillment.

### **C. Address Price Distorting Trade Imbalances**

Structurally reform trade policies to:

1. Require all federal expenditures for beef, including direct beef procurement programs (e.g., National School Lunch program and military procurement) and indirect expenditures that include beef purchases (e.g., food stamps), be for beef exclusively derived from animals exclusively born, raised, and harvested in the United States.
2. Reinstate identical U.S. food safety standards for imported beef.
3. Reinstate import restrictions for countries not free of pernicious cattle diseases.
4. Reinstate monthly inspections at foreign beef packing plants.
5. Reinstate import restrictions for countries with BSE.
6. Implement safeguard measures to protect against cattle price collapses resulting from strategically timed import increases when domestic cattle prices attempt to rally.
7. Instruct the Administration to revise rules of origin in all trade agreements to require beef's origin to be where the animal was born, raised, and harvested.
8. Require permanent origin markings on all imported cattle.
9. Prohibit foreign ownership of critical domestic beef supply chain components.
10. Prohibit the USDA from imposing a radio frequency identification (RFID) mandate and other production-cost add-ons on domestic cattle producers.

#### **D. Address Improper Industry Promotion**

End the beef checkoff program that forces U.S. cattle producers to subsidize generic beef promotional efforts that do not distinguish domestic beef from foreign beef, that treats all beef as equal, and that fails to distinguish between where and how beef is produced. Should Congress resist the repeal of the current beef checkoff program, R-CALF USA requests that, at a minimum, the 2023 Farm Bill include the Opportunities for Fairness in Farming Act (OFF Act) that addresses several of the serious beef checkoff program deficiencies.

#### **ADDITIONAL ABBREVIATED RECOMMENDATIONS**

1. Clarify that producers need not prove competitive injury to enforce anticompetitive prohibitions in Packers and Stockyards Act.
2. Disallow the “business justification” defense used by the largest packers.
3. Eliminate confidentiality guidelines in the Livestock Mandatory Reporting Act.
4. Authorize the USDA to order restitution for livestock sellers who successfully prove financial harm resulting from a packer's violation of the Packers and Stockyards Act.
5. Allow recovery of legal fees and costs in Packers and Stockyards Act litigation.
6. Pass legislation that promotes more local and regional beef packing capacity.
7. Pass legislation to reverse the USDA's and U.S. Department of the Interior's efforts to restrict and reduce grazing and water rights on federally managed lands.
8. Eliminate the risk of an inadvertent release of the live foot-and-mouth disease (FMD) virus by permanently cancelling the current plan to study and manipulate the live FMD virus in the proposed National Bio and Agro-Defense Facility (NBAF) located in the heart of the High Plains.

# R-CALF USA's 2023 Farm Bill Platform

## *The U.S. Cattle Industry Is Facing a Severe and Unprecedented Crisis*

### I. INTRODUCTION

#### *Congress Must Enact Meaningful Reforms to Avert an Impending Catastrophe – The Destruction of American Cattle Farms and Ranches As We Know Them Today.*

In just over a single generation (35 years), the average age of the American farmer increased by nearly 7 years, increasing from 51.9 years of age in 1982<sup>1</sup> to 58.6 years of age in 2017 (latest available census data).<sup>2</sup> Presumably, this overall increase in the average age of the American farmer is consistent with the subgroup, beef cattle operation owners, though census data do not delineate such subgroups.

The average annual net cash income for business operations with cattle and calves fell 43% during the second half of the last 12 years (2016-2021) when compared to the first half of that period (2010-2015), falling in real 2022 dollars from \$45,370 per farm per year during the first six years to only \$26,080 per farm per year during the most recent six years.<sup>3</sup> According to a recent study by the University of Missouri, 82% of farm household income came from off-farm sources in 2018 and farming began succumbing to this high reliance on off-farm income beginning about three decades ago.<sup>4</sup>

The 2022 forecast for the average annual net cash income for cattle and calf operations at only \$18,200 is the lowest income level since at least 2010.<sup>5</sup> And despite being the largest segment of American agriculture (generating nearly \$73 billion in cash receipts in 2021),<sup>6</sup> the average annual net cash income for cattle and calf operations is far lower than any other specified agricultural commodity reported by the U.S. Department of Agriculture (USDA).<sup>7</sup>

And, while the average size of the U.S. beef cow herd is about 44 head,<sup>8</sup> which is too few to be considered a stand-alone, economically viable beef cow operation, there are only 65,962 beef

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<sup>1</sup> Table 46, Summary by Age and Principal Occupation of Operator, 1982 Census of Agriculture, available at [1982-United States-CHAPTER 1 State Data-121-Table-46.pdf \(cornell.edu\)](https://nrc.ars.usda.gov/data-reports/1982-census-of-agriculture/1982-census-of-agriculture-table-46).

<sup>2</sup> Table 52, Selected Producer Characteristics, 2017 Census of Agriculture, available at [st99\\_1\\_0052\\_0052.pdf \(usda.gov\)](https://www.nrc.usda.gov/publications/census-of-agriculture-2017-main-report/table-52).

<sup>3</sup> See Farm business average net cash income, Economic Research Service (ERS) U.S. Department of Agriculture (USDA) available at [Farm business average net cash income \(usda.gov\)](https://www.ers.usda.gov/data-products/farm-business-average-net-cash-income/).

<sup>4</sup> See The Importance of Off-Farm Income to the Agricultural Economy, University of Missouri Extension and CoBank, available at [The importance of off-farm income to the agricultural economy \(cobank.com\)](https://www.cobank.com/resources/research/the-importance-of-off-farm-income-to-the-agricultural-economy/).

<sup>5</sup> See *id.*

<sup>6</sup> See U.S. Department of Agriculture (USDA) Economic Research Service (ERS), Cash Receipts by Commodity, available at <https://data.ers.usda.gov/reports.aspx?ID=17845>.

<sup>7</sup> See Farm business average net cash income, Economic Research Service (ERS) U.S. Department of Agriculture (USDA) available at [Farm business average net cash income \(usda.gov\)](https://www.ers.usda.gov/data-products/farm-business-average-net-cash-income/).

<sup>8</sup> See Table 16. Beef Cow Herd Size by Inventory and Sales: 2017, 2017 Census of Agriculture (calculations made therein), available at [st99\\_1\\_0015\\_0016.pdf \(usda.gov\)](https://www.nrc.usda.gov/publications/census-of-agriculture-2017-main-report/table-16).

cow operations with a herd of between 100 head and 499 head.<sup>9</sup> Within this size range are stand-alone, economically viable beef cow operations, meaning the owners/operators could be expected to depend entirely on sales of cattle and calves to maintain their existence. Thus, it is within this size range of beef cow operations that the heart of the U.S. cattle farming and ranching industry is centered. Though this herd-size range represents only 9% of total U.S. beef cow operations,<sup>10</sup> it is imperative that the 2023 Farm Bill include meaningful reforms to ensure that the stand-alone, economically viable cattle farming and ranching operations within this size range are afforded ample opportunity to remain profitable and prosperous. Doing anything less will cause the destruction of the U.S. cattle and farming industry as we know it today.

## II. PREAMBLE

### *The Systemic Cattle Industry Trajectories the 2023 Farm Bill Must Reverse*

During the past four decades, Congress and each Administration resisted making any meaningful structural reforms to the legal, regulatory, and policy framework within which the domestic live cattle industry operates. Regulators rarely took antitrust enforcement action and mergers and acquisitions by the largest beef packers occurred unabated (with the exception of the 2008 Department of Justice action that blocked the JBS/National Beef Packing Co. merger), which led to an increase in the four-firm concentration ratio for fed cattle from 36% to 85% in just over a generation; administrative rules to implement the over 100-year-old Packers and Stockyards Act were derailed; mandatory country of origin labeling (MCOOL) for beef was briefly implemented but repealed; the domestic industry's persistent volume-based trade deficit in cattle and beef was ignored; and, legislation introduced to address price-depressing packer procurement practices rarely found their way out of congressional committees.

#### **A. Concentration Is Dismantling the Cattle Industry's Competitive Infrastructure**

Meanwhile, as Congress and past Administrations continually applied their laissez faire policy, the competitive infrastructure of the U.S. cattle industry began and continues today to systematically dismantle as illustrated in the charts below. The number of industry participants, *i.e.*, independent cattle farmers and ranchers, has been reduced by 43%, with well over half a million cattle farms and ranches exiting the industry (**Chart 1**). The U.S. beef cow inventory is now the smallest in about 60 years;<sup>11</sup> it is about seven million head smaller than four decades ago and smaller than it was when the North American Free Trade Agreement (NAFTA) was implemented (by nearly 4.5 million head) (**Chart 2**). Also, marketing outlets available to cow/calf producers and backgrounders are disappearing, such as local auction yards and independent, family-sized feedlots. In fact, 75% of the nation's independent, family-sized feedlots in business when NAFTA was implemented are gone today (**Chart 3**). The ongoing dismantling of these fundamental elements of the cattle industry's critical competitive infrastructure (illustrated by steep, downward sloping trendlines in Charts 1-2) is causing the

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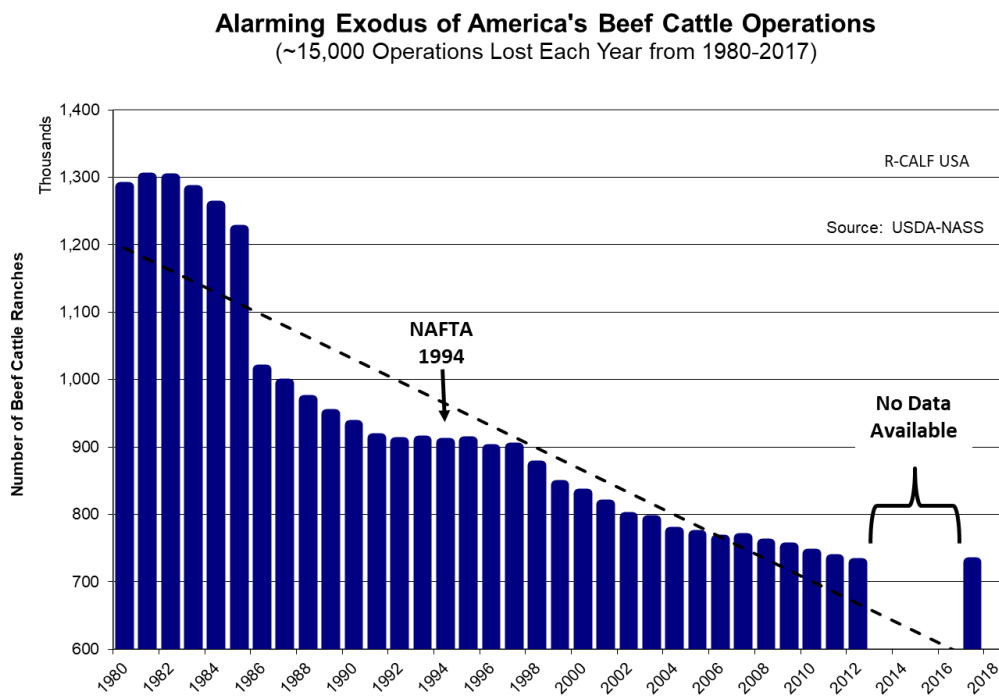
<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

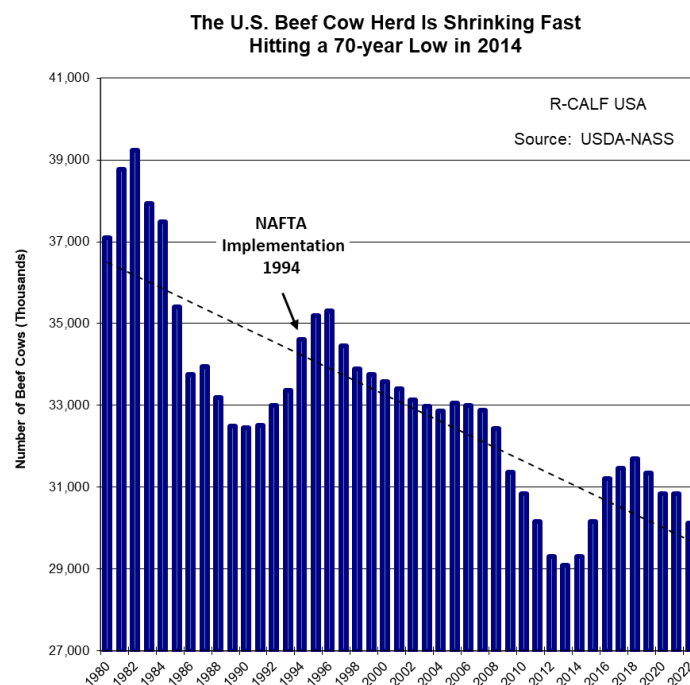
<sup>11</sup> See Beef Cows: Inventory on January 1 by Year, US, USDA National Agricultural Statistics Service, available at [https://www.nass.usda.gov/Charts\\_and\\_Maps/Cattle/bcow.php](https://www.nass.usda.gov/Charts_and_Maps/Cattle/bcow.php).

continual hollowing-out of rural America. After all, the fast shrinking but once widely disaggregated live cattle production segment of the multisegmented beef supply chain is the economic cornerstone for many, if not most rural communities in every state.

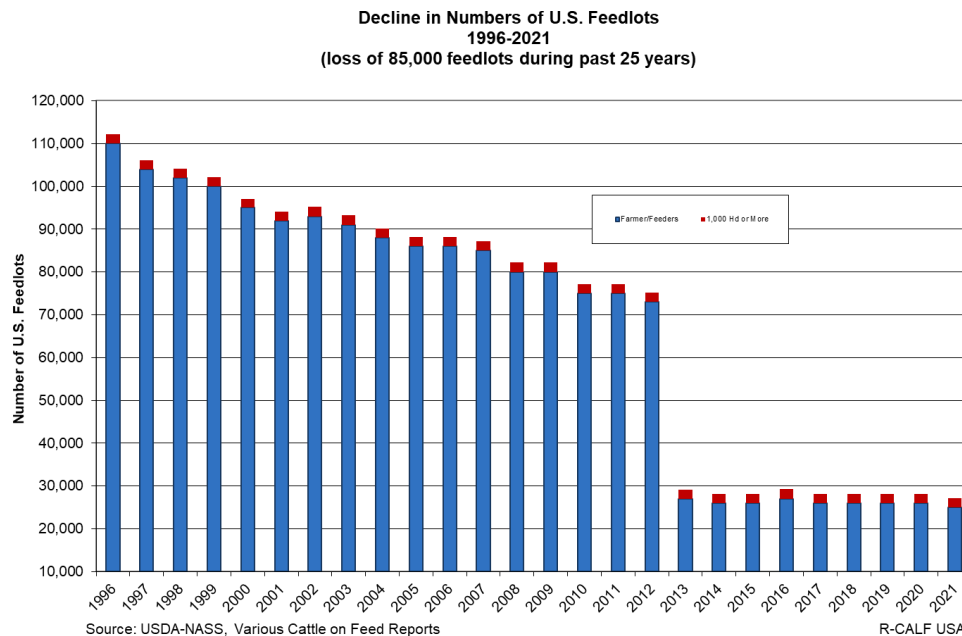
**Chart 1**



**Chart 2**



**Chart 3**



## **B. Globalization Is Exacerbating the Contraction of the U.S. Cattle Industry**

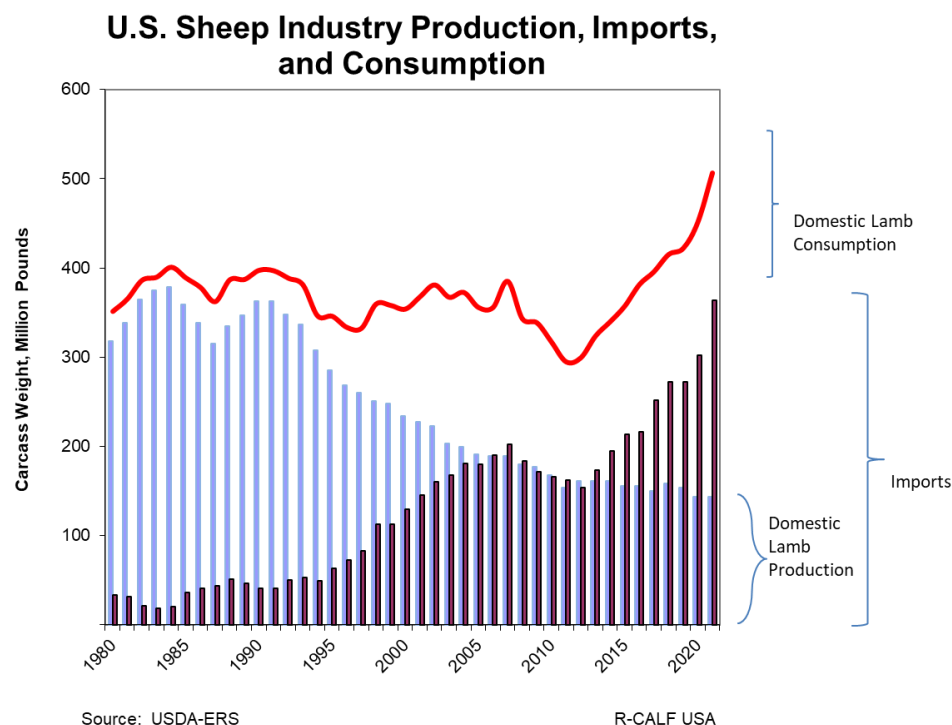
The above reference to NAFTA, which marks the outset of globalization, is critical to any discussion of the prolonged downward trajectories of the U.S. cattle industry's competitive infrastructure. Globalization, as opposed to structural reforms within the domestic market, was touted as the preferred means of reversing those downward trajectories – of strengthening the U.S. cattle industry through promises of expanded beef markets and increased beef demand that would restore profitability and prosperity to U.S. cattle producers. Those promises never materialized – they backfired – and the downward trending trajectories of the number of beef cattle operations, size of the U.S. beef cow herd and loss of cattle marketing outlets worsened following NAFTA's implementation.

## **C. Concentration and Globalization Are Destroying the Economic Viability of Cattle Industry Participants as it Recently Did to the Sheep Industry**

The U.S. sheep industry, similar in biological characteristics and industry market structure, is an illustrative bellwether indicator portending the immediate future of the U.S. cattle industry. The U.S. commercial sheep industry (meaning sheep farms and ranches substantially dependent on income from the sales of sheep and lambs for their existence) has been gutted by the combination of concentration and globalization. The number of sheep farms and ranches with a flock size of more than 100 head has declined by over 60% during just the past four decades, and America's total sheep and lamb inventory has declined by nearly 57% during the same period.<sup>12</sup> This

<sup>12</sup> Compare Table 36. Sheep and Lambs-Inventory and Sales by Size of Flock: 1982, Census of Agriculture, available at [1982-United\\_States-CHAPTER\\_1\\_State\\_Data-121-Table-35.pdf \(cornell.edu\)](https://nass.cornell.edu/publications/1982-United_States-CHAPTER_1_State_Data-121-Table-35.pdf), with Table 27. Sheep and Lambs Flock Size by Inventory, Sales, and Wool Production: 2017, Census of Agriculture, available at [st99\\_1\\_0024\\_0027.pdf \(usda.gov\)](https://nass.cornell.edu/publications/st99_1_0024_0027.pdf).

The drastic decline of the sheep industry exemplifies the destructive combination of concentration and globalization. As revealed in **Chart 4** below, though domestic lamb consumption has trended sharply upward since 2012, the beleaguered domestic sheep industry is overwhelmed by imports. While domestic lamb production has trended sharply downward since 1991, imports have skyrocketed beginning in 2012 and the domestic sheep industry's share of the U.S. market has declined to only 39%, with imports capturing 61% of the U.S. lamb market. It is self-evident that Congress must take measures to revive the commercial sheep industry while endeavoring to prevent the U.S. cattle industry from succumbing to the same destructive forces of concentration and globalization.



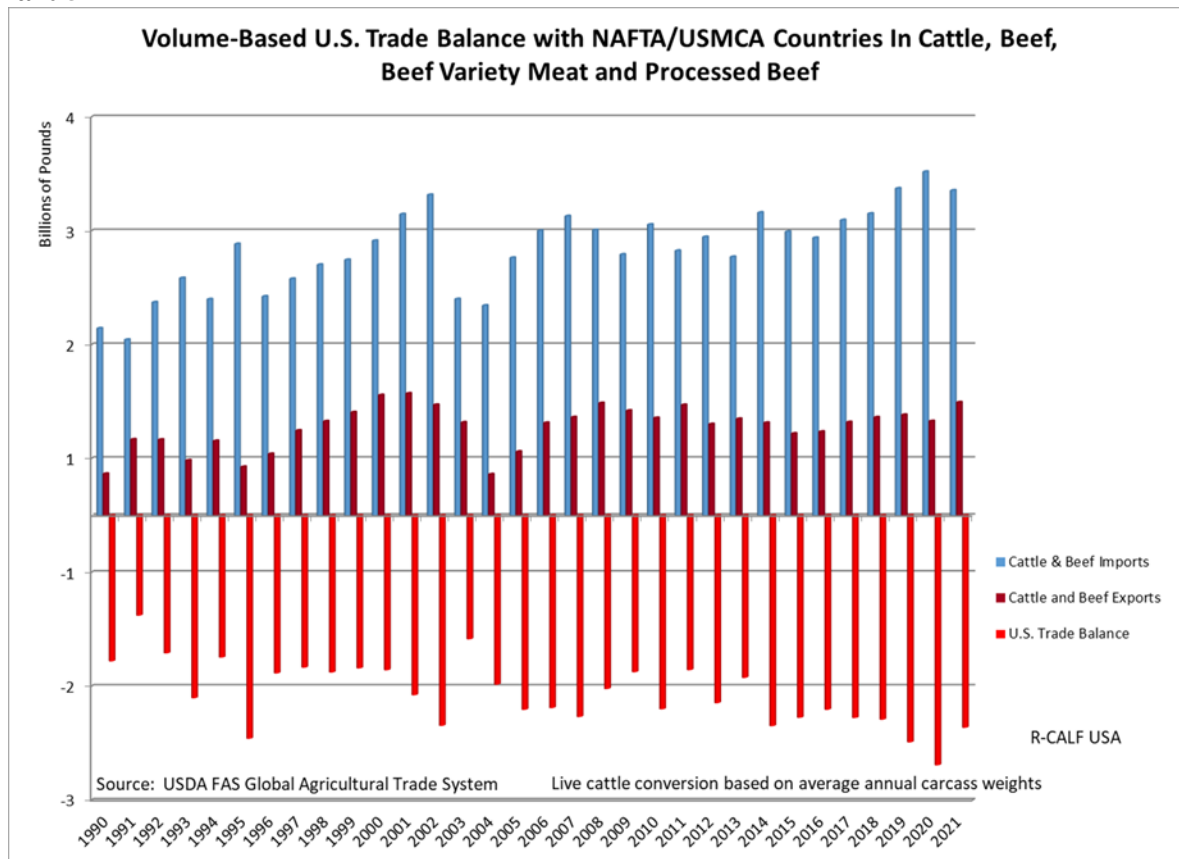
But the U.S. cattle industry is succumbing to those same destructive forces of concentration and globalization. The cattle industry is ultra-sensitive to increased imports. Studies have found that a supply increase of just 1% in fed cattle numbers would be expected to reduce cattle prices by about 2%.<sup>14</sup> Nevertheless, misguided U.S. trade policies have saddled the cattle industry with a

<sup>14</sup> The “Why” of Record-High Cattle Prices and Background for Longer Term Strategic Planning, Wayne D. Purcell, Research Institute on Livestock Pricing, Virginia Polytechnic and State University, Department of Agricultural



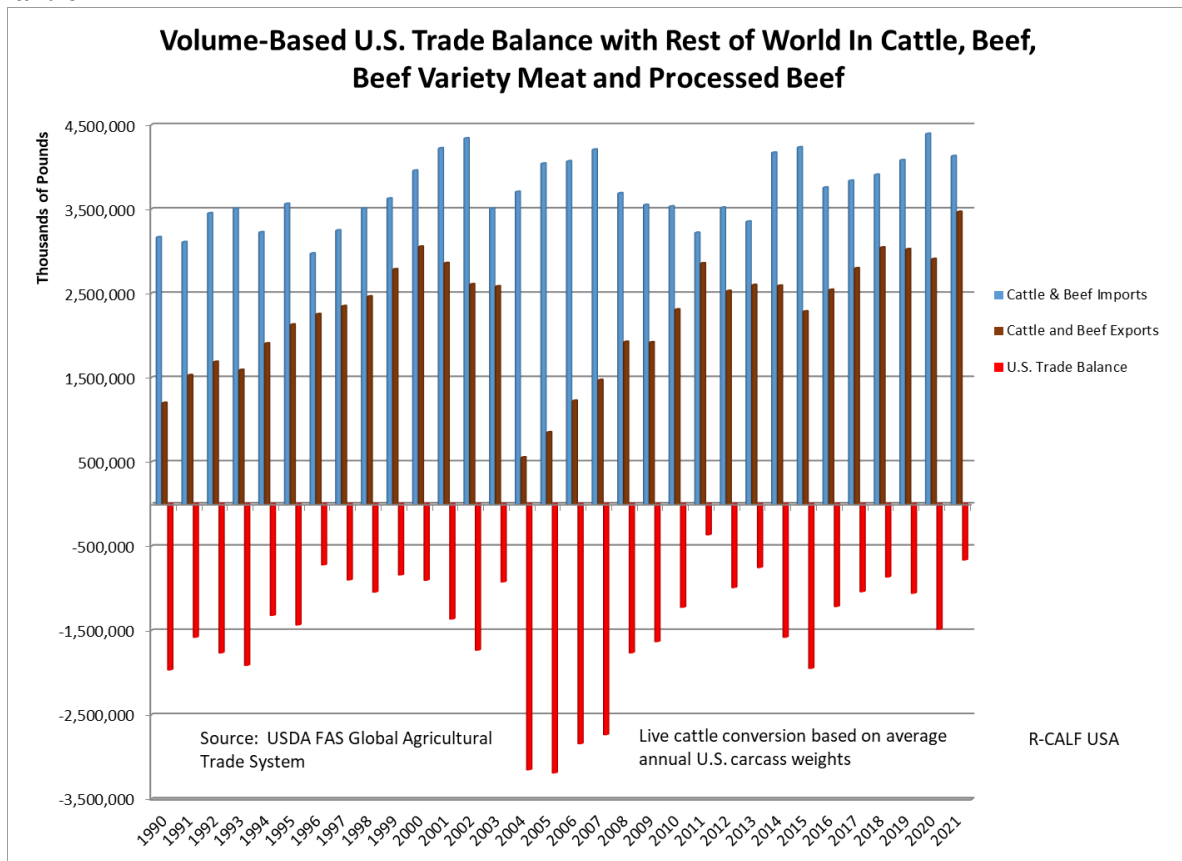
price-depressing, volume-based trade deficit in its worldwide trade of cattle, beef, beef variety meats and processed beef each year for the past several decades. The NAFTA-USMCA trade balance exemplifies the destructive nature of unbridled globalization. This is illustrated below in **Chart 5**, which shows the U.S. annually purchases from Canada and Mexico three times the supplies of cattle and beef on average than it sells to those countries, leaving the U.S. cattle and beef markets awash with an average annual deficit of over 1.5 billion pounds of beef and beef equivalent for the past several decades. Consequently, the NAFTA/USMCA agreement is a perennial burden upon the United States cattle industry that has prevented it from being a net beef and cattle exporter in the world market for the past several decades, as is disclosed in **Chart 6**.

**Chart 5**



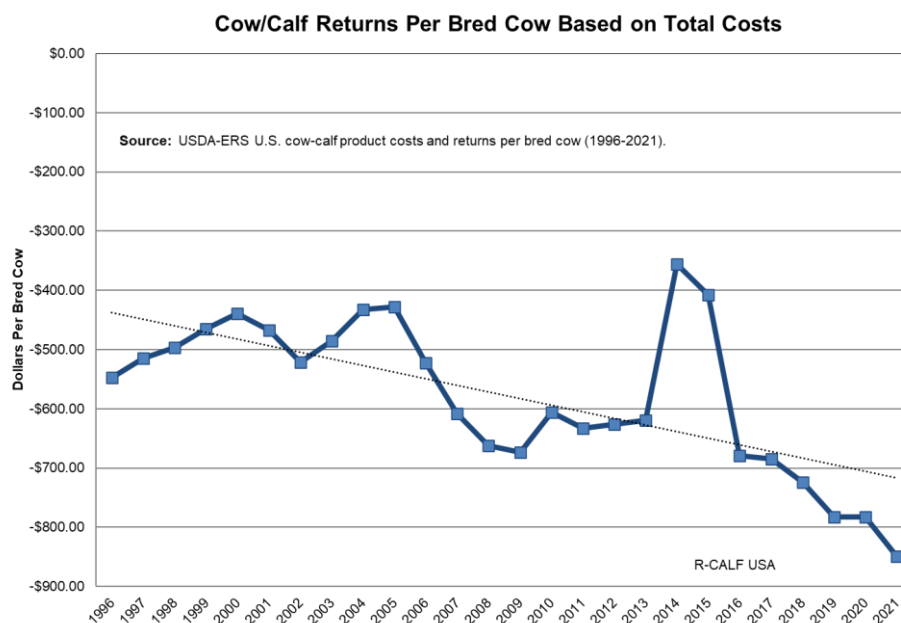
Economics, available at [The "Why" of Record-High Cattle Prices and Background for Longer Term Strategic Planning \(vt.edu\)](https://www.vt.edu/why-of-record-high-cattle-prices-and-background-for-longer-term-strategic-planning).

**Chart 6**



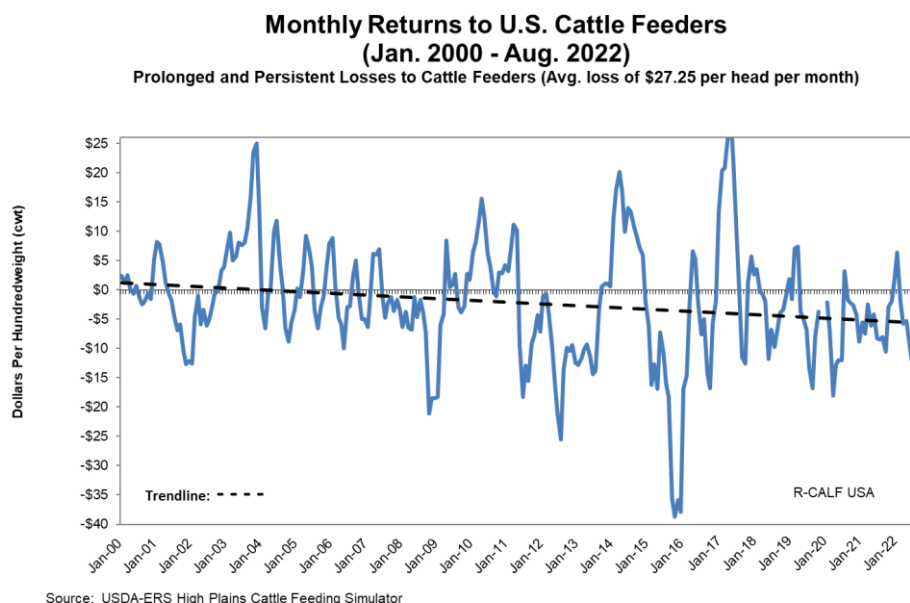
The effects of the decades-long combination of market concentration and globalization-caused trade deficits are manifest in a review of the indices of economic viability for the different segments of the live cattle supply chain. Starting with the cow/calf producer, data from the USDA reveal that the average annual return per bred cow for U.S. cow/calf producers remains on a downward trajectory and decreased 55% since NAFTA (**Chart 7**).

**Chart 7**



The USDA also estimates returns for cattle feeding – the last segment of the live cattle supply chain. Those returns are likewise on a downward trajectory since NAFTA. With an average monthly return to U.S. cattle feeders of -\$27.25 per head per month for over two decades, the loss of 75% of independent feedlots as discussed above is readily explained. During the five-year period from August 2017 through August 2022, the USDA data show the average monthly returns for feeding cattle was nearly a -\$60 per head per month (**Chart 8**).

**Chart 8**

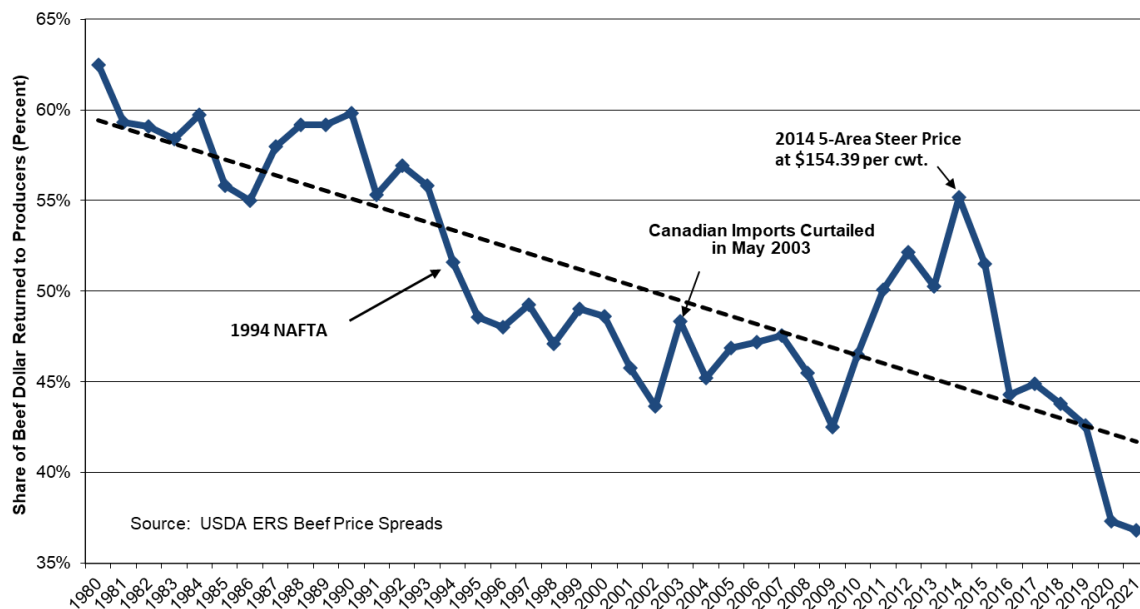


Another alarming index of the loss of economic viability for cattle producers is the prolonged downward trajectory of the share of the consumer beef dollar allocated to the live cattle segment of the multi-segmented beef supply chain. Data gathered by the USDA show over 41% of the share of each consumer beef dollar allocated to the live cattle segment just four decades ago has now been captured by beef packers and retailers (**Chart 9**).

**Chart 9**

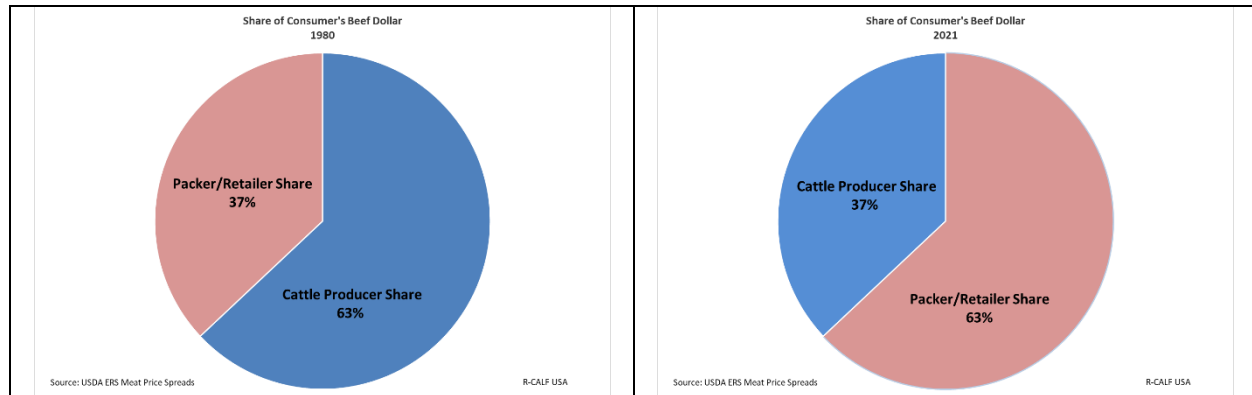
## Producers' Share of Consumer Beef Dollar

Prepared by R-CALF USA



To better comprehend the nature of the deflection that has occurred in the allocation of revenues from retail beef sales along the cattle and beef supply chain, USDA data illuminate the transference of revenues once allocated to the live cattle supply chain to the beef supply chain. Four decades ago, 63% of those revenues flowed to the live cattle supply chain, and 37% remained in the beef supply chain (i.e., the beef packer and retailer). But in 2021, the allocation percentage has been turned on its head, with the beef supply chain capturing 63% of the revenues leaving only 37% to make its way to the live cattle supply chain (**Chart 10**).

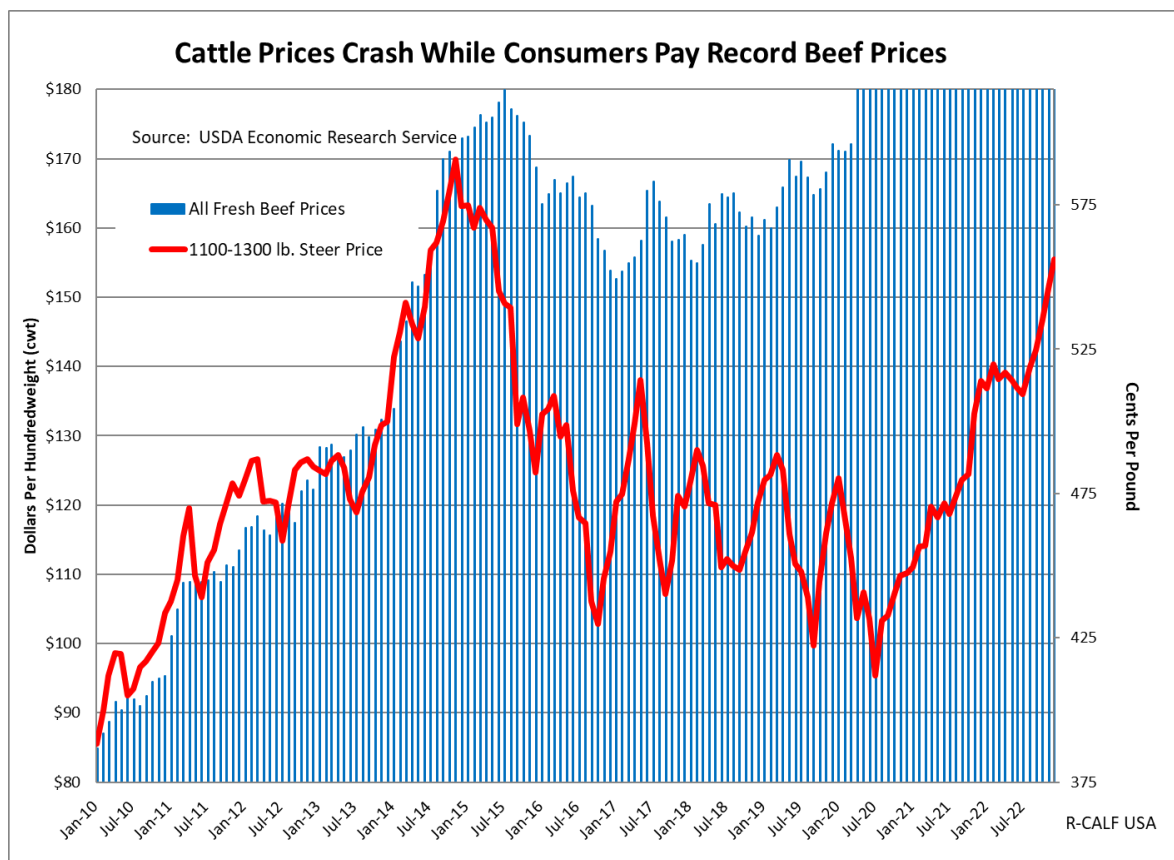
**Chart 10**



This radical reallocation of revenues manifest between the cattle supply chain and beef supply chain cannot be explained by competitive market fundamentals. Instead, this reallocation evinces severe market failure at the juncture between the two distinct industries comprising the overall beef supply chain - the live cattle industry and the beef industry.

Perhaps the best way to illustrate the fractured relationship between the cattle and beef supply chains is to show the historical relationship between retail beef prices that consumers pay at the grocery store and cattle prices received by U.S. cattle producers. As revealed in **Chart 11**, beginning about 2015 the once synchronous relationship between beef prices and cattle prices ended, and for the past eight years the spread between those two price points has been the widest in history (and for a five-year period, the two prices trended in opposite directions). In other words, since 2015, beef prices have disconnected from cattle prices, which evinces severe market failure in the U.S. cattle market. This market failure is causing the exploitation of consumers on one end of the supply chain and cattle producers on the other.

**Chart 11**



The foregoing discussion reveals the decades-long adherence to the status quo – the combination of no market structure reforms and reliance on globalization to cure market ills – has wrought severe damage to the integrity of the U.S. live cattle industry and the economic viability of its participants. But it reveals even more. Charts 1-3 depict prolonged downward trajectories in the key measurements of the industry’s competitive market infrastructure, *i.e.*, number of industry participants, size of herd, and number of available marketing outlets. Charts 4-8 depict prolonged downward trajectories in the indices of economic viability. This means if Congress does not take meaningful, decisive steps to fundamentally reform the current structure of the cattle market, and if policies promoting globalization are not also reformed, then we can predict a dire future for the U.S. cattle industry.

That future will be marked by even further erosion to both the industry’s competitive market infrastructure and the economic viability of its participants. When the critical mass of competitive market infrastructure disappears (*i.e.*, when we hit the point of no return because the infrastructure is insufficient to support a return of competitive market forces), the U.S. cattle industry will become unrecognizable. It will become another corporate-controlled, vertically integrated industry from birth to plate, and rural America will lose tens of thousands more, if not hundreds of thousands more of its critical economic cornerstones. Essentially, more damage will be exacted upon Rural America than what occurred when the poultry industry (in the 60s and 70s) and the hog industry (9 out of 10 hog producers in business in 1980 are gone today, and so

too are their markets that once were scattered all across rural America) succumbed to unbridled global and corporate power without even a whisper from Congress.

### **III. RECOMMENDATIONS**

#### ***Congress Must Act Swiftly and Decisively to Address the Four Corners of Market Failure Pervading the U.S. Cattle industry.***

##### **E. Address Lack of Competition in the U.S. Cattle Industry’s Crucial Cattle Market.**

We ask that Congress structurally reform the fed cattle market to ensure that competitive market forces are the controlling determinant of demand for live cattle exclusively born and raised in the United States.

To accomplish this, Congress must:

1. Enact legislation to ensure that beef from cattle exclusively born, raised, and harvested in the United States is clearly distinguished from imported beef and beef from imported cattle. This will empower consumers to initiate demand signals for exclusively domestic beef versus partially or wholly imported beef through their purchasing decisions. Thus, as a minimum, we ask that Congress include the American Beef Labeling Act (S.52) that restores mandatory country-of-origin labeling (MCOOL) for beef in the 2023 Farm Bill, or some variation thereof. Such a variation can be found [here](#). A recent nationwide poll by Morning Consult found that 86% of registered voters support the American Beef Labeling Act, and 77% of voters believe it is important that the beef they purchase was born, raised, and harvested in the United States.<sup>15</sup>
2. Enact legislation to force dominant beef packers to begin competing in the cattle industry’s most important price-discovery market – the fed cattle cash market. This is necessary to ensure that competitive demand signals initiated by consumers equate to a competitive price for the origin-specific cattle to which their demand signals apply. Thus, as a minimum, we ask that Congress include the Spot Market Protection Bill that requires beef packers to purchase at least half their weekly cattle needs in the competitive fed cattle cash market in the 2023 Farm Bill.<sup>16</sup>

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<sup>15</sup> The full Morning Consult MCOOL poll is available at [Label Our Beef - R-CALF USA](#) under the heading, “New Poll.”

<sup>16</sup> Examples of studies supporting an increase in the volume of cash cattle purchases include, Captive Supplies and the Cash Market Price: A Spatial Markets Approach, Mingxia Zhang & Richard J. Sexton, 25 J. Agriculture and Resource econ., (2000), at 97, available at [http://www.r-calfusa.com/industry\\_info/2008\\_JBS\\_merger/080409-Exhibit6\\_ZhangandSexton2000.pdf](http://www.r-calfusa.com/industry_info/2008_JBS_merger/080409-Exhibit6_ZhangandSexton2000.pdf); Captive Supply Impact on the U.S. Fed Cattle Price: An Application of Nonparametric Analysis, Andrew C. Lee and Man-Keun Kim, Journal of Rural Development 34(4): 103-115; The Competitive Implications of Top-of-the-Market and Related Contract-Pricing Clauses, Tian Xia and Richard J.

## **F. Address Market Power Disparity Between Concentrated Packers and Disaggregated Producers**

We ask that Congress structurally reform the beef packers' cattle procurement practices to rebalance the relative negotiating power between concentrated beef packers and disaggregated cattle feeders.

To accomplish this, Congress must:

1. Prohibit cattle procurement practices that are known to distort the competitive value of domestic cattle. Thus, as a minimum, we ask that Congress prohibit the following cattle procurement practices:
  - a. Alternative Marketing Arrangements (AMAs) that do not contain a firm base price that can be equated to a fixed dollar amount at the time of the transaction. Included in this prohibition is the *intent to deliver for weekly average sales* in which the packer effectively removes cattle offered for sale in the negotiated cash market by scheduling delivery about 30 days in the future in return for the producer's agreement to accept the packing plants weekly cash average price calculated the week prior to delivery.<sup>17</sup>
  - b. Packer ownership, feeding, or control of cattle for more than seven days prior to slaughter. (Note that dominant beef packers have historically vacillated between direct ownership/feeding of cattle and controlling cattle through contractual arrangements.)<sup>18</sup>
  - c. Top-of-the-market pricing (TOMP) pricing schemes.<sup>19</sup>

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Sexton, Amer. J. Agr. Econ. 86(1) (February 2004), at 124-138; and, Comments Regarding Agriculture and Antitrust Enforcement Issues in Our 21<sup>st</sup> Century Economy, Stephen R. Koontz (December 2009), at 9 (citing the work of Xia and Sexton).

<sup>17</sup> Examples of studies supporting a ban on AMAs tied to the cash market include: Buyer Power in the Beef Packing Industry, Francisco Garrido, ITAM; Nathan Miller, Georgetown University, et al., April 13, 2023, available at <http://www.nathanhmilller.org/cattlemarkets.pdf>; Harvested Cattle Slaughtered Markets?, C. Robert Taylor, Eminent Scholar (Distinguished University Professor) of Agricultural Economics and Public Policy, Emeritus, and American Antitrust Institute Advisory Board Member Emeritus., available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4094924](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4094924); Risk Shifting via Partial Vertical Integration Beef Packers' Acquisition of Slaughter Cattle, C. Robert Taylor, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4276805](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4276805); Multi-plant Coordination in the US Beef Packing Industry, Christopher C. Pudenz, Lee L. Schulz, Working Paper 21-WP 630, Iowa State University, Feb. 2022, available at <https://www.card.iastate.edu/products/publications/pdf/21wp630.pdf>.

<sup>18</sup> Examples of academic papers supporting a ban on packer ownership The Ban on Packer Ownership and Feeding of Livestock: Legal and Economic Implications, John Conner, et al., 2002, Iowa State University, available at [Packer Ownership...Conner Carstensen McEowen Harl.doc \(iastate.edu\)](http://Packer%20Ownership...Conner%20Carstensen%20McEowen%20Harl.doc).

<sup>19</sup>The Competitive Implications of Top-of-the-Market and Related Contract-Pricing Clauses, Tian Xia and Richard J. Sexton, American Journal of Agricultural Economics



2. Prohibit cattle procurement practices that are known to mask the competitive value of domestic cattle. The packer practice of paying compensation or offering other benefits to certain cattle feeders unrelated to the market value of the cattle effectively masks not only the true market value of the cattle sold by those feeders; but also, the true market value of all cattle as subsequently reported under Mandatory Livestock Reporting, thereby distorting the market price of all fed cattle. Thus, we ask that Congress prohibit the following cattle procurement practices:<sup>20</sup>
  - a. Providing any monetary compensation to any cattle feeder not related to the market value of the cattle at the time of the purchase transaction (e.g., bonuses for total volume or weight delivered, or for any other reason). This could be worded as any compensation not already reported under the Livestock Mandatory Price Reporting Program at the time the cattle are purchased (e.g., negotiated sales) or delivered (e.g., forward-type contracts).
  - b. Providing financing arrangements for feeder cattle purchases, feed, or feeding to some cattle feeders while denying others of the same financing terms.
  - c. Providing risk-sharing terms to some cattle feeders while denying others of the same risk-sharing terms including but not limited to cost-plus contracts, stop-loss contracts, profit-share, loss-share, agreements to pay for feed or feeding, or other arrangements that effectively deflect the financial risk of feeding cattle.
3. Provide meaningful price transparency by requiring all cattle procurement agreements offered by each packing plant to be in writing, to require disclosure of those agreements to the U.S. Department of Agriculture (USDA) Agriculture Marketing Service (AMS), and require periodic audits by AMS to determine contract fulfillment.

## **G. Address Price Distorting Trade Imbalances**

We ask that Congress structurally reform trade policies for cattle and beef to ensure that imported cattle and beef do not undercut the domestic live cattle industry's ability to expand domestic production or otherwise respond to changes in domestic or international beef demand.

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Vol. 86, No. 1 (Feb., 2004), pp. 124-138, available at <https://www.jstor.org/stable/3697879#:~:text=In%20this%20article%2C%20we%20examine%20the%20competitive,dueto%20exter-%20nalities%20and%20For%20coordination%20problems%20among>.

<sup>20</sup> Examples of academic papers addressing such novel cattle procurement practices include *Harvested Cattle Slaughtered Markets?*, C. Robert Taylor, Eminent Scholar (Distinguished University Professor) of Agricultural Economics and Public Policy, Emeritus, and American Antitrust Institute Advisory Board Member Emeritus., available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4094924](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4094924)

To accomplish this, Congress must:

1. Require all federal expenditures for beef, including direct beef procurement programs (e.g., National School Lunch program and military procurement) and indirect expenditures that include beef purchases (e.g., food stamps) be for beef exclusively derived from animals exclusively born, raised, and harvested in the United States.
2. Reinstate identical U.S. food safety standards for imported beef by nullifying the U.S. Department of Agriculture's (USDA's) rule, "Products From Foreign Countries; Eligibility for Import Into the United States," 9 CFR 327.2 and 327.4, that weakened the United States' longstanding requirement that beef exporting countries maintain meat safety inspection systems that are "at least equal to" the United States meat safety inspection system.<sup>21</sup>
3. Reinstate import restrictions for country's not free of pernicious diseases by nullifying USDA's regionalization policy, "APHIS Policy Regarding Importation of Animals and Animal Products," that weakened U.S. protections against the introduction of foreign animal diseases and pests by carving out sections of disease-affected countries where risk is believed to be somewhat lower than that of the entire country.<sup>22</sup> In association with this request, R-CALF USA seeks the reversal of APHIS' final rules allowing the importation of fresh and chilled beef from all countries not free of FMD, including where vaccination is practiced. This would include, but is not limited to, Brazil and Namibia.
4. Reinstate monthly inspections at foreign beef packing plants by nullifying USDA's rule, "Frequency of Foreign Inspection System Supervisory Visits to Certified Foreign Establishments," 9 CFR 327.2, that deleted the longstanding requirement that USDA conduct supervisory visits at foreign beef packing plants "not less frequent[ly] than one such visit per month" and replaced it with a much weaker requirement of conducting only "periodic supervisory visits."<sup>23</sup>
5. Reinstate import restrictions for countries with BSE by nullifying USDA's rules, "Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Importation of Live Bovines and Products Derived From Bovines," 9 CFR Parts 93, 94, 95 and 96, and "Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Identification of Ruminants, and Processing and Importation of Commodities," 9 CFR Parts 93, 94, and 95, that abandoned longstanding import restrictions for the importation of both cattle and beef from countries with outbreaks of BSE or mad cow disease, thereby increasing the risk of introducing BSE (classical BSE) into the United States.<sup>24</sup>

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<sup>21</sup> 60 Fed. Reg., at 38,667-668.

<sup>22</sup> 62 Fed. Reg., at 56,027-033.

<sup>23</sup> 69 Fed. Reg., at 51,194-196.

<sup>24</sup> 72 Fed. Reg., at 53,314-379; and 73 Fed. Reg., at 3,379-385.

6. Implement safeguard measures to protect against cattle price collapses resulting from strategically timed import increases when domestic cattle prices attempt to rally: “as the price increases for live cattle, there is a subsequent and consistent increase experienced in beef importation” wrote 28 bipartisan U.S. House and Senate members to the U.S. Attorney General Merrick Garland in 2021.<sup>25</sup> Congress should implement safeguard measures to protect the domestic live cattle supply chain – a particularly supply-sensitive supply chain, from such a strategic timing of imports. Safeguards should include tariffs for countries that persistently maintain trade surpluses with the U.S. and a combination of automatic relief safeguards and tariffs when import surges are associated with cattle price decreases.
7. Instruct the Administration to revise rules of origin in all trade agreements to require beef’s origin to be where the animal was born, raised, and harvested to prevent exporters from stealing the trademark of the U.S. cattle industry – its “Product of the USA” label. Under existing rules, packers can place the USA label on anything that undergoes even minor processing in the U.S. In other words, importers and packers are currently allowed to place a “Product of the USA” label on beef derived from cattle that are exclusively born, raised, and harvested in foreign countries and on beef exclusively born and raised in foreign countries.<sup>26</sup>
8. Require permanent origin markings on all imported cattle to protect the domestic live cattle supply chain against the introduction of diseases and pests. This requirement would provide a visual means of quickly identifying foreign-born cattle in the United States and would be accomplished by a statute removing livestock from the list of exemptions from the general requirement that all imported goods be marked as to their origin (this list was previously known as the U.S. Department of Treasury’s “J-List”).
9. Prohibit foreign ownership of critical domestic beef supply chain components. Brazilian-owned JBS and Marfrig now own or control two of the four largest beef packing companies operating in the United States. As documented by the Institute for Agriculture and Trade Policy (IATP) in its report, *The Rise of Big Meat, Brazil’s Extractive Industry*,<sup>27</sup> both JBS and Marfrig are a product of the Brazilian government’s “National Champions Policy,” which was implemented by the Brazilian National Development Bank (Banco nacional de Desenvolvimento

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<sup>25</sup> Joint congressional letter to U.S. Attorney General Merrick Garland, June 1, 2021, available at <https://www.rounds.senate.gov/imo/media/doc/Rounds-Smith%20DOJ%20Beef%20and%20Cattle%20Letter.pdf>.

<sup>26</sup> See, e.g., Letter from Rachel A. Edelstein, Acting Assistant Administrator, Office of Policy & Program Development, Food Safety & Inspection Service, USDA, to Elizabeth Drake, Schagrin Assocs. (Mar. 26, 2020), available at <https://www.fsis.usda.gov/wps/wcm/connect/dba58453-e931-4c1d-9b4e-fb36417049ce/19-05-fsis-final-response-032620.pdf?MOD=AJPERES>.

<sup>27</sup> *The Rise of Big Meat, Brazil’s Extractive Industry*, Institute for Agriculture and Trade Policy (IATP), Nov. 30, 2017, available at <https://www.iatp.org/the-rise-of-big-meat>.

Econômico e Social [BNDES]) to catapult Brazil into a global beef packing superpower. The IATP describes a relationship between the two cartel partners and the state controlled BNDES as that of a state-owned enterprise (SOE). As such, the IATP states the cartel partners receive not only subsidized loans, but also large volumes of resources through the purchasing of debentures and company shares through BNDES's investment arm. It is evident that Marfrig and JBS are state-supported, cartel enterprises that are attempting to gain control of America's critical food production facilities, as well as over America's food-production supply chain, particularly its beef supply chain. Congress should direct the Committee on Foreign Investment in the United States (CFIUS) and the U.S. Department of Justice to take decisive action to prohibit foreign ownership of critical beef supply chain components to ensure the beef supply chain relied upon by Americans remains in the control of Americans.

10. Prohibit the USDA from imposing a radio frequency identification (RFID) mandate and other production-cost add-ons on the domestic cattle industry as this would exacerbate the current differential experienced by domestic cattle producers whose production costs are already higher than those of the foreign producers, and whose beef already displaces domestic production. Because RFID is among the more costly forms of animal identification, a mandatory RFID regime will undermine efforts to strengthen the domestic live cattle supply chain and build a more resilient food system by saddling all domestic producers with an unnecessary cost, regardless of whether a producer stands to earn a market premium for using such an identification system.

## **H. Address Improper Industry Promotion**

We ask that Congress effectively end the cattle industry's forced subsidization of generic beef promotional efforts that do not distinguish domestic beef from foreign beef, that treats all beef as equal, and that fails to distinguish between where and how beef is produced.

To accomplish this, Congress must repeal the current beef checkoff program that:

1. Forces domestic cattle producers to not only subsidize the promotion of their competitor's beef in the domestic market (*i.e.*, by promoting both imported and domestic beef as generic beef); but also, to subsidize the promotion of "U.S. Beef" in the international market that can be derived from imported cattle, thus allowing free-ridership for beef not exclusively born, raised, and harvested in the United States – a promotional practice that undercuts the international competitiveness of domestic cattle producers that exclusively produce beef from cattle exclusively born, raised, and harvested in the United States.<sup>28</sup>

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<sup>28</sup> See, e.g., An Emerging Market: How USMEF Fosters Beef Demand In Africa, Beef Checkoff Program, depicting promotion of "U.S. Beef" as part of the beef checkoff logo and "U.S. Meat," available at <https://www.beefboard.org/2021/03/18/an-emerging-market-how-usmef-fosters-beef-demand-in-africa/>; see also

2. Currently funds political lobbying groups through, as a minimum, the cross-subsidization/allocation of lobbying group's administrative costs.
3. Has never held a producer referendum and does not require a producer referendum to be held at least once every 5 years.

Should Congress resist the repeal of the current beef checkoff program, R-CALF USA requests that, at a minimum, the 2023 Farm Bill include the Opportunities for Fairness in Farming Act (OFF Act) that addresses Items 2 and 3 above.

#### **IV. ADDITIONAL RECOMMENDATIONS**

1. Clarify that producers need not prove competitive injury to enforce anticompetitive prohibitions in Packers and Stockyards Act. (To empower cattle producers to monitor and enforce market violations.)
2. Disallow the “business justification” defense used by the largest packers. (To enable meaningful enforcement of Packers and Stockyards Act prohibitions.)
3. Eliminate confidentiality guidelines in the Livestock Mandatory Reporting Act. (To ensure transparency in the industry's critical price discovery markets.)
4. Authorize the USDA to order restitution for livestock sellers who successfully prove financial harm resulting from a packer's violation of the Packers and Stockyards Act.
5. Allow recovery of legal fees and costs in successful Packers and Stockyards Act litigation. (To empower cattle producers to protect their competitive markets.)
6. Pass legislation that promotes and encourages more local and regional beef packing capacity. (To ensure resiliency and redundancy in both the cattle market and the beef supply chain.)
7. Pass legislation to reverse the USDA's and U.S. Department of the Interior's efforts to restrict and reduce grazing and water rights on federally managed (to ensure that federally managed lands remain available to support family-owned or operated ranching operations.)
8. Eliminate the risk of an inadvertent release of the live foot-and-mouth disease (FMD) virus by permanently cancelling the current plan to study and manipulate the live FMD virus in the proposed National Bio and Agro-Defense Facility (NBAF) located in the heart of the High Plains – the region where about 75% of beef packing capacity and 80%

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image of “U.S. Beef” checkoff logo funded in part by the Beef Checkoff, at [u.s. beef checkoff logo - Bing images](#).

of all cattle in feedlots are located. While no one predicted the disastrous consequences the COVID-19 pandemic had on human lives, society, and the economy, America was wrong to believe that such an outbreak could not happen, or if it did it would be contained and irradiated quickly. America must learn from this disaster and take decisive steps to protect itself from unnecessary and avoidable disease outbreaks, whether human, animal or zoonotic. But America is on track to expose cloven-footed livestock and wildlife to the risk of FMD – the most contagious disease known to such animals, by introducing the live FMD virus onto the mainland. In its 2010 evaluation of the potential risks the National Academy of Sciences concluded the government’s risk assessment it reviewed for the NBAF “indicated that an escape of a pathogen, such as FMD[] [virus], and an ensuing disease outbreak is more likely than not to occur within the 50-year life span of the NBAF.” It further stated the risk assessment indicates “that a release of FMD[] [virus] resulting in infection outside the laboratory has a nearly 70% chance of occurring with an economic impact of \$9-50 billion.” The academy further found that human error is the most likely cause of an accidental pathogen release. Congress should reinstate the United States’ longstanding prohibition against introducing the live FMD virus onto the mainland to avoid the known risk of a catastrophic outbreak of FMD.

## V. CONCLUSION

The U.S. cattle industry is facing a severe, systemic crisis caused by decades of industry consolidation and globalization. The cattle industry is shrinking at an alarming rate, in terms of its competitive infrastructure that includes its number of participants, size of its national cattle herd, and number of marketing opportunities available to producers (i.e., shrinking numbers of auction yards, feedlots, and packers). Associated with the industry’s shrunk competitive infrastructure, the economic viability of each segment of the live cattle supply chain is marked by systemic, downward trending trajectories. These negative, long-term trajectories are manifest in the cow/calf producer’s returns per bred cow, the cattle feeder’s monthly returns, and in the overall share of the consumer’s beef dollar allocated to the live cattle sector. In fact, in a span of just over a generation, the share of the consumer’s dollar allocated to the live cattle industry has been completely flipped in favor of beef packers and beef retailers.

The plight of the U.S. commercial sheep industry is bellwether indicator the cattle industry cannot ignore, as it has shrunk beyond recognition in just the past three decades.

Whatever incremental reforms Congress has implemented to address U.S. cattle markets over the past several decades has done nothing to curb the industry’s systemic decline, putting in peril the viability of the very heart of the U.S. cattle industry – it’s participants that rely exclusively or almost exclusively on a functional cattle market for their livelihoods.

We implore Congress to act decisively and comprehensively to include in the 2023 Farm Bill the recommendations we provide above that will reverse the ongoing decline of the U.S. cattle industry by restoring both competition in U.S. cattle markets and opportunities for independent cattle producers to prosper.