



June 12, 2017

Mr. Daniel Watson
Deputy Assistant United States Trade Representative for North America
Office of the United States Trade Representative
600 17th Street Northwest
Washington, DC 20508

Re: Written Comments of the U.S. Cattlemen's Association on Modernization of the North American Free Trade Agreement

Dear Mr. Watson:

The United States Cattlemen's Association ("USCA") appreciates this opportunity to submit its views regarding negotiating objectives for the modernization of the North American Free Trade Agreement ("NAFTA"). This submission responds to the request for comments published in the Federal Register on May 23, 2017.¹ USCA is a national organization that represents an effective voice for the United States cattle industry on issues including mandatory country-of-origin labeling, international trade, market competition, reform of the mandatory beef checkoff, animal health, welfare and identification, and private property rights.

USCA strongly supports the Administration's decision to renegotiate NAFTA, particularly with the stated objective to modernize the agreement in order to "support higher-paying jobs in the United States and to grow the U.S. economy by improving U.S. opportunities under NAFTA."² Improving opportunities for the U.S. cattle industry should be a key part of the Administration's negotiating objectives for a modernized NAFTA.

Cattle production generates more cash receipts than any other segment of U.S. agriculture. In 2015, cattle production generated \$78.2 billion in cash receipts, accounting for 21 percent of total agricultural receipts.³ This is more than any other commodity, including corn, milk, and soybeans. Ranchers raise cattle in every state of the nation.⁴ There are nearly one million cattle operations in the United States, many of them small, independent, and family-owned and -operated.⁵ The health and prosperity of the U.S. cattle industry is vital to farmers and ranchers, and to thousands of rural communities, across the United States.

¹ *Request for Comments on Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement With Canada and Mexico*, 82 Fed. Reg. 23,699 (USTR May 23, 2017).

² *Id.* at 23,699.

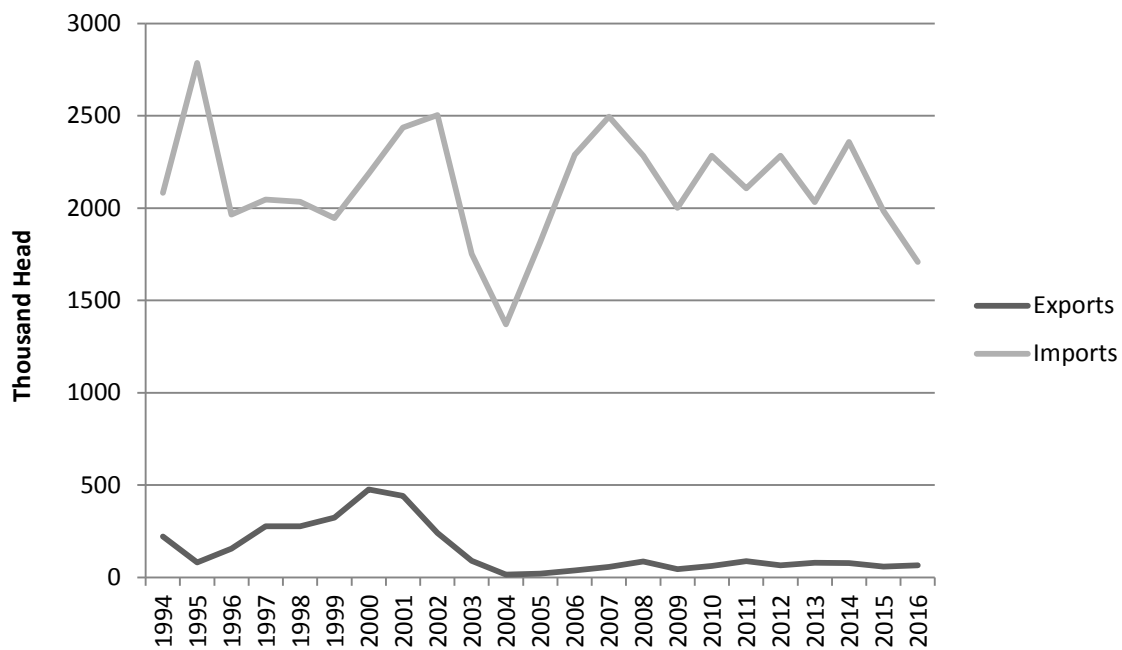
³ "Overview of the United States Cattle Industry," U.S. Department of Agriculture (June 24, 2016), available on-line at <http://usda.mannlib.cornell.edu/usda/current/USCatSup/USCatSup-06-24-2016.pdf>.

⁴ "Cattle Industry," 2012 Census of Agriculture Highlights (Feb. 2015), available on-line at: https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Highlights/Cattle/Cattle_Highlights.pdf.

⁵ *Id.*

Unfortunately, NAFTA has failed to deliver fair and balanced trade to American cattle producers. Under NAFTA, the U.S. committed to eliminate import duties and other restrictions on imports of non-dairy cattle other than breeding cattle and on imports of fresh, chilled, and frozen beef from Canada and Mexico in the first year of the agreement.⁶ By number of animals, the U.S. imports far more cattle from Canada and Mexico than it exports, and, by value, the U.S. has run a growing trade deficit in cattle with Canada and Mexico since 1994. The U.S. has also run large and persistent trade deficits in beef with Canada, and it started to run a deficit in beef with Mexico for the first time in 2015 and 2016.

U.S. Trade in Live Cattle with Canada and Mexico⁷



In 1994, the year NAFTA was implemented, the U.S. ran a surplus of \$226.7 million in beef and a deficit of \$978.8 billion with Canada and Mexico combined.⁸ By 2016, the surplus in beef had become a deficit of \$710.4 million, and the combined deficit in cattle had grown to \$1.55 billion.⁹

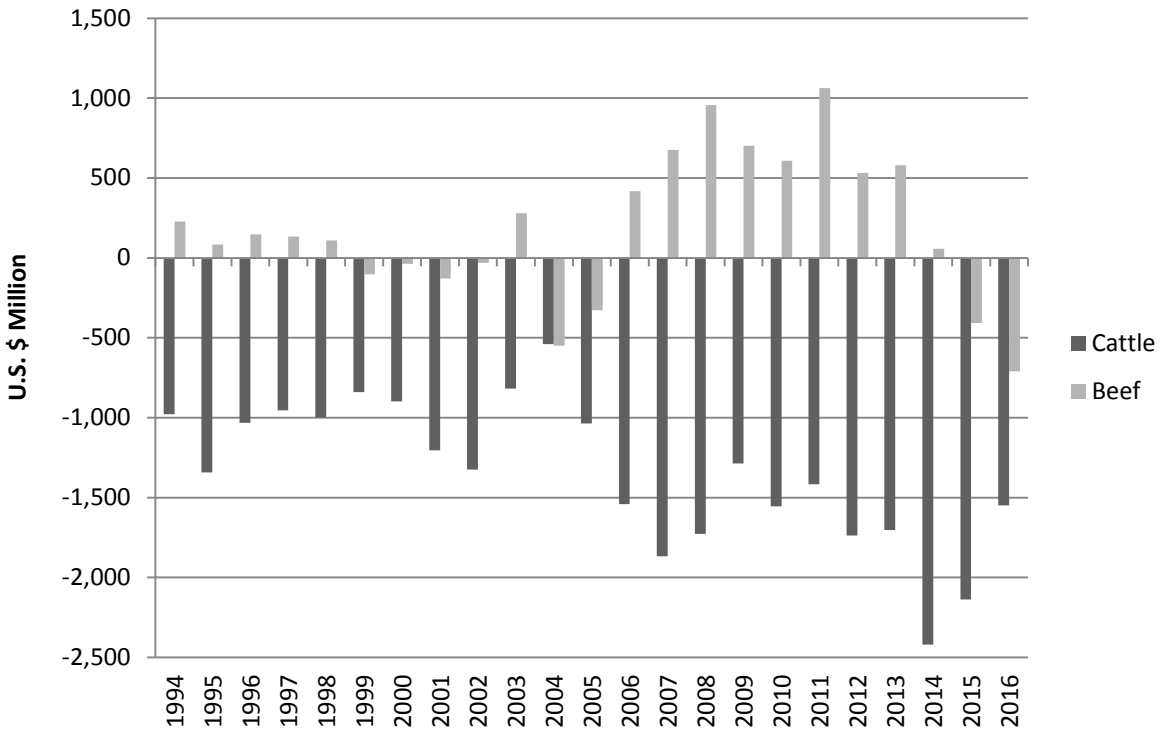
⁶ NAFTA Annex 302.2, Schedule of the United States, at HTS 0102.90.40, 0201, and 0202.

⁷ USDA ERS - Livestock and Meat International Trade Data, Cattle.

⁸ USITC Trade DataWeb, total exports and general imports, for HTS 0102.10, 0102.90, 0201, 0202, 0206.10, 0206.21, 0206.22, 0206.29, & 0210.29.

⁹ USITC Trade DataWeb, total exports and general imports, for HTS 0102.21, 0102.29, 0201, 0202, 0206.10, 0206.21, 0206.22, 0206.29, & 0210.29.

U.S. Trade Balance in Cattle and Beef with Canada and Mexico¹⁰

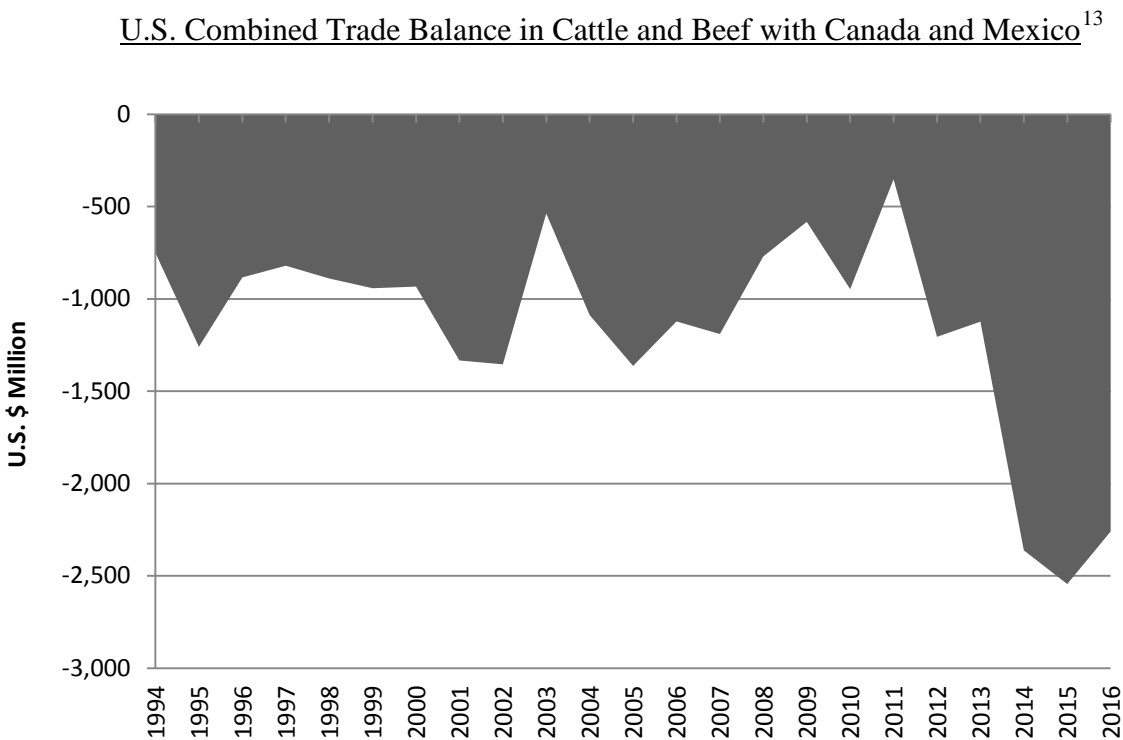


As a result, our combined cattle and beef trade deficit with Canada and Mexico has tripled over the life of the agreement, from \$752.1 million in 1994 to \$2.259 billion in 2016.¹¹ Our 2016 trade deficits with Canada and Mexico by two-digit HTS chapter show that live animals, dominated by cattle, was the 12th largest deficit category for Canada and the 19th largest for Mexico, while meat was the 18th largest deficit with Canada, with beef accounting for the majority of that deficit.¹²

¹⁰ USITC Trade DataWeb, total exports and general imports, for HTS 0102.10, 0102.21, 0102.29, 0102.90, 0201, 0202, 0206.10, 0206.21, 0206.22, 0206.29, & 0210.29.

¹¹ *Id.*

¹² USITC Trade DataWeb, total exports and general imports.



There are a number of reasons for these imbalances and the competitive disadvantage that American cattle ranchers face. Each of them should be addressed in the negotiations to modernize NAFTA.

- First, without meaningful country-of-origin labeling on meat products or strong rules of origin, many consumers who wish to purchase meat derived from animals born and raised in the United States are unable identify such product. This deprives U.S. cattle producers of the ability to differentiate their product in the market, and allows meat packers to take advantage of different supply sources while capitalizing on consumer confusion about the source of the food they eat.
- Second, perishable agricultural products, such as beef and finished cattle, have limited and time-sensitive marketing periods and face particular challenges in obtaining relief from injurious trade, whether related to unfair trade practices or import surges. Congress has directed the Administration to address perishable and cyclical products in trade agreements, and NAFTA provides a unique opportunity to do so in a comprehensive manner for the first time in a U.S. trade agreement.

¹³ USITC Trade DataWeb, total exports and general imports, for HTS 0102.10, 0102.21, 0102.29, 0102.90, 0201, 0202, 0206.10, 0206.21, 0206.22, 0206.29, & 0210.29.

- Third, cattle producers in Canada and Mexico benefit from a variety of subsidy programs that are more generous than any available to U.S. producers, further tilting the playing field away from domestic producers.
- Finally, NAFTA should not interfere with the effective enforcement of domestic trade remedy laws, which often serve as the first line of defense for domestic industries like the U.S. cattle industry.

Each of these issues is addressed in more detail below.

I. Country-of-Origin Labeling

In 2002, Congress enacted country-of-origin labeling (“COOL”) for meat and other products. The bill required that most meat marketed in the U.S. not bear a “Product of the USA” label unless the animal from which that meat was derived was born and raised in the United States.¹⁴ After a series of delays in implementation, Congress amended the law in 2008, and final regulations implementing the labeling requirement for beef were issued in 2009.¹⁵ In December of 2008, as these regulations were pending, Canada and Mexico challenged the U.S. law and regulations implementing COOL at the WTO, arguing that, among other things, they violated U.S. obligations under the Agreement on Technical Barriers to Trade (“TBT Agreement”). In 2012, the WTO Appellate Body ruled that the current COOL program violates the obligations of the United States under Article 2.1 of the TBT Agreement.¹⁶ The U.S. revised its regulations in order to comply with the Appellate Body ruling, only to have those regulations also rejected by the Appellate Body in 2015. As a result, Congress repealed the COOL requirements for beef in late 2015.

While Canada and Mexico claimed that COOL harmed the competitive position of their cattle exports to the U.S. market, import volumes remained steady pre- and post-COOL. Combined cattle exports from Canada and Mexico to the U.S. rose from 2.284 thousand head in 2008, the year before the final rule was implemented, to 2.358 thousand head in 2014, the year before the law was revoked.¹⁷ In 2016, the first full year of revocation, cattle imports from the two countries fell to 1.708 head.¹⁸ In addition, the value of U.S. cattle imports from the two countries rose from \$1.79 billion in 2008 to \$2.49 billion in 2014, reflecting the broader

¹⁴ Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, § 10816, 116 Stat. 134, 533-535 (2002).

¹⁵ *Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts*, 74 Fed. Reg. 2,658 (Jan. 15, 2009).

¹⁶ Appellate Body Report, *United States – Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/AB/R, WT/DS386/AB/R, adopted 23 July 2012.

¹⁷ USDA ERS - Livestock and Meat International Trade Data, Cattle.

¹⁸ *Id.*

dynamics of the cattle cycle in the three countries that provided opportunities undiminished by COOL.¹⁹

COOL is vitally important to American ranchers, as it is the only means they have to differentiate their product to consumers. Ranchers have no control over how meatpackers and retailers choose to label beef to consumers. As long as all beef is stamped with the USDA inspection stamp, packers can take advantage of consumer ignorance or confusion to market meat from different animal origins side by side with no distinction. This permits packers to take advantage of different supply sources while still enjoying the premium that American consumers associate with beef made from cattle born and raised in the United States, without allowing ranchers to share in any of that premium.

There have been numerous polls and studies demonstrating that consumers value origin information regarding the food that they buy, including meat. One survey of consumers in Louisiana before COOL was created in 2002 found that 93% of the consumers surveyed supported mandatory origin labeling of fresh and frozen beef in retail stores.²⁰ A 2002 survey of consumers in Chicago and Denver found that 75% of participants preferred to buy meat products labeled with country of origin as opposed to unlabeled product, with the preferences being strongest for beef products.²¹ A national poll in 2007 found that 94% of those surveyed believe that consumers have a right to know the country of origin of the foods that they purchase, and 85% of consumers say knowing where their food comes from is important.²²

In addition, it appears that consumers are willing to pay more for a more precise, country-specific label that identifies the U.S. as the country of origin than for a less precise, mixed-origin label. For example, a 2012 survey found that consumers were willing to pay \$1.77 more per 12 ounce portion for a meat product labeled “Product of United States” compared to an unlabeled product.²³ By contrast, consumers were only willing to pay an additional \$1.07 per 12 ounce portion for a meat product with a less precise “Product of Canada, Mexico and US” compared to an unlabeled product.²⁴ Similarly, the 2002 survey of consumers in Chicago and Denver mentioned above found that consumers were willing to pay an average \$0.42/lb for a steak

¹⁹ USITC Trade DataWeb, imports for consumption, for HTS 0102.10, 0102.21, 0102.29, & 0102.90.

²⁰ A. Schupp and J. Gillespie, “Consumer Attitudes Toward Potential Country-of-Origin labeling of Fresh or Frozen Beef,” *Journal of Food Distribution Research* 32(3):34-44 (2001).

²¹ Wendy J. Umberger, et al., “Country-of-Origin Labeling of Beef Products: U.S. Consumers’ Perceptions,” *Journal of Food Distribution Research* 34(3):103-116 (2003).

²² Danielle Gunn and C. Wilson Gray, “COOL Finally Arrives!” University of Idaho Extension, Agricultural Economics Extension Series No. 08-06 (Sept. 2008) at 1-2.

²³ Glynn T. Tonsor, Et al., “Consumer Valuation of Alternative Meat Origin Labels,” *Journal of Agricultural Economics* (2012).

²⁴ *Id.* While the survey also found that consumers were willing to pay more for meat labeled “Product of North America,” it appears this finding may reflect consumer confusion as to the definition of “North America” rather than an objective evaluation of the information on the label properly defined.

bearing a country of origin label with an unspecified format as opposed to an unlabeled steak.²⁵ However, when a specific label stating “U.S.A. Guaranteed: Born and Raised in the U.S.” was offered, consumers were willing to pay an average \$0.81/lb more for the labeled steak than for an unlabeled steak.²⁶ The U.S. born and raised label was perceived as nearly twice as valuable as a general origin label, demonstrating the importance consumers place on origin information and the premiums potentially available to U.S. producers if such information is provided.

The significant benefits of COOL for American ranchers and consumers far outweigh any implementation costs that may be associated with re-instating the program. As noted above, when the program was in effect from 2009 through part of 2015, Canadian and Mexican exports to the United States did not suffer, and the meatpacking supply chain did not collapse. Indeed, it is common for packers to track various animal traits throughout the production process and to segregate meat from different animals based on these traits.

It is no more difficult to do so according to the origin of the animal being processed. In the U.S., for example, any beef products exported to Mexico that were derived from Canadian cattle slaughtered in the U.S. must be accompanied by additional documentation submitted to FSIS.²⁷ In Canada, meatpackers cannot export certain types of beef to China unless that meat is from an animal born and fed in Canada and slaughtered at less than 30 months of age.²⁸ Thus, meatpackers on both sides of the border are already segregating meat from animals of different origins throughout the production process. Simply requiring them to inform consumers of that origin would impose minimal, if any, additional burdens. And, as noted above, it would create significant benefits for U.S. cattle producers and for American consumers.

In the context of the NAFTA modernization negotiations, the Administration should seek agreement from Canada and Mexico that all three countries have the right to require that meat be labeled not only with the country of slaughter, but also the country or countries in which the animal from which the meat was derived was born and raised. This common-sense, non-discriminatory program can and should be implemented in all three NAFTA countries. The parties should similarly agree that they will not challenge any such labeling requirements under NAFTA or WTO rules, as long as they meet specified parameters. Such an outcome will allow the United States to re-instate COOL, and it would shield the measure from further challenge from the two sources of U.S. cattle imports. This will help domestic producers differentiate their product and allow consumers to make informed choices about the food they eat.

²⁵ Wendy J. Umberger, et al., “Country-of-Origin Labeling of Beef Products: U.S. Consumers’ Perceptions,” *Journal of Food Distribution Research* 34(3):103-116 (2003).

²⁶ *Id.*

²⁷ “Export Requirements for Mexico,” USDA Food Safety and Inspection Service, available on-line at: <https://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/exporting-products/export-library-requirements-by-country/Mexico>.

²⁸ “China,” Canada Food Inspection Agency, available on-line at: <http://www.inspection.gc.ca/food/meat-and-poultry-products/manual-of-procedures/chapter-11/china/eng/1368642496216/1368643034029>.

II. Rules of Origin

For a meat product to be originating from one of the NAFTA countries, and thus be eligible for duty-free treatment under the agreement, it must have been slaughtered in one of the NAFTA countries.²⁹ There is no requirement that the animal from which the meat is derived also originate from one of the NAFTA countries. While the vast majority of cattle imported by the NAFTA parties is from another NAFTA country, this is not uniformly the case and may be less so in the near future. In 2016, for example, Mexico established a TRQ for cattle imports in the hopes of increasing domestic supply from countries other than the U.S. and Canada.³⁰ Mexico has already begun importing cattle from Australia and New Zealand.³¹ To ensure that duty-free access for beef under NAFTA benefits not just meatpackers but also cattle ranchers in the three NAFTA countries, the rules of origin should be revised to require that duty-free access only be provided to meat from animals that have not only been slaughtered in one of the NAFTA countries but also born and raised in one or more of the three NAFTA countries.

III. Perishable and Cyclical Agriculture Provisions

Beef and cattle are perishable commodities with limited marketing windows. Cattle in particular must be marketed when it has reached an ideal slaughter weight – marketing an animal too early will sacrifice potential income for a heavier animal, while continuing to feed beyond that weight will have diminishing to no returns. Producers of perishable and cyclical agricultural products are particularly susceptible to damage from trade surges and various forms of unfair trade practices. Because of very limited marketing periods for these products, swings in import volumes and prices of even a very limited duration can have an immediate impact on the domestic industry.

Unfortunately, current trade remedy tools are woefully inadequate to address these particular market dynamics. The transition period for the NAFTA safeguard has expired, and there are no specific rules in the agreement that provide safeguard relief tailored to perishable and cyclical products. In addition, farmers and ranchers have found that seeking trade relief under domestic antidumping and countervailing duty laws poses numerous challenges, including the length of time it takes to complete an investigation, the typical periods examined in an investigation, and the difficulty of organizing a fragmented industry to petition for relief.

In recognition of these problems, Congress directed the Administration to achieve specific negotiating objectives for perishable and cyclical agriculture in the Trade Act of 2002, and these provisions were carried over into the current grant of trade promotion authority. In particular, Congress directed the Administration to eliminate practices that adversely affect trade in

²⁹ NAFTA Annex 401.

³⁰ “Mexico Establishes TRQs But no Need to Worry,” USDA Foreign Agricultural Service, GAIN Report MX6025 (June 9, 2016).

³¹ “Mexico: Livestock and Products Semi-annual,” USDA Foreign Agricultural Service, GAIN Report MX7006 (Mar. 7, 2017).

perishable or cyclical product and to improve import relief mechanisms in recognition of the unique characteristics of such products.³² Congress also directed the Administration to seek to develop an international consensus on the treatment of seasonal or perishable agricultural products in investigations relating to dumping and safeguards and in any other relevant area.³³ When these provisions were first included in trade promotion authority in 2002, a colloquy on the Senate floor between Senators Enzi, Daschle, Grassley, and Baucus made clear that the body intended perishable and cyclical products to include livestock and meat.³⁴

The NAFTA modernization negotiations provide a unique opportunity to finally fulfill these long-standing Congressional objectives. As noted above, cattle production is the single largest segment of U.S. agriculture. And Canada and Mexico are the only meaningful trading partners the United States has for both exports and imports of live cattle. If there is any agreement where meaningful progress can be made on perishable and cyclical agriculture with profound potential benefits for U.S. producers, it is NAFTA.

As a first step, the Administration should negotiate a special regional safeguard provision for perishable and cyclical products that is not limited to a transition period, can be based on either volume and/or price triggers, and recognizes the unique marketing periods and other features that characterize trade in perishable and cyclical products. In addition, the Administration should seek clarification among NAFTA partners that each party may revise its antidumping and countervailing duty laws to provide specific forms of accessible relief for producers of perishable and cyclical agricultural products, and that such provisions would not be subject to challenge by the three parties under NAFTA or WTO rules. Such an agreement can lay the foundation for the international consensus on trade in perishable and cyclical products that Congress has directed the Administration to pursue.

IV. Subsidies to Canadian and Mexican Producers

NAFTA modernization negotiations also offer an opportunity for the U.S. to address certain subsidies to cattle producers in Canada and Mexico. According to the OECD's estimates for producer support measures, cattle producers in Canada and Mexico regularly receive commodity transfers for beef and veal that are much higher than those received by U.S. cattle producers, as a percentage of their receipts. From 1994 to 2015 (latest year for which data is available), transfers to Canadian producers were over one percent of receipts in 21 out of 22 years, transfers to Mexican producers exceeded one percent of receipts in 20 of the 22 years, and transfers to U.S. producers exceeded one percent of receipts in just two out of the 22 years.³⁵ On average over the period, transfers to Canadian producers were 2.83 percent of receipts, those to Mexican

³² 19 U.S.C. § 4201(b)(3)(J).

³³ 19 U.S.C. § 4201(b)(3)(R).

³⁴ 148 CONG. REC. S2,800 (daily ed. May 23, 2002).

³⁵ OECD Producer and Consumer Support Estimates database, available on-line at: <http://www.oecd.org/tad/agricultural-policies/producerandconsumersupportestimatesdatabase.htm>.

producers were 6.58 percent, and those to U.S. producers were just 0.40 percent.³⁶ These disparate levels of subsidization leave domestic cattle ranchers at a disadvantage when trade in cattle is duty free among the three countries and domestic trade remedy laws are largely inaccessible to the fragmented domestic cattle industry.

In its 2017 budget, the Government of Canada has proposed a number of programs to support agriculture, including a “Innovation and Skills Plan” with the goal of increasing agriculture exports to at least \$75 billion annually by 2025, as well as a \$1.26 billion five-year “Strategic Innovation Fund” to attract investment in agriculture, among other sectors.³⁷ At the federal level, the Government of Canada supports cattle producers through the Canadian Agricultural Loans Act (a loan guarantee program) and a pasture rehabilitation program.³⁸ At the provincial level, British Columbia provides loan guarantees for feeder cattle and operates a beef cattle industry development trust fund, Saskatchewan and Manitoba provides livestock loan guarantees, and Alberta, New Brunswick, Newfoundland, Ontario, and Prince Edward Island maintain a number of other programs benefitting cattle producers.³⁹

In 2013, the Government of Mexico launched programs to improve herd genetics and otherwise support cattle producers. Under one program, the government provides monetary support for the purchase of breeding cattle of about \$150/head, with encouragement for state governments to provide additional funds.⁴⁰ As noted by USDA, while the program does not explicitly prohibit support for the purchase of imported breeding cattle, it requires the breeding cattle to be registered in the national identification system and originate from breeding companies in the

³⁶ *Id.*

³⁷ “Highlights from the 2017 Federal Budget,” USDA Foreign Agricultural Service, GAIN Report CA17011 (Mar. 29, 2017).

³⁸ See “Canadian Agricultural Loans Act – Lenders’ Guidelines, Program Guidelines – Introduction,” available on-line at: <http://www.agr.gc.ca/eng/?id=1369846155609>. See also Agriculture and Agri-Food Canada, “Community Pasture Program,” available on-line at: <http://www.agr.gc.ca/eng/?id=1298388156452>.

³⁹ BCBFA BC Breeder and Feeder Association Brochure, available at <http://bcbfa.ca/wp-content/uploads/2015/06/bcbfa-brochure-.pdf>; “Cattle Industry Development Council, Beef Cattle Industry Development Fund,” available at <http://www.cattlefund.net/bcidf.htm>; Government of Saskatchewan, “Livestock Loan Guarantee Program” (January 2014), available at http://publications.gov.sk.ca/documents/20/85896-LLG_manual.pdf; Fundica, “Manitoba Livestock Associations Loan Guarantees,” available at https://www.fundica.com/p-fund-6b8e4e979fb0dfa2-Manitoba_Livestock_Associations_Loan_Guarantee-Manitoba_Agricultural_Services_Corporation; “Farm Products Payments Act, Ontario Regulation 560/93, Fund for Livestock Producers,” available at <https://www.ontario.ca/laws/regulation/930560>; Prince Edward Island, Agriculture and Fisheries, “Agriculture Livestock Enhancement Program,” available at <https://www.princeedwardisland.ca/en/information/agriculture-and-fisheries/agriculture-livestock-enhancement-program>; Newfoundland Labrador, Agrifoods, Animals, Livestock and Poultry, “Insurance,” available at <http://www.faa.gov.nl.ca/agrifoods/animals/livestock/insurance.html>; New Brunswick, “Livestock Incentive Loan Program,” available at http://www2.gnb.ca/content/gnb/en/services/services_renderer.200820.html; Alberta, “History of the Feeder Association Loan Guarantee Program,” available at [http://www1.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/beef11377](http://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/beef11377).

⁴⁰ “Cattle Herd Repopulation Plan,” USDA Foreign Agricultural Service, GAIN Report MX3077 (Oct. 30, 2013).

National Cattle Registry.⁴¹ Another program tests and certifies domestic cattle so as to guarantee genetic purity for eventual selection for semen and embryos.⁴² As the program is designed to improve Mexican cattle genetics, only domestic animal are eligible for the program.⁴³ Both programs appear to remain in effect in 2017.⁴⁴ Since the vast majority of cattle exported from the U.S. to Mexico is breeding cattle, any such discriminatory requirements would have adverse effects on U.S. cattle producers. Even if the discriminatory requirements identified did not apply, these programs may be helping to give Mexican cattle producers a competitive advantage they would not otherwise enjoy.

The Administration should seek to have these subsidy programs eliminated or offset in any negotiations to modernize NAFTA. Any programs specifically designed to increase exports or reduce imports should be of particular concern.

V. Chapter 19 Binational Panels

Meaningful access to effective trade remedies is vital to many segments of U.S. agriculture, including cattle. The binational panel system created by Chapter 19 of NAFTA has undermined our trade remedy laws, violated basic notions of fairness and impartiality, and disregarded the judicial standard of review it is required to adhere to. Chapter 19 should be eliminated from NAFTA entirely.

Since 1994, there have been 118 binational panel decisions issued under Chapter 19, a full 81 of which concerned trade remedy measures imposed by the United States. The panels have been overwhelmingly disposed to strike down trade remedy measures rather than uphold them (and rather than remand them to consider petitioner's concerns). According to one analysis, despite the fact that the panels are supposed to apply the same standard of review as U.S. courts, "U.S. agencies 'lose' on NAFTA appeals at a greater rate than when those challenges are raised before U.S. courts."⁴⁵ NAFTA panels are also far less likely to rule favorably on petitioners' claims than on respondents' claims, and the imbalance is more pronounced than any such imbalance observed in U.S. court decisions.⁴⁶

The failure to adhere to the applicable judicial standard of review is not just apparent in the track record of decisions. In a 2007 decision on carbon wire rod from Canada, the panel in fact

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ "Mexico: Livestock and Products Semi-annual," USDA Foreign Agricultural Service, GAIN Report MX7006 (Mar. 7, 2017).

⁴⁵ Juscelino F. Colares & John W. Bohn, *A Comparison of U.S. Judicial and NAFTA Panel Review of Trade Remedy Cases*, INT'L J. PRIVATE LAW, Vol. 1, Nos. 1/2 at 69, 77 (2008).

⁴⁶ Juscelino F. Colares & John W. Bohn, *NAFTA's Double Standards of Review*, 42 WAKE FOREST L. REV. 199, 212-214 (2007).

explicitly rejected the contention that it was bound to apply holdings either by the U.S. Court of International Trade or even the U.S. Court of Appeals for the Federal Circuit.⁴⁷ This decision flies in the face of the principle of a consistent, reliable, and uniform rule of law, and it is on its own reason enough to eliminate the Chapter 19 process.

As a result of the string of adverse decisions from Chapter 19 panels, one commentator noted that the process “has been quite effective in curbing what Canadians believe to be the overzealous enforcement of AD and CVD laws by U.S. authorities ...”⁴⁸ The author suggested that adverse Chapter 19 decisions had created a chilling effect on U.S. petitioners, concluding that one “bright spot” of the Chapter 19 process is that Canada and Mexico have been subject to far fewer trade remedy investigations and orders since NAFTA was imposed relative to other countries, proportionate to their trading volume.⁴⁹ This is precisely the opposite of what the United States should seek in NAFTA.

Domestic producers already face enough obstacles seeking relief from unfair trade practices. It is particularly difficult for fragmented industries such as the cattle industry to marshal their resources, meet standing requirements, and obtain relief under the current law. The prospect of having any cases against Canada and/or Mexico put in further jeopardy by the Chapter 19 process is only one more impediment, particularly when all of our cattle imports are from these two countries. The Administration should put a priority on making trade remedies more accessible and more effective for U.S. producers, not less so. An important step towards this goal is eliminating Chapter 19.

VI. Conclusion

USCA strongly supports the Administration’s decision to modernize NAFTA through re-negotiations. The cattle industry is the largest segment of U.S. agriculture, and it is uniquely impacted by NAFTA given the high volume of cattle and beef trade in the region and the fact that nearly all U.S. cattle trade is with our NAFTA partners. More than twenty years since its implementation, it is clear that NAFTA has not provided U.S. cattle ranchers with the level regional playing field they need to compete. The steps outlined above could help maximize the potential benefits of the agreement for the hundreds of thousands of cattle operations spread throughout the United States.

⁴⁷ *Carbon and Certain Alloy Steel Wire Rod from Canada*, USA-CDA-2006-1904-04, Decision of the Panel (Nov. 28, 2007) at 21.

⁴⁸ Patrick Macrory, “NAFTA Chapter 19: A Successful Experiment in International Trade Dispute Resolution,” C.D. Howe Institute Commentary (Sept. 2002).

⁴⁹ *Id.*

We look forward to working with the Administration in furtherance of these important goals.

Sincerely,

A handwritten signature in cursive script that reads "Kenny Graner".

Kenny Graner,
President,
U.S. Cattlemen's Association