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# WHAT HAVE WE LEARNED FROM CATTLE/BEEF DISPUTES?

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*Abuse of important trade laws represents one of the most ominous threats to a liberal international trading regime. Joseph Stiglitz, SEJ, 1997.*

## BACKGROUND AND PURPOSE OF THE PAPER

The organizers of this workshop undertook to have reviewed five trade disputes among the NAFTA partners. Individual commodities were selected because of characteristics unique to that dispute, their overall significance in trade, or the nature of the resolution, with the goal of improving our understanding of trade relations among the three countries. The cattle/beef sector was selected because of its economic importance in all three countries, the example it provides of interest group participation, and because it involves a recent major formal dispute process affecting each country.

When economists conduct a case study review of “disputes” in a sector, and certainly in the cattle/beef sector, the first consideration is to define the

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scope of analysis. "Disputes" that reach formal resolution processes within the North American Free Trade Area (NAFTA), the World Trade Organization (WTO)<sup>2</sup> or bilaterally (all discussed in the preceding USDA/AAFC paper) are obvious candidates for review. U.S. investigations of Canadian or Mexican live cattle exports, initiated by the Ranchers and Cattlemen Action Legal Foundation (R-CALF), were also that form of dispute<sup>3</sup>.

However, there are other instances of disputes which are more limited in scope but are no less significant. They usually involve specific trade considerations that occupy interest group, bureaucratic, and sometimes political, time and resources. These examples of trade disagreements are often resolved by negotiation outside any formal dispute settlement process, or they may not be resolved. If left unresolved, they may continue to stress trading relations and ultimately may rise in importance to become formal disputes. In some cases, informal trade stress may just disappear. In this paper, we identify informal and formal disputes in the cattle/beef sector because both forms are important to understanding trading relations among the United States, Mexico, and Canada. R-CALF, and antidumping duties imposed by Mexico against imports of U.S. beef in 1999, are the only formal disputes in beef or cattle. In this paper we concentrate on the R-CALF dispute. However, there are several significant examples of ongoing trade stress in the industry. We refer to these as "issues" in this paper. Many of the issues identified here have been discussed by various authors and discussants in previous workshops (Hayes and Kerr, 1997; Anderson, Mintert, and Brester, 1998; Hobbs and Kerr, 1998; Lambert, 1998; Isman, 1998).

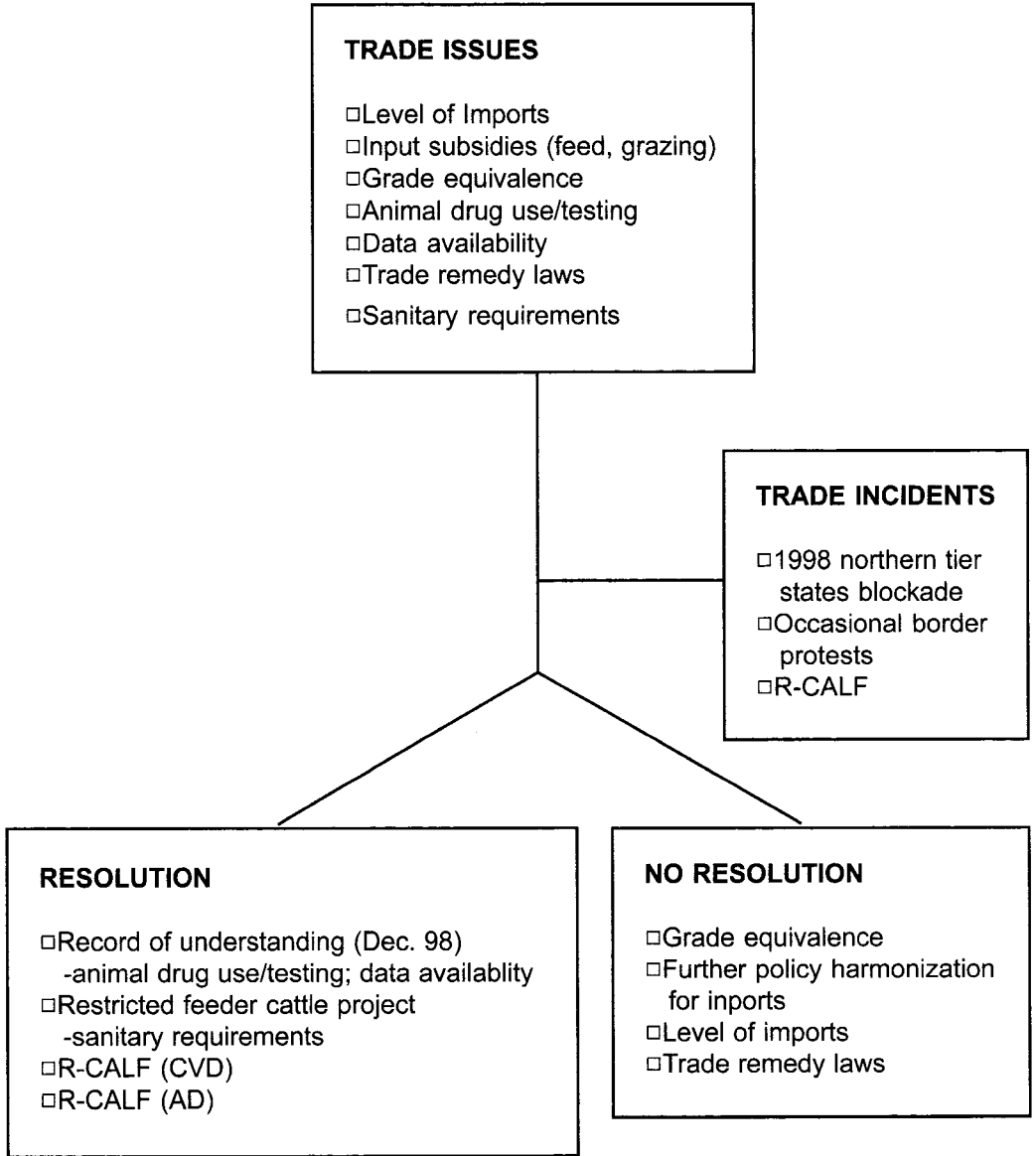
The purpose of this paper is to review cattle/beef disputes among NAFTA partners in order to improve understanding of trade stress in the sector, with the broader goal of achieving more harmonious trading relations. The paper will:

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<sup>2</sup>Previously administered under the General Agreements on Tariffs and Trade (GATT).

<sup>3</sup>As discussed in a later section there were three separate actions launched under U.S. trade remedy law by the Ranchers and Cattlemen Legal Action Fund.

**Figure 1: Cattle and Beef Trade Issues and Incidents.**



Source: Compiled by the authors.

- identify policy and trade issues among the three NAFTA partners in the cattle/beef sector, and review causes and consequences of the R-CALF dispute;
- provide a summary of recent quantitative analyses of effects of increased cattle/beef trade within the NAFTA area; and
- draw conclusions on where the current dispute resolution process is inadequate for achieving greater harmony among NAFTA partners.

The next section of the paper provides an overview of the industry in the three countries, and a brief discussion of trade issues and incidents. A simple model of issues, incidents and disputes is provided in Figure 1. Section three provides a brief summary of the U.S. Trade-Remedy Laws under which the R-CALF cases were tested. Section four describes the suit initiated by R-CALF against Mexican and Canadian live cattle imports, and the last section provides our conclusions.

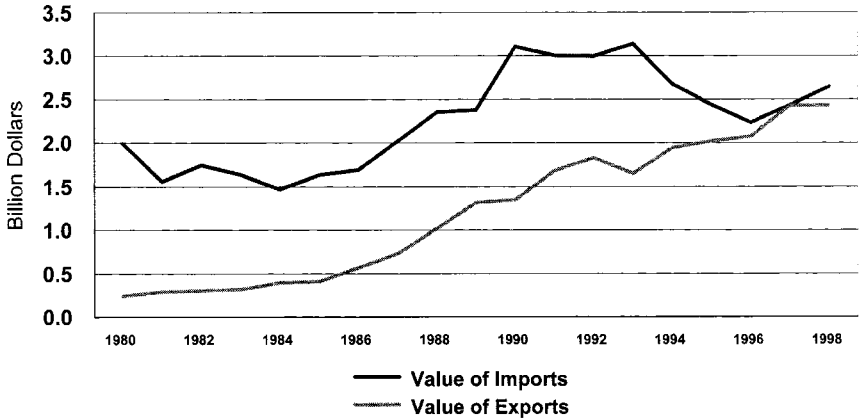
## **INDUSTRY BACKGROUND**

### **Production and Trade**

U.S. beef exports have grown significantly, from 1.4 billion dollars in 1989 to 2.5 billion dollars in 1997 (Figure 2). However, exports are still a relatively small percentage of production, accounting for 8.5 per cent in 1998 (Marsh, 1999). The increase in exports has resulted in the United States becoming a net exporter, in value terms, of beef since 1994. However, when both live cattle and beef are considered together, the United States remains a small net importer.

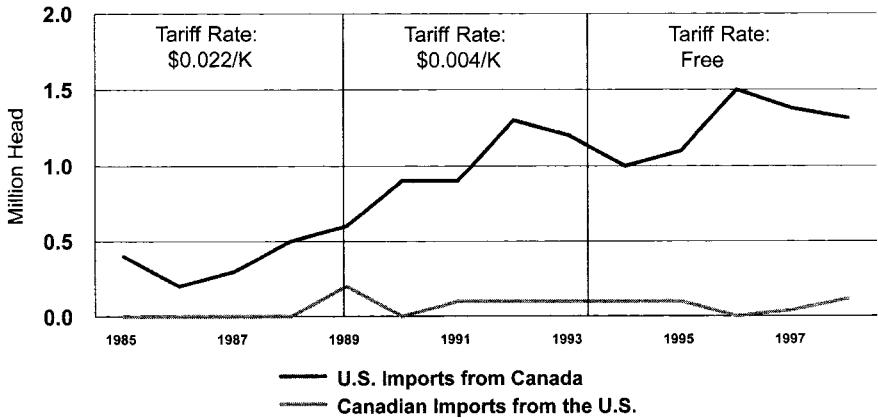
Increased imports of cattle and beef from Canada have displaced imports of manufacturing quality beef from Australia and New Zealand. In 1999 the United States imported 980 thousand head of cattle from Canada, a decrease from 1.3 million head in 1998 (Figure 3). While the United States is a consistent net importer of live cattle from Canada, U.S. exports of live cattle to Canada increased to 222 thousand head in 1999 from a previous five year average of 62 thousand head, due to increased demand in Alberta and less onerous sanitary restrictions at the U.S.-Canadian border. One factor behind increased U.S. imports of cattle was the cattle cycle, for western Canada had large inven-

**Figure 2: Value of U.S. Imports and Exports of Cattle and Beef, 1980 - 1998.**



Source: Marsh 1999.

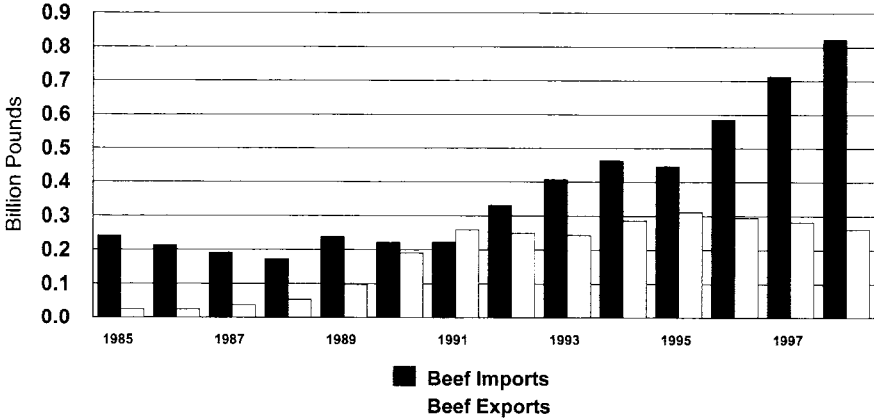
**Figure 3: U.S. - Canadian Trade in Live Cattle, 1985 - 1998.**



Source: USDA 1999a.

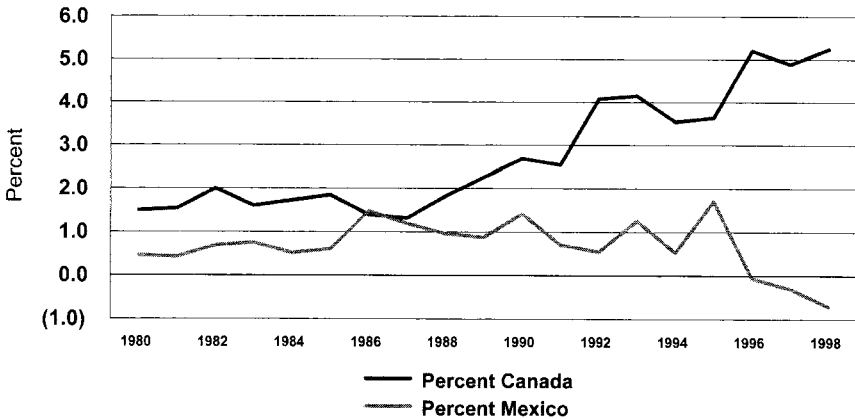
tories that needed to be liquidated (USDA, 1999b). Other factors were the elimination of Canadian transportation subsidies to export grain, resulting in lower feed grain prices on the Canadian prairies, and inadequate slaughter capacity in Alberta.

**Figure 4: U.S. - Canadian Trade in Boxed Beef, 1985 - 1998.**



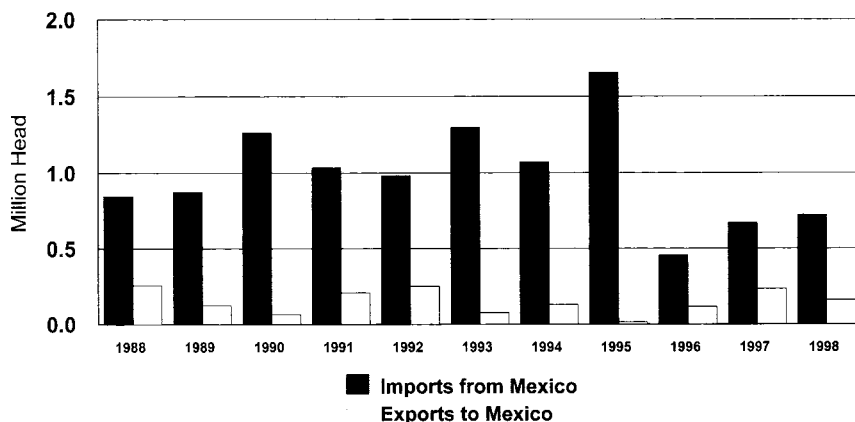
Source: USDA 1999a.

**Figure 5: Net Imports from Canada and Mexico, Cattle and Beef Pounds as a percentage of U.S. Beef Supplies, 1980 - 1998.**



Source: Marsh 1999.

The United States is also a net importer of beef from Canada, and imports of boxed beef have increased fourfold since the implementation of the Canada-United States Free Trade Agreement ten years ago (Figure 4). In 1998, the United States imported 823 million pounds of beef from Canada and ex-

**Figure 6: U.S. Cattle Trade with Mexico, 1988 - 1998.**

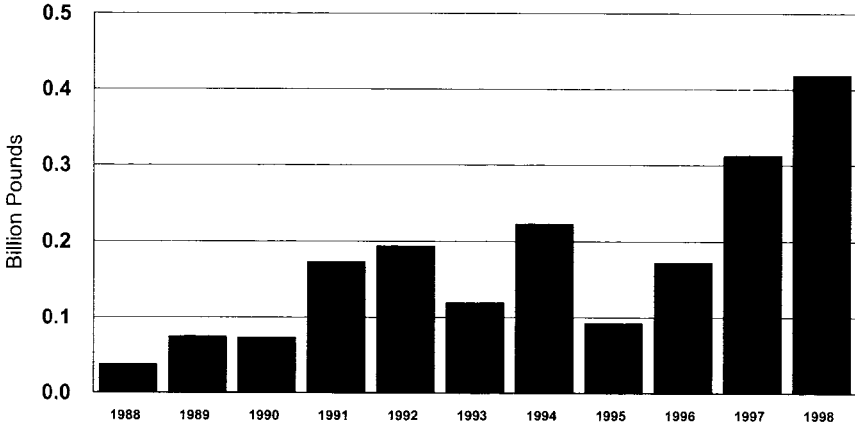
Source: USDA 1999a

ported 261 million pounds of beef to Canada (USDA, 1999b). Net imports from Canada are illustrated in Figure 5.

The United States became a net exporter of cattle and beef to Mexico in 1996 (Marsh, 1999). U.S. imports of feeder cattle have decreased from a high of 1.296 million head in 1993 to 959 thousand head in 1999 (Figure 6). While the United States exports some breeding stock and slaughter cattle to Mexico, the number is small, with 100 thousand head being exported in 1999. U.S. exports of beef have increased to 421.6 million pounds in 1998, after reaching a low point in 1995 of 90 million pounds due to the devaluation of the peso (Figure 7).

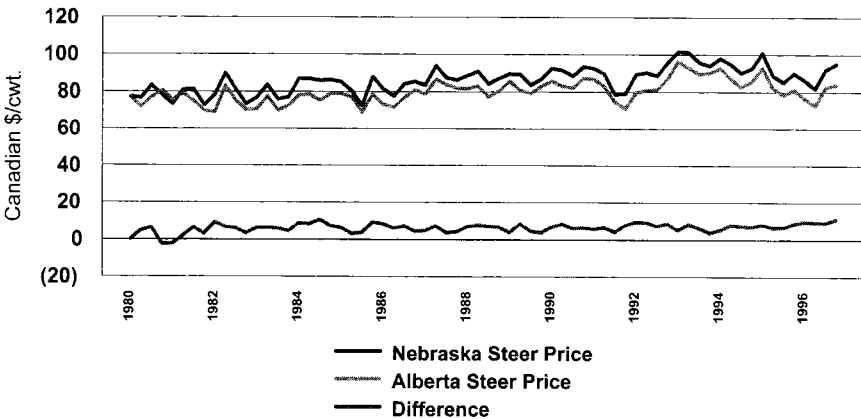
Previous research indicates that the U.S. and Canadian cattle and beef markets are well integrated (USITC, 1997; Young and Marsh, 1998). Figure 8 illustrates that slaughter prices in the Nebraska and Alberta markets track one another closely, are separated by a relatively constant margin and have common turning points. Inventory numbers show U.S. dominance in the North American cattle and beef industry. On January 1, 1999 the United States cattle inventory numbered 98.5 million head, Mexico followed with 24.6 million head,

**Figure 7: U.S. Boxed Beef Exports to Mexico, 1980 - 1998.**



Source: USDA 1999a

**Figure 8: U.S. - Canadian Slaughter Prices, 1980 - 1998.**



Source: Young and Marsh 1998.

and Canada had 12.8 million head (USDA, 1999a). Due to its size, the U.S. market is widely regarded as the primary pricing point in the North American market, with regional differences due to transportation costs and exchange rates.



## Cattle/Beef Sector Issues

With the exception of the cases that are the subject of this paper, trade and policy relations in the cattle/beef sector have been reasonably harmonious, and the market has functioned reasonably well. Aceves Ávila and López López described the situation well in an earlier workshop paper:

*Mexico-U.S.-Canada live cattle-beef trade has few tariff barriers and seems to be a good example of specialization based on competitive advantage of the three countries. (Aceves Ávila and López López, 1998, p. 207).*

Working relations among the three national producer organizations<sup>4</sup> began prior to signing the NAFTA Agreement. They were strengthened in January 1994 by creation of a tripartite body, the NAFTA Beef Working Group, an affiliation of the three producer organizations. The three organizations continue to meet periodically. A few on-going issues continue to affect trade relations. These issues are identified in Figure 1 and are discussed very briefly below.

**Mexico-U.S. Trade Issues.** For Mexico, there appear to be two significant issues in its trading relationship with the United States. Much of the beef exported to Mexico by the United States is offal, low valued cuts and other meats not usually consumed in the United States. It is claimed that these meats enter at low prices which disrupt the Mexican market. These concerns resulted in a Mexican dumping action against the United States in 1994–1995, and although dropped, the concern remains. In August 1999, Mexico initiated an antidumping suit and levied duties.

According to Aceves Ávila, another issue is the barrier to Mexican exports to the United States in the form of a sanitary rule relating to bovine tuberculosis (Aceves Ávila, 1998). From the U.S. side, animal diseases and the volume of imports have been issues. Each of these issues appears to be part of the producer groups' cooperative working agenda.

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<sup>4</sup>The organizations are the National Cattlemen's Beef Association (NCBA) in the United States, the National Livestock Producers Federation (CNG) in Mexico, and the Canadian Cattlemen's Association (CCA) in Canada.

**Canada-U.S. Trade Issues.** There are more outstanding issues between the United States and Canada. Those that continue to receive attention are grading procedures (equivalence and reciprocity), animal drug use and testing, and sanitary requirements. Consumer safety concerns and access to the European Union market are issues of shared interest. Border inspections have caused discord, especially when increased vehicle and animal health inspections were used by several northern tier states to disrupt the movement of agricultural goods entering from Canada. Issues involving import levels and input subsidization were addressed in the R-CALF actions. Whether the legal decisions emanating from R-CALF resolved those issues remains to be seen. Discussion comments by Lambert and Laycraft on this paper provide additional information on these issues.

For purposes of this paper it can be said that NAFTA, where it applies, has contributed to trade harmony on many of the “issues” in the sector. Some issues remain but there appears to have been commitment and progress toward achievement of improved trade, and the market outcomes in economic terms indicate considerable success. The exception to this favorable assessment appears to be events before, during and perhaps subsequent to the R-CALF actions.

## **U.S. TRADE REMEDY LEGISLATION**

In November of 1998, R-CALF filed a countervailing duty suit against live cattle imports from Canada and antidumping duty suits against live cattle imports from both Canada and Mexico. The R-CALF petitions were filed with the Department of Commerce under Sections 701 and 731 of U.S. trade law (Tariff Act of 1930). Section 701 is intended to provide relief from subsidized imports through imposition of countervailing duties; Section 731 is intended to provide relief from product dumped in the United States through imposition of antidumping duties.<sup>5</sup>

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<sup>5</sup>Canada has counterpart legislation which pre-dates the U.S. laws in terms of historical development. The existing legislation is the Special Import Measures Act (1984) administered by the Department of National Revenue, Customs and Excise; the Canadian International Trade Tribunal conducts investigations and determines injury (Dutz, 1998).

The purpose of Section 701 is to provide protection to U.S. producers from unfair practices of exporters resulting from government sponsored benefits such as subsidized exports, tax relief and favorable credit terms to exporters or buyers. An interested party can initiate an action by filing a petition, as occurred in the R-CALF case, or the International Trade Administration (ITA) of the Department of Commerce (DOC) can initiate an action on its own. Petitions under section 701 are the joint responsibility of the U.S. International Trade Commission (USITC) and the ITA. If an ITA investigation under Section 701 determines that significant subsidization exists, and if the USITC determines that the imports are likely to injure the U.S. industry, a *countervailing duty* may be imposed on imports. An important characteristic of this legislation is that, once initiated, the process of investigation and decision making is mandated and occurs along a specified and tight time line (Coughlin, 1991; Trebilcock and Howse, 1995).

If the DOC in its preliminary investigation finds subsidization, the USITC conducts a preliminary assessment of injury. If this determination is positive (injury or probable injury), the ITA establishes requirements of cash deposits or bonding equivalent to the estimated subsidy on imports. If further DOC investigation confirms subsidization, a countervailing duty may be applied until revoked. At any point in the investigation period which may extend over 320 days, findings negative to the allegations may result in termination of the process and removal of the cash requirements or the countervailing duty.

Section 731 is intended to provide protection against unfair trading practices referred to as "dumping." Originally dumping was defined as exporter price discrimination which resulted in lower selling prices in the U.S. market than in the exporters' domestic market, or in third markets. Stiglitz (1997) points out that application of the legislation has shifted in the past twenty five years from the criterion of price discrimination to exporters selling below their full average costs of production. Antidumping cases are also jointly administered by ITA which determines the dumping margin, and the USITC which determines if injury has occurred. In order for an antidumping duty to be applied, both a positive margin and material injury must be found. The process of Section 731 cases is also firmly mandated but the time frame may extend to 420 days from initiation.

Injury determination is an important component of trade remedy application. “Material Injury” is defined as “harm which is not inconsequential, immaterial or unimportant” and is assessed by consideration of “all relevant economic factors that bear on the state of the industry in the United States.”<sup>6</sup> Factors considered by the USITC in making an injury determination include:

- volume of imports;
- effects of imports on U.S. prices; and
- effects of imports on domestic producers.

There is considerable economic literature on application of Sections 701 and 731 in trade disputes. Schmitz, Firsch, and Hillman (1981) analyzed U.S. antidumping actions against Mexican tomato producers. They demonstrated the arbitrary nature of the outcome of the case by showing that a different, allowable test (cost of production vs. third market prices) would have produced opposite results. They also showed that it was normal business practice for tomato growers, at times, to sell below cost of production. Schmitz et al. argued that the jurisprudence associated with Section 731 did not contemplate perishable and cyclical agricultural production.

Coughlin, based on a review of Section 701, 731, and 301 applications, also noted major weaknesses. He attributed actions as much to self-interest protection as fair trade motivation and concluded:

*Overall, the evidence is that trade-remedy laws hinder rather than facilitate free trade. U.S. fair trade laws can be more accurately characterized as the bedrock for protectionism rather than the bedrock for free trade. As such, trade remedy laws need to be remedied by eliminating the bias toward protection of domestic producers. (Coughlin, 1991)*

Stiglitz, writing in the *Southern Economic Journal* in 1997, provided the following observations:

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<sup>6</sup>USITC, Live Cattle From Canada, #731-TA-812 (Final). *Determination and Views of the Commission*, November 1999.

- there has been a dramatic increase in use of trade remedy laws by the United States in the 1980s and 1990s;
- antidumping actions have shifted, over the past twenty-five years, from preventing price discrimination to actions based on selling below costs of production;
- in over 80 percent of antidumping case since the mid-1980s, the dumping margin has been determined to be positive, suggesting bias in the tests;
- procedures applied in countervailing duty actions tend to produce biased margins;
- harassment cases are real, and legal costs are asymmetric meaning that domestic producers have a process-advantage in the action; and
- the trade laws induce rent seeking behavior.

Stiglitz also stated “Since it is relatively easy to show that a foreign firm has been subsidized in some way, the countervailing duty laws have become a populist sibling to antidumping laws” (Stiglitz, 1997, p. 412). He concluded that “the laws need to be reformed” and reported that even the chairman of USITC admits “we all know that these laws can be improved” (p. 418).

## **THE R-CALF DISPUTE**

The dispute referred to in this paper as the “R-CALF Dispute” was really comprised of three separate trade remedy actions against Canadian and Mexican exports of live cattle to the United States. An action was brought against Mexico and Canada for alleged dumping of live cattle under Section 731, the antidumping provisions. The third action was brought against Canada<sup>0</sup> under Section 701, alleging government subsidization of live cattle exports. The petitions were filed with the Department of Commerce in late 1998 by R-CALF, “a grassroots non-profit corporation who’s sole purpose is to initiate actions ... [in relation to] U.S. Trade Regulations and Trade Relief Laws” (R-CALF release, undated about July 13, 1998).

The basic issues behind the action were the depressed state of the calf and fed beef markets in 1998, and the increasing volume of imported cattle. R-CALF alleged in 1998 that “beef and live cattle imports have caused an annual loss in value to U.S. cattlemen of over \$200/calf in recent years and an annual loss to the cattle industry of over \$4 billion on a net trade basis” and that “live

imports alone (excluding beef imports) have reduced annual value of calves over \$100/head” (R-CALF release, 1998). These arguments were reflected in the arguments which led to the USITC investigation despite considerable economic evidence from several sources, including previous USITC investigations, which contradicted this position.<sup>7</sup>

The depressed state of the cattle sector was not, however, the only issue that influenced the action. It was R-CALF’s perception that processors had the power to price cattle in their own interests; they believed politicians were unreceptive to problems in agriculture, in particular those of cattle producers; they had several differences with the national organization (NCBA); and they were suspicious of accuracy and dependability of official data on the industry as well as economic analysis (Anderson, Mintert, and Brester, 1998). More generally, U.S. cattle producers were experiencing unfavorable returns and they were aware that imports from Canada were rising. Earlier, producers had expressed concerns about Canadian safety net programs, including the National Tripartite Stabilization Program, that had previously existed in Canada. Those programs were reviewed by the USITC in 1993 and were found “to be very small” in their effects. Despite that finding, it is possible that the perception remained among U.S. cattlemen that these programs influence Canada’s competitiveness. Safety nets and other federal and provincial programs became part of the Section 701 investigation on Canadian cattle.

### **Petition On Mexican Cattle**

The antidumping dispute filed by R-CALF (November 12, 1998) on live cattle from Mexico alleged damage of about 176 million dollars related to 670 thousand head of imports. However, this dispute did not last long. A survey of U.S. cattle producers before the petition was filed revealed limited support for action against Mexico. NCBA chose not to support that petition and

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<sup>7</sup>If the Brester and Marsh results from the appendix are applied to a “750 pound calf,” an estimate of the negative impact of IMPORTS ALONE would be about \$35/head, around 6 percent of the value of the animal (Marsh, 2000). If they were applied considering ALL U.S. TRADE, the impact would imply an INCREASE of about \$6/head. Holder (USDA, August 1998), Mintert (Kansas State University, August 1998), and the USITC (1997) all reported that live cattle imports had very little to do with the depressed state of cattle prices.

**Table 1: Canadian Cases: Investigation Details/Criteria.**

<b>Time Period</b>	Most recent four quarters before filing the petition, October 1997 to September 1998. For subsidization, April 1997 to March 1998.
<b>Coverage</b>	<ul style="list-style-type: none"> <li>• Live cattle for slaughter; not beef or beef products. Exports sourced from Alberta, Saskatchewan, Manitoba, and Ontario.</li> <li>• For determination of subsidies, 30 government programs ranging from National Income Stabilization Act, to grazing and pasture management programs, to a bear damage compensation program in Ontario. The Canadian Wheat Board was identified as a source of government subsidization.</li> <li>• For determination of dumping margins, six producer/exporters with the greatest volume of exports were used to estimate production costs and returns.</li> </ul>
<b>Action Costs</b>	Estimates place R-CALF costs at around \$US 1.7m. Canadian direct costs have been estimated at \$ Cdn 5.0 m; there are noofficial estimates of marketing losses on Canadian cattle, or estimates of indirect producer group and government intervention costs.

Source: Various USITC and participant documents.

actually worked to have it terminated. The USITC preliminary report on injury, released about two months after the petition was filed, found no evidence of injury in relation to Mexican live cattle imports. The case terminated in January 1999 after the first round of investigation.

### **The Countervailing Action On Canadian Cattle**

There was reasonably broad support among cattle producers in the United States for a countervailing duty initiative on Canadian live cattle. This support resulted in the NCBA taking a public position of supporting the petition drafted by R-CALF. That petition was filed on November 12, 1998. No estimate of damage was provided but the allegation covered 135 thousand head of imports valued at 920 million dollars. The investigation, begun in December, covered 28 federal and provincial programs as well as the Net Income Stabilization Account (NISA) and the Canadian Wheat Board (CWB). A few details of the countervail case are summarized in Table 1.

The basic argument in relation to the CWB was that it reduced prices to barley producers on the prairies and thereby represented an indirect government subsidy to Canadian cattle feeders. Most of the evidence in support of this allegation was drawn from published Canadian material including a submission by Canadian cattle producers to a public inquiry, and economic analysis conducted as part of the ongoing debate on role and impacts on prairie grain producers of the CWB. As it had in policy debates for some time in Canada, the CWB issue dominated the countervailing duty action. Several position statements were presented with claims and counterclaims about CWB impacts. The CWB was a significant participant in presenting the overall Canadian position on this case.

Canadian intervention in defense of its position was broadly based and, of course, expensive because these actions require using U.S. legal firms specializing in trade law.<sup>8</sup> The Government of Canada, each of the four named provincial governments, Quebec, the Canadian Cattlemens' Association, and the Canadian Wheat Board retained counsel separately or in combination, and made submissions and appearances throughout the first eight months of 1999.

The preliminary USITC countervail decision in January, as is common in these cases, found in favour of injury. That finding initiated further analysis by DOC to determine the magnitude of subsidization. This analysis showed that in a few programs there were subsidies; calculated in terms of the value of the subsidy to producers (not the cost of the subsidy to the government), in *ad valorem* terms, the estimates ranged between 0.01 percent and 0.65 percent. When these subsidies were allocated over all production, the overall level was determined to be 0.38 percent. That is below the 1 percent level required to trigger countervailing duty action, i.e., *de minimis*, as agreed to in the Uruguay Round Agreement (Trebilcock and Howse, 1995, p. 145). As a result, on May 4, 1999 DOC reported that countervailing duties would not be applied to live cattle from Canada.

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<sup>8</sup>Stiglitz (1997) points out the imbalance in influence and cost in contesting a trade remedy action. In total, seven Washington legal firms were retained by Canadian defendants.



The investigation confirming the preliminary analysis continued into September, and when the final ruling was reported October 22, 1999 the estimate was raised to 0.77 percent (Federal Register, October 22, 1999). Countervailing duties were not imposed as the level of subsidy calculated was still *de minimis*.<sup>9</sup> The investigation agreed with the conceptual argument that the operations of the CWB could provide a subsidy. However, during the period of investigation the estimated subsidies attributed to the CWB were insufficient for the imposition of countervailing duties. The case was thereby terminated (USITC, 1999).

### **Antidumping Action Against Canadian Cattle**

The antidumping petition was also filed on November 12, 1998. The allegation was that live Canadian cattle were being sold into the United States for slaughter at “less than fair value,” and that imports were injuring the U.S. industry. The alleged dumping margin was \$6.42 to \$10.72 per hundredweight, on 135 thousand head. If these two conditions are determined to exist, under Section 731 of the Tariff Act of 1930, offsetting remedies may be applied. Producer support for this action was much less evident than in the countervailing duty case. As a result, the NCBA took a neutral stance on the antidumping case.

The DOC and the USITC began their investigations in December, and USITC announced its preliminary finding of probable injury on January 20. For purposes of this case, fair value was determined to be a “constructed value” of Canadian cattle based on calculated full costs of production. Consequently a major costs and returns analysis of selected western Canadian cattle feeder operations was initiated by the DOC.<sup>10</sup> A set of six producer/exporters were identified and questionnaires sent out to provide the basic cost and sales information. Four provinces-- Alberta, Saskatchewan, Manitoba, and Ontario-- were

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<sup>9</sup>Subsidies are *de minimis* if they are determined to represent less than one percent of the value of the product, measured by the amount of benefit conferred to producers.

<sup>10</sup>There are well defined, standardized procedures and DOC regulations for determination of “fair value” according to production costs. Details of the analysis can be found in DOC, Notice of Final Determination ..., FR 56739. October 21, 1999.

**Table 2: Percentage Dumping Margins Posted By DOC, June 30 and October 12, 1999**

<b>Exporter/Producer</b>	<b>Weighted Average Percent Margin</b>	
	<b>Preliminary 6/30 Effective 7/1</b>	<b>Final 10/12 Retroactive 7/8</b>
Cor Van Raay Ltd. and	4.49	4.53
Butte Grain Merchants Ltd. Groenenboom Farms Ltd.	3.9	3.86
Jameson, Gilroy and B & L Livestock Ltd.	3.94	5.10
Pound-Maker Adventures Ltd.	0.18 (de minimus)	no duty required
Riverside Feeders Ltd. and Grandview Feeders Ltd.	6.81	5.34
Shaus Land and Cattle Co.	5.43	15.69
All Others	4.73	5.63

Source: USITC # 3255 November 1999: Live Cattle From Canada (Final) and 64 FR 56739 October 22, 1999.

identified because these provinces are the major source of live cattle for export to the United States.<sup>11</sup>

On June 30, DOC released its preliminary determination of dumping margins on live cattle and established the requirement of bonding requirements on imports effective July 1. Effective July 22 some margins were revised upwards (see Table 2). When a dumping margin is declared, the Customs Service

<sup>11</sup>Participation by Canadians in the DOC analysis is discretionary in the sense that candidates can refuse to provide information. One respondent withdrew part way through the investigation. However, DOC can conduct its analysis as if respondents did provide all information requested. Hence, there is strong motivation for those selected to respond, despite uncompensated reporting costs and contributing to a process which may produce unfavorable market consequences. The firm that withdrew from the survey (on July 12) experienced a large increase in its assigned dumping margin on July 22.

requires a cash deposit or posting of bond in the amount of the dumping margin to allow the product to enter the United States.

On November 19, 1999 the ITC released its final determination on injury caused by selling live cattle for export at “less than fair value.” That determination, which ended the case, stated:

*...that an industry in the United States is not materially injured or threatened with injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada of live cattle, ..., that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). USITC, Determination and Views of the Commission. Investigation # 731-TA-812 (Final).*

The countervail case, as indicated in the previous section, was terminated by the determination that there was *no significant subsidization*. This determination *found dumping* but *no injury*. The distinction in the findings is significant in symbolic terms and perhaps will have implications for subsequent actions. Exports were determined to have been dumped, i.e., live cattle were unfairly traded, and the record shows that conclusion. The wording in a separate “view of Commissioner Carol T. Crawford” of the final determination is interesting:

*...I find that the domestic industry **would not have increased its prices or its output and sales, and therefore its revenues, significantly had the subject imports been fairly traded.** Therefore, I find that the domestic industry would not have been materially better off if the subject imports had not been dumped.* (USITC, November 1999, p. 32, highlighting by the editor).

The USITC found that Canadian cattle producers traded unfairly, but it did not matter. This conclusion, if viewed from the vantage point of trade harmony and market performance, speaks volumes.

## **Observations On The Cases**

It is not within the scope of this paper to analyze positions presented on both sides of the cases. That would require summarizing hundreds of pages of documentation. However, some key aspects of the investigation and debate deserve comment in view of the purpose of this workshop.

First, objective economic assessment of the Canadian-U.S. cattle/beef sector would likely conclude that it is an example of a well functioning, reasonably mature market, that has few barriers to trade. Certainly there are pressures from the cattle cycle, and packer concentration continue to be issues of concern, as are regulation effects on the Canadian feed grain market. However, Canada and the United States have been close to one economic cattle/beef market for years, and Mexico is becoming part of that market. Movement toward “free trade” and its benefits are as close to reality in the cattle and beef sector as any other agricultural sectors characterized by significant domestic production and trade. Importantly, prices, location of production, distribution of cattle and beef, and beef consumption are market determined.

That trade issues persist, and that trade stress arises within this milieu is understandable. However, that a dispute could reach the level of R-CALF actions against Canadian producers, generate the costs and disruptions it did, and be characterized by an agency determination that cattle were traded unfairly when in reality they were sold and slaughtered according to fundamental market forces, has to be a cause for concern. It might also be of concern that NAFTA mechanisms for dispute resolution, and NAFTA itself, did not prevent this costly process. Indeed, freer trade in cattle and beef was a major irritant among R-CALF supporters.

Adding to the concern is the fact that, at the time the USITC investigation began, there was considerable economic evidence available on the role of imports on U.S. cattle and beef prices, on comparative levels of subsidization (OECD, 1999), and on reductions in agricultural subsidies in Canada. The USITC had conducted its own analyses in 1993 and in 1997 which appear to contradict the basic R-CALF claims. There were, therefore, strong economic grounds for

rejecting the petition.<sup>12</sup> The national producer organization in the United States had reservations about addressing overall industry problems through use of the trade remedy legislation, especially the dumping case. Certainly Canadians would have preferred a different approach.

That these considerations did not influence the U.S. Department of Commerce decision to proceed with R-CALF in November 1998 and again in January 1999 indicates that external and available economic evidence within the United States held little weight in these proceedings. On the other hand, incomplete economic evidence from Canada on barley prices held substantial weight in the early decisions.<sup>13</sup> These considerations may suggest there were other motivations for the particular approach. The cases certainly did draw attention to the issue caused by the volume of imports and created significant costs for Canadian producers (and others). As well, it presented the CWB as a trade issue in a new form, and as a new twist on an old issue for Canada.

The finding of no subsidization by the CWB turned on the evidence that during the period of investigation, Alberta and Montana barley prices were very similar. In fact for part of the period reviewed, Alberta prices in the unusual situation of exceeding those in Montana. If DOC had chosen a different time period, the conclusion on subsidization by the CWB may have been reversed, and that may have removed the *de minimis* finding on overall subsidies. There are some who argue that historic barley prices have no relevance in the post-Crow era on the Canadian prairies, and the similarity of Montana and Alberta prices will prevail in the future. Whether Canadian barley prices will arbitrage well with those in the United States depends partly on how much the border is opened to grain movements. These comments illustrate the cross-sector relationships that exist, and raise the issue of harmony between Canada and the United States on cross-border grain trade. Had Canadian prairie barley marketing continued under the open-border framework introduced in 1993 (the continental barley market), the 701 action might not have occurred.

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<sup>12</sup>The final USITC determination indicating lack of injury more or less replicated these findings.

<sup>13</sup>Initial allegations of CWB barley price and feed cost differences were grossly overstated and based upon arguments that were inappropriate to the case.

There are numerous criticisms of the cost of production methodology used in these investigations to determine dumping margins (Coughlin, 1991). One concern is that there are legitimate instances when agricultural and manufacturing companies sell below their cost of production. As quoted by Bovard "If the same antidumping laws applied to U.S. companies, every after-Christmas sale in the United States would be banned" (Coughlin, 1991, p. 13). The cyclical nature of prices in the cattle industry (illustrated in Figure 8) is well known. Many U.S. producers sold cattle during the period of investigation at market prices that were below the cost of production, and some U.S. producers stated misgivings at the double standard applied in this case.

There are other problems in using cost of production for these purposes. The method of determining the dumping margin is to exclude "below-cost sales" in the home market (Canada) from the comparison if the proportion of below-cost sales exceeds 20 percent. These below-cost sales, consistent with legal requirements, were excluded from determination of normal value. This means that the distribution of sales prices in Canada was truncated, but there was no corresponding adjustment made in U.S. prices. This means that different (in fact, biased) price estimates are used between Canada and the United States to determine the antidumping margin. Further, there is no indication that tests are conducted to determine if differences in prices are statistically significant. These procedural matters cast doubt on the validity of the calculations.

Finally, there is an efficient and accurate way to identify differential input costs (subsidized or market determined) facing livestock producers. It is to analyze regional (in this case, cross-border) prices and flows of feeder animals. Subsidized feed costs in Canada would show up as higher feeder animal prices and/or inflows, just as support for grains and subsidized farm credit show up in land prices. This economic test could be conducted relatively easily by either side to the argument. It would likely show that, as in feeder cattle from Mexico and feeder pigs from western Canada, the flow of feeder cattle was for some time *to* the United States. Health restrictions on imports into Canada do not explain southern movements of Canadian feeder cattle and pigs, but relative feeding costs probably do.

**Table 3: Mexican Antidumping Duties on Selected U.S. Beef Products, 1999**

<i>Item</i>	<i>Shipper</i>	<i>Duty (percent)</i>
Live Cattle	all	none
Beef Carcasses	ConAgra, Excel Corp., IBP	none
	other shippers	5.24
Bone-In Beef Cuts	ConAgra, Excel Corp., IBP	none
	Farmland National Beef Co.	7.60
	other shippers	12.76
Boneless Beef Cuts	Excel Corp., Farmland National Beef Co.	none
	IBP	4.14
	ConAgra	7.66
	other shippers	74.98

Source: USDA 1999c.

The use of trade remedy law is costly in unanticipated ways. This is illustrated by the Government of Mexico antidumping suit against the exporters of U.S. cattle, beef and edible beef offals in 1999. Mexico's Secretariate of Commerce and Industrial Development found that some U.S. exporters sold selected beef products to Mexico at prices determined to constitute dumping. Antidumping duties were implemented on August 2, 1999 (USDA, 1999c). Table 3 shows the duties imposed for selected products, which vary by the company selling the product. The actions by the Government of Mexico are regarded by some observers to be in retaliation for U.S. trade actions, and illustrates how trade relations can degenerate in unanticipated and costly ways.

These observations indicate that there remains much to be done in achieving trade harmony in what is already a relatively free market and which, otherwise, should be a relatively dispute free sector. They also indicate that

**Table 4: A Binary Assessment of Economic Impacts of R-CALF**

	<i>United States</i>		<i>Canada</i>	
	<i>C.V.</i>	<i>A.D.</i>	<i>C.V.</i>	<i>A.D.</i>
Imports	0	0	0	0
Producer price impact	0	0	-	--
Packer impacts	-	-	+	+
Consumer price impact	0	0	+	+
Dispute costs	--	--	--	--
Producer group relations	--	--	--	--
Short-run trade relations	--	--	--	--
Long-run harmony	?	?	?	?

Notes: + indicates probable favourable outcome in relation to the factor.

- indicates probable unfavourable outcome.

0 indicates no perceptible impact.

Source: Compiled by the authors.

responsibility for achieving trade harmony lies with each of the NAFTA partners.

## CONCLUSIONS

Table 4 summarizes some of the probable impacts and direction of benefit or loss from the R-CALF experience. It is not an encouraging picture. If our conclusions on impacts are valid, the most likely “winners” are Canadian packers and, perhaps, Canadian consumers. That was not the intended outcome of the action. It is difficult to identify any significant benefits to offset the considerable costs incurred by the parties to the R-CALF dispute, and Canadian producers bore market costs of the antidumping margin through reduced prices.

Ideas of how to develop dispute resolution systems that will achieve greater harmony across the U.S., Mexican and Canadian beef industries can be



informed by an evaluation of the experiences in the R-CALF cases. On the positive side, the processes used by the DOC and the USITC resulted in negative final findings for both suits. The antidumping duty was terminated and a countervailing duty was never imposed. The investigations published by the USITC and the DOC follow previous USITC reports (in 1987, 1993 and 1997) that did not find violations of trade agreements or anticompetitive practices by the Canadian cattle industry. Another positive aspect of these investigations is that they directly responded to concerns raised by the U.S. industry, for example, the impact of CWB practices on feed prices in Canada. In doing so, the investigations have added information and data on the Canadian and U.S. industries.

There are also negative consequences of this application of U. S. (and Mexican) trade remedy law. Antidumping and countervailing duty actions are costly. The industries in both countries must invest a large amount of resources in preparing their case. Reportedly, the U.S. industry spent US\$1.7 million and the Canadian industry spent CA\$5 million in legal and associated fees. The opportunity costs of this time and money, and the unaccounted costs, for the industry are high as the resources could have been directed at trade issues of joint concern, such as the European Union beef hormone dispute, or the reduction of other trade barriers through multilateral negotiations in the WTO. Substantial resources, which also have high opportunity costs, were expended by both governments. In addition, a linkage may exist between the R-CALF suits and the suit initiated by the Government of Mexico against the U.S. industry, increasing the cost of the R-CALF suits. Importantly, progress on efforts to make changes to ease other trade issues (as in Figure 1) often stall during periods of high conflict. There may be a question of willingness to pursue other issues after this conflict.

Certainly economic losses were imposed on the Canadian industry even though the bond funds are returned. Brester, Marsh, and Smith (1999, p. 24) estimate that with imposition of the antidumping tariff of 5.57 per cent, Canadian slaughter prices were reduced by 2.88 per cent in the short run (US\$ 1.77/cwt) or by 3.53 per cent in the long run if they had been in place longer (US\$ 2.17/cwt). That represents a large price decline over the July–November marketing period and significant revenue reduction. Economic losses would have

been much larger had the final determination been positive for R-CALF, and antidumping duties implemented for an extended period. This raises the question of liability for market and defense costs in disputes of this nature- -should initiating parties have some financial responsibility if their case fails? Legal settlements often ignore economic costs, but compensation payments are common in agricultural policy.

The antidumping and countervailing duty processes under the Tariff Act were not designed to encourage and develop good working relations between two industries or to accommodate partners in a trade agreement. The process was designed in an era when domestic production was dominant, to provide protection to domestic industry under pressure from imports. However this has all changed with globalization. More importantly, NAFTA is a trinational agreement and the cattle/beef sector is approaching one market. The trade remedy process is a legal-administrative process which encourages adversarial behavior. In the quest for improved trade harmony and reduced policy stress, particularly in the face of economic evidence pointing so strongly to “very small impacts,” a less damaging process needs to be developed. As indicated earlier, there is economic literature which supports that position, and this review of the R-CALF actions reaches that conclusion.

Avoidance of trade disputes may be facilitated by greater involvement of producers and other industry participants in problem solving. There has been discussion of the potential of cross border producer organization in past workshops. The past year has produced several examples of cross-border meetings and conferences, some of which are discussed later in this publication. These fora are to be encouraged. Further, within NAFTA there are provisions for dealing with sanitary and phytosanitary issues according to “*science based*” evidence and rules. Adherence to “*economic science-based*” information early in the R-CALF discussions may have avoided the entire process. Building an “*economic-science based*” analogue into NAFTA process may be a useful consideration. Trade remedy law in its present form, needs to be, at most, “last resort” action.

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## APPENDICES

Two recent analyses of the cattle/beef sectors in the United States, Mexico, and Canada provide useful economic information related to the R-CALF case, and to the overall question of effects of NAFTA on cattle and beef trade. They are briefly summarized here as information related to the purpose of this workshop.

### APPENDIX 1

#### **USITC Analysis of Quantitative Relationships Among Mexican, Canadian, and United States Cattle and Beef Industries**

The USITC report set out to analyze the impact of NAFTA and URA on U.S. imports and exports of live cattle for slaughter (LCFS), and on fresh and frozen beef; and to report on steps to prevent transshipment of fresh and frozen beef through Mexico and Canada to the United States. Chapter 4 of the report *IMPACT OF THE NAFTA ON U.S. TRADE IN CATTLE FOR SLAUGHTER AND BEEF* contains results of quantitative analysis using econometric models of factors which, for Canada, appear to be directly related to issues raised in the R-CALF petitions. The evidence on Mexico is relevant only to the question of NAFTA effects on the sector.

For Mexico, the analysis demonstrated that the new zero level tariff rates on cattle and beef within NAFTA resulted in the United States becoming the virtual sole supplier of Mexican beef imports. The USITC estimates show an increase in U.S. exports of 187m pounds, valued at \$180M over the period 1994-'96, with the United States now accounting for about 97 percent of Mexican imports. Canada has no significant cattle/beef trade with Mexico except in breeding stock. Second, the analysis indicated that peso devaluation had a larger net effect on U.S. exports to Mexico than NAFTA, and in the opposite direction. The estimates are about 314 m pounds reduction, valued at about \$300m.

The peso devaluation was composed of two separate, and opposite effects. Edible offal and other by-products (for retail or household consumption) declined significantly. Imports for the HRI trade increased due to increased tourism.

The analysis of imports from Canada showed:

- Canadian live cattle for slaughter imports are determined by prices on both sides of the border. The elasticity of trade with respect to price U.S. and Canadian prices is 3.7. (in other words arbitrage in the LCS market functions as economists would expect);
- cattle inventories can be used to predict future LCFS imports;
- available slaughter plant capacity on the Canadian prairies influenced LCFS imports in the post-NAFTA era;
- there was no indication of major NAFTA impacts on LCFS imports from Canada because tariff levels were already low (less than 2 percent ad valorem) prior to implementation of NAFTA meaning that the structural change associated with NAFTA was small;
- “grain prices were found not to be important in explaining the pattern of trade over the past few years.” (p. 4–32); and
- during 1997 and into 1998, there should be a decline in Canadian LCFS resulting from reduced Canadian cattle inventories and increased slaughter capacity coming on line in Alberta.

The report concluded:

*While increased slaughter capacity in Canada will likely result in fewer live cattle for slaughter moving south, it may also provide opportunities for increased shipments of feeder and slaughter cattle to Canada. If so, then Canada will increasingly export beef rather than live cattle for slaughter, particularly if efforts to harmonize the meat-grading system of both countries are successful .(USITC, 1999, p. 4–32).*

## APPENDIX 2

### U.S. Beef and Cattle Imports and Exports: Impacts on Cattle Prices

Brester and Marsh (1999) report:

- U.S. cattle and beef imports from Canada increased substantially after 1988, increasing Canada's share of total beef imports (which increased only slightly over the same period);
- U.S. prices declined steadily in the 1990s; of the \$8/cwt decline in slaughter prices, 4.4 percent of the reduction, or \$0.35/cwt was attributable to the change in Canadian cattle and beef imports;
- cattle prices continued to fall in 1998 as a consequence of increased marketing weights, large supplies of competing meats, flat exports, and Asian flu problems; the contribution from imports from Canada was small;
- imports from Canada represented 6.5 percent of total U.S. beef supplies in 1998;
- U.S. beef exports to Canada (1989–1997) increased by less than half a percent;
- the United States is a net importer of beef, veal, and live animals when imports are measured in volume (carcass equivalents) terms. When imports are measured in value terms, the United States is a net exporter; and
- using their model to extrapolate different U.S. trade scenarios, indicates that the finished cattle price in the United States would rise by about \$5/cwt if all imports of cattle and beef from Canada and Mexico were eliminated, but fall by \$5/cwt. if all U.S. participation in cattle/beef trade were eliminated. Eliminating all other beef imports are estimated to raise U.S. price by \$1/cwt.; eliminating U.S. exports reduces price by about \$11.00/cwt, more than half of which is associated with by-product exports.



## APPENDIX 3

### Chronology of Petitions on Canadian Live Exports

#### **Section 701: Countervailing Duty Action Against Canada**

- October 1998: NCBA supports initiatives on cvd against live cattle from Canada.
- November 12, 1998: Petition filed by R-CALF.
- December 22, 1998: DOC initiates investigation.
- January 20, 1999: USITC (preliminary) finds reasonable grounds for injury.
- May 4, 1999: DOC (preliminary), Canadian Subsidy rate determined to be 0.38 percent (*de minimis*). No duty imposed.
- October 22, 1999: DOC final report/countervailable subsidies are not being provided to producers or exporters of live cattle in Canada. Case terminated.

#### **Section 731: AntiDumping Action Against Canada**

- October 1998: NCBA takes a neutral position on antidumping case against Canadian live cattle imports.
- November 12, 1998: R-CALF petition filed.
- December 22, 1998: DOC initiates investigation.
- January 20, 1999: USITC (preliminary) finding of grounds for injury.
- March 1, 1999: six Canadian cattle feeder/exporter respondents selected for analysis of production costs.
- March–May 1999: responses on costs.
- June 30, 1999: dumping margins determined; requirements for bonding exports imposed effective July 1.
- July 23, 1999: revised dumping margins (upward adjustment).
- October 21, 1999: margins revised effective July 8.
- November 19, 1999: ITC Final Determination of No Injury.