

Update on Legal Proceedings Regarding US Border Issues, December 2006

Provided by John Masswohl, CCA Director of International Relations

There have been a number of recent developments on the Canada-US cattle trade front and there likely will be a few more by the time this is published.

Last April, Judge Richard Cebull of the US District Court in Montana ruled in favour of upholding USDA's rule to open the US border to UTM cattle and beef. In June, R-CALF appealed that ruling to the Ninth Circuit Court of Appeals. In August, USDA filed a motion for "summary affirmance" with the Ninth Circuit. The gist of USDA's motion was that the Ninth Circuit had already heard, considered and rejected all of R-CALF's substantive arguments in July 2005 when the preliminary injunction was overturned and therefore should affirm Judge Cebull's ruling to uphold USDA's rule. However, the Ninth Circuit issued a decision on November 14 that R-CALF will be allowed to make its arguments.

Thus the case over "rule one" will continue. R-CALF's briefs are due at the Ninth Circuit on December 11 and USDA's reply brief is due January 10. R-CALF may submit a further re-buttal by January 24. After all these briefs are submitted, the Ninth Circuit may set a date for oral arguments or they may rule on the basis of the written briefs. There is no time limit for them to issue a decision.

We are very pleased to report that USDA sent "rule two" to the White House, Office of Management and Budget on November 24 to conduct the formal interagency review of the rule. This is an important step that must occur to bless the rule before it gets published as a proposal for public comment. After the comment period, USDA will prepare responses to the comments it receives and seek OMB's approval a second time before putting out the final rule. In the best case scenario, the earliest this could occur would be sometime in the late Spring or early summer – but as we well know – delays can occur at any step in the process. We expect that R-CALF will commence another legal challenge shortly after the final rule is published. We will also explore the possibility of Congressional activity in a future issue.

With the recent announcement from Russia that they will accept beef from Canada, we now have at least partial access to six of what were Canada's top ten beef

export markets in 2002. Russia was our 7th most important export market in 2002, purchasing approximately \$4.5 million that year. There is also encouraging progress from Taiwan and Saudi Arabia which were our number 5 and 6 most important export markets in 2002, so we are hoping for good news from those markets soon. This encouraging situation is due in large part to the joint efforts of government and industry to implement and practice strong BSE controls and surveillance measures and to communicate that there is no justifiable reason for any country to maintain BSE trade restrictions on Canadian beef or cattle.

Unfortunately the Republic of Korea remains a notable exception to this progress. In 2002, Korea was Canada's fourth largest export market for beef, purchasing some \$50 million of product. However instead of making concrete efforts towards restoring market access for Canadian beef, all Korea offers are well-worn excuses which have more to do with trade protectionism than scientific fact.

The Canadian Cattlemen's Association has requested that the Government initiate dispute settlement mechanisms with Korea under the WTO. We have also requested that the Government suspend free trade negotiations with Korea. We see no value in entering into a further agreement with a trading partner that refuses to honour its existing obligations. We believe that in the absence of such action, trading partners that are currently accepting Canadian beef or are in the process of restoring access could interpret Canada's failure to challenge Korea as an implicit acceptance of Korea's position. Thus we believe that demonstrating Canada's case to the WTO will be an opportunity to reinforce progress with all trading partners.

Finally we are pleased to report that all federal political parties worked together to pass a unanimous resolution in the House Standing Committee on Agriculture on November 28 to constrain the use of supplemental import permits for beef and veal permanently. The resolution directs International Trade Canada to require permit applicants to demonstrate their efforts to purchase Canadian beef when requesting a supplemental import permit. The resolution also requires the Minister only to authorize supplemental imports in exceptional circumstances and report to the House if the total quantity of supplemental imports in any given year exceeds 1,500 tonnes.

All MPs are to be commended for undertaking this initiative and working together for the long term benefit of the beef industry. The motion was sponsored by James Bezan, an MP and cattle producer from Manitoba. James, along with Conservatives Gerry Ritz, Larry Miller, David Anderson, Jacques Gourde, Minister Chuck Strahl, Liberals Ken Boshcoff, Paul Steckle, Wayne Easter, Robert Thibault, New Democrat Alex Atamanenko and Bloc members Andre Bellavance and Jean-Yves Roy all deserve a hearty thank you from beef producers across the country for their initiative to enact this policy.