

## NAFTA, Bovine TB, and U.S. Importation of Mexican Feeder Cattle

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### *Introduction*

In order for "free" trade to work in the U.S.-Mexican cattle industry, Mexican feeder cattle (200-699 lb. calves) must be imported by U.S. feedlots free of disease.<sup>1</sup> To judge by the recent response of the Mexican government to phyto-sanitary measures proposed by the U.S. Animal Health Association (USAHA) for Mexican feeder cattle, it will not be a simple task to make the profit objectives of the cattle industry compatible with USAHA's disease-free animal health standards. The USAHA recently proposed new phyto-sanitary rules on Mexican cattle exports that Mexican officials believe would undermine Mexico's \$500 billion beef export industry.<sup>2</sup> Gustavo A. Reta, Undersecretary for Livestock at the Agricultural and Water Resources Secretariat (SARH) suggested that Mexican ranchers might react to these rules by pressuring the Mexican government to institute tougher tests on U.S. cattle exports to Mexico, and on U.S. sheep exports, a combined \$200 million industry.<sup>3</sup> Under the contradictory provisions of the North American Free Trade Agreement (NAFTA), Mexico could challenge U.S. phyto-sanitary rules and regulatory enforcement as a trade barrier and demand that they be weakened or abrogated. As is outlined below, Mexican cattle producers could claim that bovine tuberculosis (TB) eradication in Mexican cattle is not, in the language of the NAFTA subchapter on sanitary and phyto-sanitary provisions, "economically feasible" even at the "appropriate level" of

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<sup>1</sup> For an excellent analysis of the Mexican cattle industry, see Steven E. Sanderson, *The Transformation of Mexican Agriculture: International Structure and the Politics of Rural Change* (Princeton, NJ: Princeton UP, 1986), 119-181.

<sup>2</sup> Dianne Solis, "Agricultural Crisis in Mexico Deepens As More Farmers Face Loan Delinquency", *Wall Street Journal* (Sept. 13, 1993), A12.

<sup>3</sup> John Rice, "SARH Officials React to New U.S. Threat to Mexican Cattle Imports" *Mexico City News* (Sept. 13, 1993).

consumer protection that would be determined by a trade dispute resolution panel.

Part of the proposed USAHA rules concern bovine TB surveillance, detection and eradication programs. Whereas 5% of U.S. cattle tested positive for bovine TB in 1918, and 0.015% (one of 6,800 animals) tested positive in fiscal year 1990<sup>4</sup>, Dr. Mitchell Essey of the USDA's Animal and Plant Health Inspection Service (APHIS) said that perhaps 50% of Mexican dairy cattle and about 1% of beef cattle carry the TB bacteria in the herds of the northern tier of Mexican states from which cattle are imported for U.S. feedlots. The higher detected incidence of bovine TB in dairy cattle is due in part to the fact that steers are generally slaughtered at the age of 18 months to two years, whereas dairy cattle live longer and hence bovine TB symptomology is more apparent. Dr. Essey believes that bovine TB can be controlled in the northern Mexican states. The extent of bovine TB in southern Mexican states is assumed to be higher than in the north, although little TB testing has been done in the south.<sup>5</sup>

According to APHIS veterinarians, there has been a significant increase in bovine TB in U.S. herds during the last two years, and the origin of most of that bovine TB is the Mexican feeder cattle imported by U.S. feedlots:

"[a]pproximately 68 percent of all tuberculosis cases detected on slaughter inspection of feedlot cattle from 1982-1991 traced to Mexico. In F[iscal] Y[ear] 1992 436 (83 percent) of the 523 feedlot cases investigated traced to Mexico."<sup>6</sup> Confirmed cases of bovine TB "averaged 0.6 per 100,000 cattle slaughtered for FY 1985 through FY 1991, while in the first half of FY 1992 the confirmed case

<sup>4</sup> "Overview of the Assessment of Risk Factors for *Mycobacterium bovis* in the United States", *Animal Health Insight*, 10.

<sup>5</sup> Dr. Mitchell Essey, phone interview, on Sept. 30, 1993.

<sup>6</sup> Mitchell A. Essey, D.V.M. and Robert M. Meyer, D.V.M., "Status of the State-Federal Bovine Tuberculosis Eradication Program: Fiscal Year 1992", *Proceedings: Ninety-Sixth Annual Meeting of the United States Animal Health Association*, 531-532.

rate was 2.0 per 100,000."<sup>7</sup> "Although the percentage of TB-contaminated cattle in the United States is still small, the sharp rise in the disease -- especially in Colorado and the Southwest, where many high-risk Mexican cattle are imported - - "scares the heck out of a lot of us" said John A. Hennessy, acting state veterinarian in Missouri."<sup>8</sup> Despite the tracing of bovine TB in U.S. herds to steers of Mexican origin, a recent APHIS study concludes "Mexican cattle infected with *M. bovis* are entering the U.S., but there is no evidence to date that they play a substantial role in transmitting *M. bovis* to domestic cattle."<sup>9</sup> However, a report on bovine TB in Texas concludes that "there is some concern regarding the potential for exposure of domestic breeding cattle [to bovine TB from Mexican cattle]. The extent of that risk is not presently quantifiable."<sup>10</sup> Dr. Mark Schoenbaum, Central Region Epidemiological Officer with APHIS, said that although he believes that the incidence of contamination of domestic herds by cattle of Mexican origin is small, that testing for bovine TB is difficult, and TB tests are by no means perfect.<sup>11</sup>

Mexican feeder cattle imports have increased greatly during the past decade and are very likely to do so in the future. According to the U.S.D.A., in 1991, over one million Mexican feeder cattle were imported into the United States (over 70% of them into Texas feed lots), which amounted to 3.4% of total U.S. beef production.<sup>12</sup> These cattle imports were valued at \$361 million.<sup>13</sup> In 1988,

<sup>7</sup> "Overview of the Assessment of Risk Factors for *Mycobacterium bovis* in the United States", *Animal Health Insight*, 13. This is condense from *Assessment of Risk Factors for Mycobacterium bovis in the United States*.

<sup>8</sup> Mike McGraw, "Evidence grows at packinghouses of resurgence of TB in cattle herds", *The Kansas City Star* (April 30, 1993).

<sup>9</sup> "Overview of the Assessment of Risk Factors for *Mycobacterium bovis* in the United States", 10.

<sup>10</sup> "Bovine Tuberculosis in Texas", Zoonosis Control Division, Bureau of Veterinary Health (June 28, 1993), 3.

<sup>11</sup> Phone interview, Dr. Mark Schoenbaum (Sept. 29, 1993).

<sup>12</sup> Cited in "The Impact of the North American Free Trade Agreement on the U.S. Livestock and Meat Sectors," United Food and Commerical Workers International Union Before the International Trade Commission on November 24, 1992, 19.

844,000 Mexican feeder cattle were imported at a value of \$262 million.<sup>14</sup> Since 1982, the number of Mexican feeder cattle imports has quadrupled.<sup>15</sup> These feeder cattle imports are 'fed out' before marketing for slaughter by a livestock and beef industry that is quite concentrated and centralized. "In 1990, for example, 205 feedlots with capacities of 16,000 head or more accounted for more than half of production (52 percent); 44,000 smaller feedlots supplied the remainder. Ninety-one plants [in 1990] accounted for more than 90 percent of all U.S. beef packing in an industry with more than 1,000 packing plants."<sup>16</sup> Furthermore, "three companies -- IBP, Cargill and ConAgra --- now slaughter nearly 80% of all U.S. meat."<sup>17</sup> Given the increase in bovine TB, largely originating in Mexican feeder cattle, and the likely future increase in Mexican feeder cattle exports, bovine TB eradication has become a politically sensitive trade issue, as well as an animal health and consumer issue.

Congressional testimony by William H. Wynn, International president of the United Food and Commercial Workers International Union (UFCW) argues that several articles in NAFTA would enable a major increase in feeder cattle and meat exportation into the United States. Wynn testified that "The high cost of feed grain has been a major barrier to the expansion and development of a modern livestock sector in Mexico. The major contribution of NAFTA in changing the economics of the livestock and meat trade is the elimination of current Mexican quotas and tariffs on imports of feed grains from the United States . . .

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<sup>13</sup> *U.S. -Mexico Trade: Pulling Together or Pulling Apart?*, Office of Technology Assessment, Congress of the United States (Washington, D.C.: U.S. Government Printing Office, October, 1992), 199.

<sup>14</sup> *NAFTA: Effects on Agriculture*, An American Farm Bureau Research Foundation Report (1991), vol. I, 76.

<sup>15</sup> "Overview of the Assessment of Risk Factors for *Mycobacterium bovis* in the United States" *Animal Health Insight* (Summer, 1993), 11.

<sup>16</sup> *U.S. -Mexico Trade: Pulling Together or Pulling Apart?*, 210.

<sup>17</sup> Statement of A.V. Krebs, PrairieFire Rural Action to the USDA Public Hearing, Food Safety, Des Moines, Iowa, June 4, 1993, 2.

Once Mexico frees up the import of grain, it will make sense to raise livestock and slaughter it in Mexico for export to the United States".<sup>18</sup> Whether or not transnational corporations expand the feed, livestock and beef industries to the degree suggested by Wynn's testimony may be in part conditioned by the eradication of bovine TB.

#### *Risk of Bovine TB for Humans and USDA Inspection Problems*

Veterinarians and epidemiologists consulted for this report generally agree that the risk of bovine TB transferring to humans is slight. Yet the difficulty of distinguishing bovine TB bacilli from human TB bacilli in the laboratory, plus a memo from one Food Safety and Inspection Service (FSIS) administrator concerning TB testing for inspectors handling carcasses suggests that the acquisition of TB through beef consumption cannot be dismissed. Furthermore, the accusation of an FSIS inspector that he was ordered to release a carcass with TB lesions for human consumption does not allow the public to be entirely sanguine about relying on the USDA to prevent the acquisition of TB from meat.

Dr. Terry Beals, Executive Director of the Texas Animal Health Commission stated that "Today it would be extremely rare for a human to get cattle tuberculosis."<sup>19</sup> Dr. Morse Potter, a veterinarian with the Centers for Disease Control and Prevention said that the clinical difference between *M bovis* and the human TB bacteria is so slight that diagnostic laboratories do not attempt to determine the strain of TB. Dr. Potter added that although the data on bovine to human TB transmission are imperfect, "there is no evidence that *M bovis* is an

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<sup>18</sup> William W. Wynn, Statement before the International Trade Subcommittee, Committee on Ways and Means, U.S. House of Representatives on North American Free Trade Agreement, (March 11, 1993), 6.

<sup>19</sup> "Cattle Herd in Karnes County Cause Concern; Tuberculosis Infection Possible", Texas Animal Health Commission News Release (May 21, 1993).

important portion of human TB".<sup>20</sup> This assurance notwithstanding, Dr. R.C. Nelson, an Assistant Area Supervisor of FSIS requested TB testing for FSIS employees from Dr. Mark Minis, Regional FSIS Director, on June 6, 1992. Nelson wrote "[b]ecause of the high incidence of [bovine] Tuberculosis and because of the exposure our employees have with these positive animals, we recommend TB testing for FSIS employees who are in contact with these animals."

The recent experience of Dr. Wilfredo Rosario, a whistleblowing U.S. federal veterinarian, attests that part of the difficulty in protecting the public from foodborne TB is assuring that FSIS inspection practices carry out FSIS official policy. "Dr. Rosario was ordered by FSIS management to release the carcass he diagnosed in October 1989 as having TB lesions."<sup>21</sup> Dr. Rosario, with the aid of the Government Accountability Project (GAP) and attorney Ken Morrison, has struggled since then both to change the policy of giving USDA's stamp approval to TB lesioned meat and to determine at what bureaucratic level of the USDA such a policy originated.

USDA policy no longer allows, as it did in 1990, that "beef carcasses found to be "suggestive" of tuberculosis . . . be released for human food".<sup>22</sup> Although Secretary of Agriculture Edward Madigan wrote on January 19, 1993 that his predecessor, Clayton Yeutter, had erred in defending the policy of releasing such carcasses for human consumption, Madigan's own distortions concerning TB dispositions standards required a detailed response from attorney Morrison to the U.S. Office of Special Counsel. According to Morrison, in April 1993, Secretary Madigan's letter "led directly to the OSC's highly unusual decision to order a new,

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<sup>20</sup> Phone interview with Dr. Morris Potter, on August 31, 1993.

<sup>21</sup> Ken Morrison, "The October Carcass", *The Los Angeles Reader* (October 9, 1992), 9.

<sup>22</sup> George Anthon, "Bovine TB still a public health concern", *The Des Moines Register*, March 8, 1993, 3A.

full-blown investigation into the USDA TB-disposition policies".<sup>23</sup> The investigation, ordered by Robert L'Heureux, Associate Special Counsel for Investigation of OSC, is still underway.<sup>24</sup> Morrison wrote in a June, 1993 article that "[o]nly after the [*Los Angeles Reader*] article ["The October Carcass", also authored by Morrison in October, 1992] was published -- fully two years after the Special Counsel first ordered Yeutter to investigate -- did the USDA really begin investigating."<sup>25</sup> Morrison hopes that the results of this investigation will determine, among other matters, "how many TB carcasses, in what parts of the country, have actually been illegally released over the years".<sup>26</sup>

The increase in the detection of bovine TB and the likelihood of greater future increases with increased Mexican feeder cattle exports pose serious inspection problems for government officials in Mexico, at the U.S.-Mexican border, in feedlots and in processing plants. Despite the generally very good health of American cattle herds, the threat posed by bovine TB to human health, particularly to animal inspectors, feedlot employees and meat packing employees cannot be dismissed as negligible.

#### *Fighting Foodborne Diseases Through Consumer Awareness Measures*

TB bacteria in meat can be killed by cooking it at 160 degrees. However, reliance on "A Quick Consumer Guide to Safe Food Handling" (USDA Home and Garden Bulletin No. 248), programs to encourage consumer awareness of safe food handling and cooking is evidently not a substitute for the years of work that it will take to eradicate bovine TB in Mexican cattle. Food-borne disease, such as

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<sup>23</sup> Letter from Kenneth S. Morrison, August, 18, 1993.

<sup>24</sup> Letter from Robert L'Heureux to Dr. Wilfredo Rosario re OSC File No. DI-93-1119, April 16, 1993

<sup>25</sup> Morrison, "USDA Finally Gets the Message About TB-Infected Carcasses", *The Los Angeles Reader* vol. 15: 34 (June 4, 1993)

<sup>26</sup> Morrison, "USDA Finally Gets the Message About TB-Infected Carcasses".

the November, 1992 to February, 1993 outbreak of *E-coli* 0157:H7 in undercooked hamburger that resulted in four deaths and more than five hundred laboratory confirmed illnesses<sup>27</sup>, is a grim reminder of the limits of consumer awareness and of inspection procedures. Most Mexican feeder cattle imported into the U.S. are likewise destined to become hamburger. Prof. Steven Sanderson writes that "Mexican frontier beef cattle fit the requirements of the U.S. ground beef market by yielding precisely that tall, rangy, muscular, quick-growing feeder steer which is not produced domestically."<sup>28</sup>

It is a matter of debate whether the *E coli* 0157:H7 tainted hamburger contained Canadian meat, New Zealand meat, or Australian meat transhipped through Canada under the weaker 'streamlined' inspection procedures resultant from the U.S. Canada Free Trade Agreement.<sup>29</sup> A Centers for Disease Control and Prevention report to trace the origin of the hamburger contamination concludes, "[t]he limited recovery of suspect lots from these dates [Nov. 19-20, 1992] suggests that a large quantity of the implicated meat was consumed,

<sup>27</sup> "Multistate Outbreak of *E. coli* 0157:H7 Infections", *Morbidity and Mortality Weekly Report* Centers for Disease Control and Prevention, Vol. 42:14 (April 16, 1993), 258-263.

<sup>28</sup> Sanderson, *The Transformation of Mexican Agriculture*, 171.

<sup>29</sup> FSIS Import Meat Inspector William Lehman declared in sworn testimony that "the USDA and the Centers for Disease Control and Prevention have determined that it was a batch of Australian beef that was blended with U.S. ground beef which ultimately became the hamburgers sold by Jack-in-the-Box. I don't know the origin of that particular lot of Australian meat, but I do know that because of loopholes in the U.S. Canadian border inspection procedures, Australian meat routed to the U.S. through Canada is able to circumvent the more stringent inspections that would be required were the Australian meat imported directly into the United States. Pursuant to the implementing procedures of the U.S. - Canada Free Trade Agreement, USDA inspectors are directed to visually inspect only a small percentage of meat imported from Canada to the U.S. Indeed, as an Import Inspector I have been ordered not to visually inspect Australian meat imported to the U.S. through Canada." Testimony before the Subcommittee on Commerce, Consumer Protection and Competitiveness, Committee on Energy and Commerce, U.S. House of Representatives on Food Safety as It Related to the North American Free Trade Agreement, February 18, 1993, 3-4. A Center for Disease Control and Prevention report on the *E coli* 0157, in an apparent refutation of Lehman's testimony states that "Lot 4 produced 12/28/92 did not have an Australian supplier for frozen meat; the frozen meat was supplied by a New Zealand company." There is no mention of whether the New Zealand beef was transhipped through Canada. That report concludes "The supplier of the contaminated meat has not been determined", probably because of an "inexactness of production records." Jessica Tuttle, CDC memorandum on EPI-AID Trip Report (May 21, 1993), 5, and 10.



particularly in restaurants supplied by the California distribution centers."<sup>30</sup> Fortunately, adequate cooking of unrecovered lots of suspect contaminated meat prevented further poisonings and perhaps deaths.

Unfortunately, the USDA sometimes seems more inclined to rely on consumer awareness, rather than on meat inspection enforcement to protect consumers: "The federal government hasn't given inspectors the authority to confiscate raw meat tainted with *E coli* or other bacteria because it expects consumers to cook meat thoroughly and destroy the bacteria in the process said Patricia Stoulf, associate deputy administrator for science and technology at the Food Safety and Inspection Service (FSIS) in Washington, D.C."<sup>31</sup> In a USDA press conference to announce safe-handling labels that must appear on all raw meat and poultry products sold in the U.S., "Eugene Branstool, assistant agriculture secretary for marketing and inspection services, describes the labeling rule as the centerpiece of a broad consumer-education campaign. He predicts that food safety will be a focus of the 1990s, in much the same way that auto-safety and environmental awareness were the focus of earlier decades."<sup>32</sup> If the agency would rather make consumers more "aware" of the dangers of *E coli* 0157:h7 contaminated meat than confiscate that meat, the USDA food safety campaign may remain little more than consumer education and public relations. (The meat industry has already announced that it will be unable to have safe handling labels on all products by the October 15 deadline.<sup>33</sup> The National-American Wholesale Grocers' Association, the National Grocers Association and the Texas Food Industry Association are suing the USDA in U.S. District Court in

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<sup>30</sup> Tuttle, CDC memorandum, 11.

<sup>31</sup> Paul McEnroe and Sharon Schmickle, "For Consumers, it's luck of the draw", *Minneapolis Star Tribune* ((August 8, 1993), 14A.

<sup>32</sup> Rose Gutfeld, "Required Labels For Poultry, Meat Unveiled", *Wall Street Journal* (Aug., 12, 1993), B8, column 1.

<sup>33</sup> "Gore Plans to Eliminate FSIS", *Cattle Buyers Weekly* (Sept. 6, 1993), 1-2.

Austin, TX. The suit contends that "USDA acted illegally by forcing enactment of the label requirement in only 60 days".<sup>34)</sup>

The incidence of food-borne illnesses and deaths is more frequent, widespread and serious than can be appreciated in any one outbreak, even one as notorious as the *E coli* 0157:h7 outbreak. According to the General Accounting Office (GAO), "[r]esearchers at the Centers for Disease Control estimate that there are about 6.5 million cases of food-borne illness and about 9,000 deaths in the United States each year. Most of these cases can be traced to microbial pathogens in meat, poultry, eggs, and seafood."<sup>35</sup> Given the incidence of food-borne illness prior to "free" trade and the difficulties of eradicating just one, analysis of the effects of trade policy and increased trade on U.S. food safety should extend beyond what is permitted by the extremely limited provisions for Congressional debate on NAFTA provided for in the 'fast-track' authorization.

#### *Prospects for Bovine TB Eradication in Mexican Cattle*

According to Dr. Bob Hillman, a member of the Joint Mexican-U.S. Committee on Bovine TB Eradication, it will be "many, many years" before Mexican bovine TB eradication programs can be certified as equivalent to U.S. Programs.<sup>36</sup> [get the quote from the AL veterinarian re 20-25 year estimate for bovine TB eradication] Concerning the recent increase in bovine TB in U.S. herds, Dr. Hillman stated "[t]he Mexican free-trade agreement is a very big

<sup>34</sup> Joanna Ramey, "USDA Sued Over Meat Label Date", *Supermarket News* (Sept. 27, 1993), 1.

<sup>35</sup> "Food Safety: Inspection of Domestic and Imported Meat Should Be Risk-Based", Statement of John W. Harman, Director, Food and Agriculture Issues, Resources, Community and Economic Development Division, General Accounting Office in Testimony before the Subcommittee on Commerce, Consumer Protection and Competitiveness, Committee on Energy and Commerce, House of Representatives, February 18, 1993, p4.

<sup>36</sup> Dr. Bob Hillman, phone interview on August 13, 1993.

consideration . . . It is vital that trade agreements and procedures for [Mexican cattle] entry be based on sound scientific data, not on someone's economic policy, not on a whim and not because someone can make some money doing this."<sup>37</sup>

Although Dr. Essey believes that bovine TB can be controlled eventually in the northern Mexican states bordering the U.S. from which most cattle are exported, he said that the time it will take to eradicate the disease "depends very much upon dollars".<sup>38</sup> In the United States "[p]roblems persist in dealing with the disease in known infected herds because little or no compensation is available for animals destroyed because of tuberculosis".<sup>39</sup> Dr. Essey explained that in addition to the problem of acquiring indemnification funds, there are two other factors that complicate the eradication program. First, the size of herds, particularly dairy herds, has increased, so that herds with thousands of cattle require indemnification payments in millions of dollars. Second, even if funds are available, cattle owners may choose not to depopulate their herds because, on average, the indemnification payment is about \$350 less per head of cattle than the value of the cattle for breeding. Cattle owners tend to depopulate their herds when the number of TB positive cattle in a herd is high enough so that probable future rates of infection can be confidently extrapolated. The symptomology of bovine TB is such that a badly diseased herd can have good looking cattle. Fortunately, Dr. Essey, concluded the incidence of bovine TB in large herds has been very low.<sup>40</sup>

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<sup>37</sup> Hillman cited in McGraw, "Evidence grows at packinghouses of resurgence of TB in cattle herds".

<sup>38</sup> Dr. Mitchell Essey, phone interview, on Sept. 13, 1993.

<sup>39</sup> Essey and Meyer, "Status of the State-Federal Bovine Tuberculosis Eradication Program: Fiscal Year 1992", 529.

<sup>40</sup> Dr. Mitchell Essey, phone interview, on Sept. 30, 1993.

Dr. Billy Johnson, Co-chair of the Joint Committee, stated that APHIS would provide only technical assistance to help eradicate bovine TB in Mexico and would provide no funds for indemnifying owners of TB positive cattle destroyed in the eradication program.<sup>41</sup> A March 4, 1993 memo concerning USAHA Resolutions on bovine TB eradication in Mexico states, "[l]egal advise [sic] would have to be obtained to determine if reactor animals found on retest [to be TB positive] at designated holding areas could be required to be slaughtered without payment of indemnity".<sup>42</sup> What will become of the bovine TB eradication program if Mexican law does not require slaughter without indemnification payment?

According to Dr. Essey, no bovine T.B. eradication plan has ever been successful that did not provide for funds to indemnify cattle herd owners.<sup>43</sup> For example, in order to eradicate a bovine TB outbreak in North Dakota in 1988, \$1.5 million was paid out for the destruction of 4,500 cattle.<sup>44</sup> Dr. Jorge Saltijaral, of the Dept. of Agriculture and Animal Production in the Universidad Autónoma Metropolitana in Mexico City, said that there are no such indemnity funds in the Mexican Bovine TB Eradication Campaign.<sup>45</sup> The national cattle owners association of Mexico (Conferación Ganadera Nacional) will fund the Mexican eradication campaign with \$70 million.<sup>46</sup> Dr. Max Coates, of the Texas Animal Health Commission, said that that about 85% of bovine TB eradication costs in Mexican herds would be paid for by Mexican cattle producers.<sup>47</sup>

Although the State of Chihuahua, on the Texas border, plans to eradicate bovine

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41 Phone interview with Dr. Billy Johnson, on Sept. 14, 1993.

42 Memo from Robert B. Mellan, U.S. Animal Health Association Administrator, to the Assistant Secretary of Agriculture (Dec. 12, 1992), 3.

43 Dr. Mitch Essey, phone interview, Sept. 13, 1993.

44 Phone interview with Dr. Bill Rotenberger, Assistant State Veterinarian of North Dakota, Sept. 14, 1993

45 Dr. Jorge Saltijaral, phone interview, Sept. 13, 1993.

46 Dr. Mitch Essey, phone interview, Sept. 13, 1993.

47 Dr. Max Coates, phone interview, Sept. 27, 1993.

TB "in six years or less"<sup>48</sup>, Dr. Saltijaral said that he and other Mexican specialists in bovine TB doubt very much that this goal can be met.

The response of the cattle industry to the outbreak of bovine-TB, as will be outlined in this article, has sought to protect NAFTA and the industry's health through joint U.S.-Mexico agreements on animal health, which, at this point, are largely statements of principle to control bovine TB. These agreements, however well-intentioned, are years away from becoming the animal health regulation and enforcement programs that could guarantee the health of cattle imported from Mexico, and, hence, food safety for American consumers. Passage of NAFTA in its present form could allow such industry initiated agreements to act as substitutes for federally staffed and funded animal health inspection programs, particularly on the Mexican side of the border.

### *NAFTA and Food Safety*

The text of NAFTA offers ambivalent assurance of stringent animal health and food safety regulation, enforcement and sanctions. NAFTA articles in "Subchapter B -- Sanitary and Phytosanitary Measures", though seemingly clear when read individually, are so contradictory as a whole as to create the sort of loopholes that would likely result in a stoppage of trade while corporate lawyers and trade representatives from the U.S. and/or Mexico and/or Canada present their respective cases in the NAFTA trade dispute resolution tribunal. For example, consider Article 754.1: "Each Party may, in accordance with this Subchapter, adopt, maintain or apply any sanitary or phytosanitary measure necessary for the protection of human, animal or plant life or health in its territory, including a measure more stringent than an international standard, guideline or

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<sup>48</sup> "Eradication Program for Bovine Tuberculosis in the State of Chihuahua, Mexico" Secretaria de Agricultura y Recursos Hidraulicos (January, 1993) 3.2.4.

recommendation." Or Each Party may not adopt etc. In any event, Each Party is not required to adopt such measures, since they might conflict with the language of other articles in the Subchapter, e.g. Article 754.5: "Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is applied on to the extent necessary to achieve its appropriate level of protection, taking into account technical and economic feasibility." In a trade dispute, the determination of what is an "appropriate level of protection" for citizens and what is technically and economically feasible for producers, processors and distributors will be argued by the trade representatives. State and local governments, to say nothing of non-governmental citizen groups, will have no legal standing to represent their own cases before the NAFTA dispute resolution tribunal.<sup>49</sup>

Just as NAFTA was negotiated with public comment restricted almost entirely to that of large corporations,<sup>50</sup> so too may remain hidden from public view the information upon which are based judgements concerning an "appropriate level of protection" and the technical and economic feasibility of sanitary measures. Article 763b provides that "Nothing in this Subchapter shall be construed as requiring a Party to: furnish any information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises." It hardly needs to be mentioned that sometimes the needs of law enforcement, public interest and commercial interests are not identical. If the absence of public interest groups from the drafters of NAFTA are any indication of the kind of representation the public may expect from the U.S. Trade Representative, it

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<sup>49</sup> Kate Tammaro, "Will NAFTA Attack the Constitutional Powers of States?" Center for Policy Alternatives (Washington, D.C.), March, 1993.

<sup>50</sup> Lori Wallach and Tom Hilliard, "The Consumer and Environmental Case Against Fast Track", Public Citizen's Congress Watch, May 1991.

would not be illogical to expect that in cases where commercial interests and public interests conflict, commercial interests will likely prevail.

Neither have the so-called side agreements to NAFTA satisfied concerns of agricultural organizations opposing NAFTA. A news release from the National Farmers Union (NFU) states, "Earlier this year, NFU and eight other agricultural organizations submitted a letter to U.S. Trade Representative Mickey Kantor, imploring him to strengthen NAFTA provisions concerning agriculture. The letter outlines 12 specific areas of concern including the need to incorporate country of origin labeling, stronger border inspection systems and inclusion of price transparency language." Nancy Danielson, legislative representative for the NFU said that "[w]e have enumerated these shortcomings on numerous occasions and been told that our concerns would be addressed in a surge agreement, which would serve as agriculture's side agreement. The surge provision is not a side agreement at all, but is a repeat of the original vague language."<sup>51</sup>

Rather than continue the melancholy sport of finding loopholes in the NAFTA text or outlining objections to NAFTA's general agricultural policy, the remainder of this article outlines cattle industry initiatives taken in consort with the USAHA and Mexican government.

#### *NAFTA and the Cattle Industry Response to Bovine TB*

The National Cattleman's Association (NCA), a NAFTA supporter, professes to "have some concerns with animal health and environmental and food safety standards" regarding NAFTA.<sup>52</sup> However, in May, 1993, six months after President George Bush had signed NAFTA, NCA had yet to investigate the impact of the projected increase in feeder cattle exports from Mexico with

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<sup>51</sup> National Farmers Union News Release, August 13, 1993.

<sup>52</sup> Amy Jo Brandel, "Beef industry pondering NAFTA's impact", *Agri News* (May 6, 1993), A1.

NAFTA on animal health inspection systems in the U.S. and Mexico. Neither, stated NCA government affairs vice president Tom Cook, had the organization examined the differences on beef production practices between the two countries, particularly concerning the animal drugs and growth enhancers used in Mexico, but banned in the U.S.<sup>53</sup> At a July 27, 1993 press conference that announced the formation of AG for NAFTA, a coalition of 101 agribusiness companies<sup>54</sup>, NCA's Roger Stuber declared that NAFTA "will not change United States animal health safety standards for Mexican cattle . . . and in fact may improve Mexican standards."<sup>55</sup> Stuber's declaration is presumably based on work initiated in 1992 to confront the rise in bovine TB.

At the mid-year meeting of the NCA in 1992, a resolution was adopted to request that the USDA recognize the Arizona-Sonora Animal Health Agreement between the states of Arizona and Sonora, Mexico, and "promote this agreement as a model for other states, and an expanded national program."<sup>56</sup> This half-page agreement, signed by the governors of Arizona and Sonora on June 13, 1992 was the result of negotiations between the states and the cattle industries of the two countries in response to "the possibility of increased import restrictions resulting from a nationwide concern about the incidence of bovine tuberculosis in imported Mexican steers . . . Such restrictions could also have a negative impact on the Free Trade Agreement being developed between the United States and Mexico."<sup>57</sup> Of the agreement, the *Arizona Republic* stated in a June 16, 1992 editorial that "Arizona is riding point on NAFTA, the proposed North American

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53 Brandel, "Beef industry pondering NAFTA's impact", A2.

54 "Food, agriculture coalition begins campaign for NAFTA", *Milling and Baking News* (August 3, 1993), 1, 12-13.

55 *Food Chemical News* (August 2, 1993), 52.

56 Report of the Arizona-Sonora International Livestock Health Committee (undated), 1.

57 Report of the Arizona-Sonora International Livestock Health Committee (undated), 1.



Free Trade Agreement, positioning itself well out front in the U.S. drive to open up commerce with Mexico."

One of the purposes of the agreement is to "assure Arizona's livestock industry an uninterrupted supply of cattle from Sonora which in turn insures a ready supply of stocker cattle for our cattle feeding industry."<sup>58</sup> Although these industry concerns gave rise to the June agreement, only in late September 1992 did the Arizona-Sonora Livestock Health Committee actually visit a Sonoran cattle and dairy ranch. The Committee reported that "various industry representatives were impressed with the progress made by Arizona and Sonora through the Arizona-Mexico Animal Health agreement . . . This effort by Sonora could well be the protocol adopted by other Mexican states and the Mexican Department of Agriculture for a national program of the eradications of bovine tuberculosis and brucellosis in Mexico."<sup>59</sup> Although USAHA Resolution 15 has the "ultimate goal of achieving complete eradication of Bovine TB from both countries", Dr. Billy Johnson, Co-Chair of the Mexican-American Joint Committee on Bovine TB Eradication, said that the immediate goal was to provide sufficient TB negative herds from Mexico for export to the United States. He said that about 60% of herds had been tested for TB in Sonora, the state with the most advanced detection programs in Mexico.<sup>60</sup> A June, 1993 report from the Committee for TB Eradication in Sonora states that "[t]ests have been done to 4,847 herds of beef cattle, detecting 0.35% positive herds; on dairies 81 herds have been tested, finding 25% of them positive."<sup>61</sup>

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58 Report of the Arizona-Sonora International Livestock Health Committee (undated), 1.

59 Arizona-Sonora Livestock Health Committee Report, September 28, 29, 30, 1992; Hermosillo, Sonora, Mexico

60 Phone interview with Dr. Billy Johnson, Sept. 14, 1993.

61 Salvador Campa, "Report of the Committee of the Campaign for the Eradication of Bovine Tuberculosis and Brucellosis from the State of Sonora" (June 25, 1993), 1.

The Arizona-Sonora Livestock Health Committee prepared its resolutions for the United States Animal Health Association (USAHA) meeting of Oct. 31-Nov. 6 under considerable time pressure. It seems that a three-day visit in late September 1992 to one dairy and one cattle operation in Sonora, plus an earlier inspection of a Mexico City laboratory that produces tuberculin for TB testing, together with earlier work by an *ad hoc* USAHA committee, was sufficient to convince the Arizona-Sonora Livestock Health Committee to recommend at the USAHA meeting that import restrictions on Mexican feeder cattle exempt those cattle "originating from Mexican states that have agreements following the guidelines of the Arizona-Sonoran agreement."<sup>62</sup> It appears that the Committee believes that the intent to "improve the surveillance and detection of livestock diseases which could have an impact on livestock production"<sup>63</sup>, if assented to by another Mexican state, is sufficient to exempt that state's cattle from USDA import restrictions. The Committee's belief in the good intentions of the Mexican cattle producers funding the bovine TB eradication program is given regardless of the animal health inspection infrastructure of a Mexican state and regardless of the incidence of bovine TB in herds that reside in that state or are transhipped through it. In short, the Committee believes that if Mexican officials sign a cattle industry initiated agreement to improve detection of bovine TB and other diseases in one Mexican state, there will be no need for more stringent USDA regulations and enforcement for cattle from other states. Furthermore, as Mexican Undersecretary for Livestock Gustavo Reta implied on September 13th,

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<sup>62</sup> Report of the Arizona-Sonora International Livestock Health Committee (undated), 1. Emphasis in the original document.

<sup>63</sup> Agreement of Cooperation between the State of Arizona and the State of Sonora, June 13, 1992.

any attempt to impose such regulations might result in more stringent and perhaps retaliatory restrictions on U.S. beef and sheep exports to Mexico.<sup>64</sup>

### *Conclusion*

The increase in bovine TB in U.S. herds, largely originating in Mexican feeder cattle, has instigated a bovine TB eradication program which, in Mexico, appears to be insufficiently funded to meet the stated objectives of the eradication program. Because Mexican cattle producers are providing most of the funds for the bovine TB eradication program, the difficulty of eradicating bovine TB with such limited funds, particularly for indemnification, may cause them to claim that APHIS or U.S. state animal health regulations violate the standards of "economic feasibility" and/ or "appropriate level" of protection for NAFTA.

Although bovine TB appears to be unlikely to be transmitted to meat consumers who like to cook their meat well-done, feedlot and meatpacking workers, as well as inspection personnel may be at some risk in handling raw meat or being infected through splattered blood. For the USDA and the meat industry, the burden of insuring that consumers do not contract TB through infected meat rests finally with the consumer, although many meat retailers believe that most consumers will not read food safety handling labels mandated by the USDA on August 16, 1993.<sup>65</sup>

The international division of cattle and beef producing labor that brings beef to the tables of American consumers has made bovine TB a trade issue, as well as an animal health and consumer issue. The current language of NAFTA's sanitary and phyto-sanitary provisions invites Mexican accusations that USDA regulations and enforcement are "trade barriers". Although the NAFTA trade

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<sup>64</sup> John Rice, "SARH Officials React to New U.S. Threat to Mexican Cattle Imports" *Mexico City News* (Sept. 13, 1993).

<sup>65</sup> *Cattle Buyers Weekly* (Sept. 27, 1993), 1.

dispute resolution panel may well resolve the resulting trade wars in favor of U.S.-based transnational corporations, it seems unlikely that bovine TB in cattle of Mexican origin will be eliminated as a threat to meat industry workers, inspection officials, and consumers.