

PolicyPennings by Dr. Daryll E. Ray

The week that was in the US beef industry

With the Supreme Court decision on the Beef Checkoff, the approval of changes in international mad cow disease safety and trade guidelines, and the closure of the US border to cattle from the Mexican state of Durango, the fourth week in May, 2005 has given US cattle producers a lot to chew on.

On Monday, May 23, 2005, the US Supreme Court released its long awaited ruling on the constitutionality of the Beef Checkoff program that requires beef producers to contribute \$1 per head of cattle sold to a fund that is primarily used to promote the increased consumption of beef. Using the 2001 ruling of the Supreme Court in the Mushroom Checkoff case (US vs. United Foods), the opponents of the Beef Checkoff argued that forcing cattle producers to fund the advertising program violated their free speech rights.

The Supreme Court got around that obstacle by accepting the argument of the supporters of the Beef Checkoff that the advertising involved was not the speech of individuals, but was government speech (the issue of government speech was not raised in the mushroom case). In concluding that the advertising messages funded by the beef program are government speech, the Court wrote: "the message is effectively controlled by the Federal Government. . . . The Secretary . . . has final approval authority over every word in every promotional campaign, and his subordinates attend and participate in meetings at which proposals are developed."

The ruling contains wording that suggests that the decision was made on the narrow grounds of the issue of government speech and that given a different line of argument, the results might be different. It seems likely that we have not heard the last word on checkoff programs. It also seems certain that both the challengers and defenders of pork and other checkoffs will use the Beef Checkoff ruling as a guideline for their ongoing court cases.

In a Tuesday USDA press release, "Agriculture Secretary Mike Joahns announced that the US Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) has closed the US border to cattle from the Mexican state of Durango due to inadequacies with that state's bovine tuberculosis (TB) management program." The state

of Durango accounts for 16.5% of all cattle imported into the US from Mexico. That action will certainly put some pressure on feedlots and beef processing facilities in the US Southwest. This action takes place at a time when there is significant debate on the continued closing of the US border to the importation of cattle from Canada and its effect on US finish and slaughter operations.

The condition for the resumption of the importation of cattle from Durango into the US is that Durango meet all general APHIS guidelines plus the specific "recommendations by the APHIS review team." Detailed information on the specific requirements can be found on the USDA website.

On Thursday, Joahns applauded "the leadership of the World Organization for Animal Health (OIE) in modernizing the international approach to the safe trade of beef products by updating the BSE guidelines to reflect current science." Those guidelines will make it possible for boneless beef cuts that are processed according to risk mitigating guidelines to be exported without regard to the country's BSE status. That guideline permits the resumption of the importation of boneless beef from BSE infected countries into markets that had been closed to them since as long ago as the late 1980's.

This means that US beef producers gain access to markets that have been recently closed to them since the discovery of a BSE infected cow in Mabton, Washington. On the other hand, in addition to enlarging the potential pool of US's beef export competitors, these rules also mean that US mass merchandisers can assemble lowest-cost supplies of boneless beef cuts from multiple countries without regard to BSE status.

Daryll E. Ray holds the Blasingame Chair of Excellence in Agricultural Policy, Institute of Agriculture, University of Tennessee, and is the Director of the UT's Agricultural Policy Analysis Center. (865) 974-7407; Fax: (865) 974-7298; dray@utk.edu; http://agpolicy.org. Daryll Ray's column is written with the research and assistance of Harwood D. Schaffer, Research Associate with APAC.

Originally published in *MidAmerica Farmer Grower*, Vol. 22, No. 22, June 3, 2005
Reproduction Permission Granted with 1) full attribution to Daryll E. Ray and the Agricultural Policy Analysis Center, University of Tennessee, Knoxville, TN;
2) Copy of reproduction sent to Information Specialist, Agricultural Policy Analysis Center, 310 Morgan Hall, Knoxville, TN 37996-001