



UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of Commissioner  
Rohit Chopra

**Prepared Remarks of  
Commissioner Rohit Chopra<sup>1</sup>**

**R-CALF USA  
Rally for the American Rancher Convention  
Deadwood, South Dakota**

**August 21, 2020**

Thank you to R-CALF USA for inviting me, and I'm sorry I can't be with you in person today.

I once read a report that described how a small set of companies in your industry "attained such a dominant position that they control at will the market in which they buy their supplies, the market in which they sell their products, and hold the fortunes of their competitors in their hands."

Does that sound true to anyone? Well, that report wasn't written recently. It was issued over a hundred years ago, in 1918, by the Commissioners of the Federal Trade Commission. But, I'm sure it rings true to many of you today.

Farming and ranching was once the epitome of a free and independent life, where individuals can chart their own course and do business as they like. But, today, few are feeling free and independent. Instead, many of you feel that your lives are dictated by the regulations and orders imposed by corporate giants far from your own land, and even from outside the United States.

Covid-19 has made this even more acute. Many struggle to get their product to market. Dairy farmers are dumping milk, while stores report shortages and long lines form at food banks. Supply chains are fragile, and family farms are quickly disappearing.

Today, I want to discuss three areas where federal policymakers need to act. First, fixing the government's approach to protecting the Made in USA brand. Second, giving American farmers and ranchers the right to repair their own equipment. Finally, ensuring that we halt abusive and anticompetitive practices and vertical integration, which will be made even easier by the USDA's efforts to gut protections in its latest rulemaking under the Packers and Stockyards Act.

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<sup>1</sup> The views expressed below are my own and do not necessarily reflect those of the Commission or of any other Commissioner.

## Made in USA

The Made in USA label is part of our national brand. We know that it is valuable, and bad actors exploit it for their own gain at the expense of all of us. Made in USA fraud doesn't just harm families shopping in grocery stores; it also harms honest competitors that tell the truth.

The FTC is the nation's top cop when it comes to protecting the Made in USA label. But, unfortunately, the FTC's Made in USA policies have long been too favorable to fraudsters. Since I've taken office as a Commissioner, the FTC has voted on several Made in USA settlements. In general, the proposed settlements have included no refunds for consumers, no forfeiture of illegal gains, no notice to consumers, and no admission of liability. I voted against these no-consequences settlements, because they allowed bad actors to profit from deception, and they did little to deter wrongdoing.

In 1994, around the time of the signing of NAFTA, Congress gave the FTC the authority to punish Made in USA fraud with stiff penalties after it spelled out its policy in a rule. But, after twenty-five years, the FTC still hadn't turned on this penalty switch.

Last year, I outlined how the FTC could issue formal rules that clearly prohibit this fraud, codifying our longstanding policy that unqualified Made in USA claims can be made only when a product is made "all or virtually all" in the United States. I am pleased that we finally proposed a rule that will trigger penalties for deceptive Made in USA labels. The proposed rule is currently [open for comment](#), and I encourage you to weigh in with your views. It's not a cure-all. However, it can start changing the calculus for lying on labels.

But, even if we turn on this penalty switch, I'm concerned that the USDA could be a problem. Under the Packers and Stockyards Act, the FTC has clear jurisdiction over retail sales of meat. Unfortunately, a handbook published by the USDA's Food Safety and Inspection Service describes how meat can be marked as a "Product of the USA" as long as the meat is processed in America. That's not right. We need to make clear that claims about Made in USA must follow FTC standards.

## Right to Repair

Another issue that I hear is top of mind during this Covid-19 crisis is the right to repair.

Health care facilities want to repair ventilators and other life-saving machines. Consumers want to be able to fix their home appliances and mobile devices. Farmers and ranchers want to be able to maintain and service equipment, like tractors.

When we buy and pay for a product, that product should be ours. But, companies are finding new ways to pick our pockets, selling us products that stop working, and forcing us to pay them more to get them working again.

Sometimes that means not providing software updates to older devices, like phones and tablets, which can make them obsolete. Another way is to make it harder for you to repair your own devices, by not publishing manuals or by forcing you to go to an authorized repair service.

Many of you probably have faced your own issues with this, and John Deere has famously fought against giving rural America the right to repair. Policymakers and regulators need to fix this.

In 1975, Congress passed a number of reforms to warranty law and gave the FTC the power to enforce it and issue rules to protect purchasers. The law generally prohibits companies from conditioning a warranty on using specific parts or by limiting who can provide service, like repair services, on the equipment or device. This helps to ensure that we have choices. However, the law generally applies only to products sold for personal or household use, and it won't apply if there's no written warranty.

Many states across the country are considering right-to-repair laws. The FTC recently held a public forum on right to repair. I hope it will start a process at the federal level to take more action, and I know many of you are counting on us.

### **Anticompetitive Abuse**

Finally, and most importantly, excessive consolidation, vertical integration, and abusive, anticompetitive tactics in the agriculture industry is a dangerous threat to the livelihood of rural America. It can even compromise our national security.

The Covid-19 crisis is a stark reminder that the United States must have a stable food supply that relies on a fair and competitive family farm system. When multinational agribusiness giants exploit their market power to abuse our nation's farmers, ranchers, and producers, our nation is less secure.

Remember that report from the Commissioners of the FTC over a century ago to address anticompetitive abuses? Within just a few years after that report, the Justice Department entered into consent decrees with the big packers. Congress passed the Capper-Volstead Act to allow farmers to band together to bargain against the large corporations. And, of course, Congress passed the Packers and Stockyards Act, which was modeled after the FTC Act, to prohibit unfair, unjustly discriminatory, and deceptive practices. This formed the core of government policies to halt abuses, but things have changed dramatically.

When pandemic-related shutdowns began in March, the impacts on our agricultural sector were felt almost immediately, amplifying concerns about the USDA's proposed rules under the Packers and Stockyards Act.

On March 16, I made a [formal submission to the USDA](#) on their proposed rules. I also shared my concerns about the USDA's proposal in a Congressional hearing this month. I argued that the USDA's proposed rules run counter to the Packers and Stockyard Act's objectives in both spirit and letter.

Rather than spelling out specific practices deemed illegal, the proposal outlines four vague criteria that could be used to defend preferential treatment. According to the proposal, preference would be justified: to save on costs between producers; to meet competitors' prices; to meet competitors' terms; or as a "reasonable business decision that would be customary in the industry."<sup>3</sup>

Do we want to ratify and give a legal shield to “customary” business practices which are actually unfair and abusive?

The proposed rules are vague and have more holes than a fishing net. When you’re trying to halt anticompetitive harm, vague standards don’t work. They favor incumbents looking to further exploit their market power. Dominant players can use their substantial legal budgets to turn loose terms into legal loopholes that wind up swallowing up the law. The resulting uncertainty, endless legal costs, and heightened risk deter strong government enforcement and discourage private actions.

Competition rules that lay out bright-line bans on certain market structures or practices work better than highly subjective guidelines. When rules are clear-cut, violations are easier to detect, claims are easier to prove, and cases are easier to decide. The USDA should toss this proposal and, instead, write rules that faithfully implement the goals of the Packers and Stockyards Act.

Rules don’t need to create any requirements or red tape. But, when they spell out the practices that are unlawful with specificity, it is easier for government enforcers can halt misconduct before it becomes a “customary” business practice. New USDA rules should detail contract terms that are inherently unfair or discriminatory. In addition, when government becomes captured by special interests or is simply asleep at the switch, the rules need to allow farmers and ranchers to enforce their rights in court themselves. I know many of you have seen too many anticompetitive mergers and conduct that is killing the livelihoods of so many. We all know that we have to reverse course.

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Before I end, I admit that I’m no expert on agriculture. And I’m sure you’ve heard many from the federal government who talk a big game, but then do nothing. I also know many of you have risked retaliation for speaking up yourselves.

In some ways, what’s happening in our economy, especially during this crisis, isn’t limited to agriculture. In the health care field, independent pharmacists are getting squeezed out by vertical integration and megamergers. In retail, operators of franchised businesses face draconian terms by powerful corporate franchisors. In tech, app developers and startups are often at the whim of Big Tech giants.

This isn’t independence or liberty. Millions of small businesses are worried they will shut down. We simply cannot let independent, local businesses and family farms go extinct. But, they will if we don’t enforce basic rules of the road – including our antitrust laws, consumer protections, and producer protections – that keep the market fair for everyone.

Thank you again, and I look forward to your questions.