PROPOSALS TO BAN PACKER OWNERSHIP OF LIVESTOCK

HEARING

BEFORE THE

SUBCOMMITTEE ON
LIVESTOCK AND HORTICULTURE

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

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SUBMITTED MATERIAL

PROPOSALS TO BAN PACKER OWNERSHIP OF LIVESTOCK

SATURDAY, JUNE 21, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LIVESTOCK AND HORTICULTURE,
COMMITTEE ON AGRICULTURE,
Grand Island, NE

The subcommittee met, pursuant to call, at 8:00 a.m., in the Hornady-Marshall Auditorium, College Park, Grand Island, NE, Hon. Robin Hayes (chairman of the subcommittee) presiding.

Present: Representatives Osborne, Janklow, King and Neugebauer.

Staff present: Pam Scott, subcommitte staff director; Pete Thomson, Claire Folbre, and Andy Johnson.

OPENING STATEMENT OF HON. ROBIN HAYES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. HAYES. Good morning, everyone. I will officially call our hearing to order today. This is a hearing of the House Agriculture Subcommittee on Livestock and Horticulture, to review proposals to ban packer ownership of livestock. And we will come to order.

I will begin with a short opening statement and proceed from there.

First, let me thank all of you, the witnesses and others that have come to be with us in the audience today. As we all know, proposals to ban ownership of livestock by packers is a much discussed issue among producers, packers and processors, members of the subcommittee and others in Congress. We expect to hear from the witnesses today about how they think a ban on packers owning livestock will affect producers. Since the proponents of this proposal have asserted that it will benefit producers through greater market power and higher prices, that should be the basis of our discussion.

We have witnesses from both the producer and packer community to testify. Additionally, not just local witnesses are testifying, but folks from my part of the country have traveled to be here with us today as well. I think it is important for all of us to appreciate that there is a variation of views nationwide about the effects of a ban on packer ownership and what it would do to producers. It is this lack of consensus that makes the debate about this proposal so difficult.

Many of you know the 2002 farm bill contains report language encouraging Congress to hold hearings on this issue. We are keeping that commitment by holding this subcommittee hearing. Additionally, the fiscal year 2003 omnibus appropriations bill provided GIPSA with $4.5 million to conduct a study regarding a ban on packer ownership.

This is a hearing, and it is structured like any of our subcommittee hearings in Washington. Witnesses have been selected by the subcommittee with consultation from State livestock producer organizations and other interested parties. All witnesses will have 5 minutes to present their oral testimony and then each member will have 5 minutes to ask questions of the witnesses. More time can be allotted for questions as needed. We have lights and timers—just to make sure Governor Janklow stays on time—I am sorry. The light will go red at the end of 5 minutes—I was just kidding our friend from South Dakota. What we want to do is maintain some discipline so that everyone has a chance to speak. It is very, very important, particularly if we have time, and we hope to, to have an open mic period where people from the audience who would like to tell us what is on their mind, that is a big part of what we are doing too.

After both panels have testified, as I say, we will have the open mic. And again, keep your comments to 3 minutes in length. Any written statements can be presented to the group and will be added to the record, up to 10 days after the hearing.

We need to adjourn by noon because of time constraints. And again, written statements—and those of you on the panel who have submitted written statements, if you want to summarize and additional spoken testimony, that is perfectly all right.

I remind everybody that we as a group are here today for one reason and that is to listen and to learn from your experiences, your knowledge. Solutions do not occur in Washington, they occur here in Nebraska, South Dakota and Iowa. So we appreciate you all coming, we are here because of your concerns and because of my friend Tom Osborne, who is sitting on my left, a wonderful guy who works very, very hard, not only for Nebraska, but everybody in this country, to maintain the quality of life that is a hallmark of the freest and greatest Nation in the world.

So without further ado, I am going to introduce our panel, let them make a brief opening statement and we will begin the hearing.

I am Congressman Robin Hayes from North Carolina's eighth district, that is south central North Carolina, from Charlotte to Fayetteville. I am also in the farming business, serve on the Agriculture Committee, Armed Services Committee, and Transportation Committee.

Congressman Mike Ross, the ranking memebr on this subcommittee, was unable to be with us today. But he, along with some other Members of Congress, have submitted statements for the record and I will include them in the record.

[The prepared statement of Mr. Ross follows:]

PREPARED STATEMENT OF HON. MIKE ROSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. Chairman, I would like to thank you for holding this important hearing, here in the heart of Nebraska livestock country, to address the issues related to packer ownership of livestock. I regret that I am unable to be with my colleagues on the

Livestock and Horticulture Subcommittee, but am committed to working with you on issues important to the agriculture community.

Packer ownership is of importance to producers all across this nation and I look forward to reading the comments of our friends in the Midwest. Additionally, I am interested in the findings of the 2-year study regarding the market and economic implications of laws that would prohibit packer control of livestock. As my colleagues are aware, this study was part of an agreement between the House and Senate to look at all aspects of this issue.

Earlier this year, Congress provided $4.5 million to cover funding for this study. I believe that we are on the right track in gathering information to make an informed decision in the future.

Again, I thank you, Mr. Chairman, for your time and attention to this matter and look forward to working with you, as we address this issue together in the coming days.

Mr. HAYES. Again, thanks for your hospitality and we are mighty glad to be here. I will go to the right first, we typically do that. Mr. King, from Iowa, if you would proceed.

OPENING STATEMENT OF HON. STEVE KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. KING. Thank you, Robin. I also am very glad to be here and I am glad to see you come out this morning on a Saturday morning when you have got a lot of other things that you could be doing. That tells me you care a lot about this issue and about the future of the economy in this region.

I represent Iowa's Fifth Congressional District, it is the western third of the State of Iowa, 32 counties, it runs from Minnesota to Missouri and borders on South Dakota and Nebraska. Actually I declared it to be the eastern Nebraska district until I found out those folks in South Dakota took exception to that statement. So I just declared it the western Iowa district.

But my background is soil conservation work. I started out in 1975, bought a bulldozer and began building terraces, dams, waterways—custom work on farms. We have been tied to agribusiness all of my life, closely enough that I said to one of the ladies out here this morning that our business has essentially been the canary in the cage to agriculture's economy. Our business stopped singing when the agricultural economy started going down. And when it came back, then we started to pick up some profit again and that canary started to sing.

I do sit on the Agriculture Committee, I spent 6 years in the Iowa Senate and I twice voted for a ban on packer ownership. I am a cosponsor of the bill in Congress today. I am still of an open mind, however and I would like to hear both sides of this, and I look forward to hearing your testimony, gentlemen, this morning, and also the open mic period.

Thank you, Mr. Chairman.

Mr. HAYES. And our good friend from Texas, Lubbock, to be specific, Randy Neugebauer.

OPENING STATEMENT OF HON. RANDY NEUGEBAUER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. NEUGEBAUER. Thank you, Chairman Hayes and other members of the Livestock and Horticulture Subcommittee.

I am the 435th ranking member of the House of Representatives. I have actually been on the job for 2 weeks 2 two days, I replaced the former Chairman of the Agriculture Committee, Mr. Combest.

I come from an agricultural part of Texas, I grew up in west Texas and my family had farming and ranching interests. So I am delighted to be on the Agriculture Committee and look forward to hearing the testimony today on this very important issue.

Mr. HAYES. Next, a very dear friend—I hope so after kidding him already this morning—former Governor and now Congressman bill Janklow from the great State of South Dakota.

OPENING STATEMENT OF HON. WILLIAM J. JANKLOW, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH DAKOTA

Mr. JANKLOW. Thank you, Mr. Chairman. I am going to be extremely brief. I really want to thank you and the other members of the committee for coming out here to the heart of cattle country.

There cannot be a more divisive issue that cattlemen deal with than the free market and whether or not it effectively operates vis-a-vis pricing. This is something that is very contentious, it is something that has very strong opinions on all sides and the key thing is, as I indicated last night when we were all talking, I have strong opinions on this, but maybe I am wrong, maybe I am not accurate, and the only way I can find out whether I am wrong or accurate is to listen to testimony and listen to witnesses.

But the bottom line really is that raising livestock is pretty simple. It is a heck of a lot of hard work, it is very technical, but the way of life is not a complicated way of life. You need fair trade, you need a fair price and a marketplace that has its ups and downs and you also need to make sure that you have a competitive free enterprise system.

That is the reason I am here. And Mr. Chairman, we would not have this opportunity if it were not for you. Thank you.

Mr. HAYES. We saved the best for last, the beneficiary of my favorite hat today, dear friend, a wonderful representative of Nebraska and all the country, Dr./Coach Tom Osborne.

OPENING STATEMENT OF HON. TOM OSBORNE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. OSBORNE. Thank you. The chairman is very nice to hold this hearing and we hope by the end of November that that hat is popular and everyone around here is appreciative of the fact that you wore that hat today.

I might take just a minute longer than the others because I am somewhat responsible for this hearing, we hope it goes well today. I thought I might just tell you why I asked the members of the Agriculture Committee to come out here.

As you know, during the authorship of the farm bill, there was a packer ban included on the Senate side and then it disappeared in the conference, so many people said well, that is the end of that. And yet, there was an authorization for a study and there were people who did at least say we are going to try to make sure that this is not a dead issue, that it is examined carefully. And so we thought it was important that we follow through. If you give your word on something, you had better do it and so we are going to try to make sure that the issue of packer ownership is thoroughly investigated. There will be a study, as you know, that will be done over the next few years.

The reason that the packer ban was eliminated from the farm bill, I think was really a couple of different reasons. One is there was no unanimity on what the word "control" meant, captive supply—is it forward contracting, is it more than that—what is it. So nobody could really come up with a definition. And that was one of the really contentious issues. And then secondly the amount of division in the industry. You have the National Cattlemen, National Pork Producers, who oppose the ban; a great many of the State organizations, R-CALF, others who are very much in favor of the ban. And so if you are sitting in Washington, DC and you really have not thought much about the issue, which probably is true of the majority of Congressmen, and you have mixed signals, it is very, very difficult to get something like that in the legislation.

So I think until the industry itself comes together in some way, where there is a more unified position, probably nothing is going to happen of any great significance. And so that is one thing that we want to point out.

I will mention just a couple of other things. There have been four or five studies done by economists that have to do with packer ban and the proposed legislation. And it depends on which economist you read. And you will hear others quote economists this morning, but there are two or three studies that are very much in favor of packer ban, two or three that are very much against it. And so there is no unanimity within the academicians and the economists that have studied this issue.

The other thing that is really important to remember, and I think you will see that a little bit this morning, is that there are some very strong regional differences. Here in the Midwest, the Great Plains States, there is a fair amount of sympathy for a packer ban, but when you go on either coast or in the south, you find that there is much less sympathy. And so when you are trying to write national policy and when you are trying to do something as a House Agriculture Committee, you have to listen to all these different points of view and that makes it a little difficult.

Last thing I will mention to you is that the translate intent into actual regulation in the field is difficult. And so we decided that we want to do something on mandatory price reporting and the intent was good, but when it all came out at the other end of the pipe and it was initiated, you all know it was not very good. And now we are going through the same thing with country of origin labeling. The intent is certainly very good and then you write policy and then at the end, once the regulations are written, and they are not formulated yet, there are a lot of people that are getting very nervous, you may sometimes get what you asked for, but you find out it really is not what you wanted.

So we want to make sure that same thing does not happen here with the packer ban, where we have a certain intent and by the time you get to the regulations, you have something that is really damaging and it is not really what you wanted. So we think it is important that we have hearings like this, we take a little bit of time and that is what we are about today. We are not going to come up with any final solution, but we are going to put a lot of things out there that will be in the Congressional Record, that people on the House Agriculture Committee, people in Washington will listen to and we hope that this is an informative hearing for that reason.

So, Mr. Chairman, I will turn it back over to you and thank you again for coming and thank all of the panelists and members of Congress who are here today.

Mr. HAYES. Thank you, Coach, and again let me re-emphasize the fact of how important you all are—your time, your presence here and your input. We all recognize that there is a serious problem and how we go about coming up with solutions determines the outcome. And we want to listen very, very carefully and we will, to any and every idea that you have, so that as this process goes forward, we do things that help you and your family and make sure that the outcome is something that we all agree is the way we should have gone.

One quick thing about the Coach, he worked tirelessly on your behalf on all issues, but drought relief, I cannot tell you how many times, day and night—and he is one of the main reasons that we were able to get some drought relief for our farmers that was very, very necessary.

We are working hard on our committee to expand markets for you, I want to point that out. We did file suit in the WTO about GM products. We are going to continue to make sure that we do everything we can to tear down artificial trade barriers and tariffs to our wonderful agricultural products. Livestock is certainly a part of that. So expanding markets is very important.

Last but not least—you have got a job, we have got a job. Your job is to talk, our job is to listen. We have got to make sure we do not finish before you do.

Our first panel today is—going from—Mr. Korley Sears is on—well, I hate to say somebody is on the left, he is on the right if you look at it in a certain way. [Laughter.]

Owner and Manager of Ainsworth Feedyard in Ainsworth, Nebraska. Next to him, Jeff Rudolph from the HiGain Feedlot on Cozad, Nebraska; Marcus Harward, a cattle producer from Richfield, North Carolina; Dave Hansen, a pork producer from Hartington, Nebraska; Robert Kornegay—that is the way they say it in the west and I am going to get him to pronounce it correctly for you from the east. We appreciate you all being here.

Normally we have an amber light as well, so if you would give them a two and a one, to give you some idea where you are instead of just the red. Can you get the green one to come on?

Gentlemen, thank you and you may proceed. If Korley Sears would go first.

STATEMENT OF KORLEY SEARS, OWNER/MANAGER, AINSWORTH FEEDYARD, AINSWORTH, NE

Mr. SEARS. Thank you, Chairman Hayes, Representative Osborne and members of the House Subcommittee on Livestock and Horticulture. My name is Korley Sears, co-owner of Ainsworth Feedyards, Ainsworth, Nebraska. Ainsworth Feedyard is a family-owned custom feedyard selling approximately 60,000 head of cattle per year for our customers. I am also a member of the Organization for Competitive Markets and R-CALF United Stockgrowers of America. I am here to speak in favor of the prohibition of packer ownership of livestock as a first step towards addressing the breakdown of agricultural markets in our country.

Nebraska agriculture was built upon open and competitive markets. Competitive markets require access, transparency, fairness and competition. Captive supplies are destroying competitive markets and are destroying our production livestock agriculture in Nebraska. Captive supplies of livestock are livestock inventories controlled by the dominant packing companies through contracts or packer ownership. Eliminating the packer-owned cattle from the market would be a big step toward restoring competition. We need to let packers be packers. Producers can grow the livestock just fine.

My family has been in the feeding business for decades. In fact, we have been in the cattle industry since the 1880's in Nebraska. We have never seen the markets as closed and non-competitive in the history of our business as they are today. Live cattle prices are no longer determined according to supply and demand. Rather, they are increasingly determined by whether packers have large volumes of cattle owned or under contract that they can schedule for slaughter if the supply and demand factors are pushing prices up.

In other words, if cattle prices are going up, packers can strategically schedule their own cattle, pull out of the market, crash the price and jump back into the market after they have exerted "discipline" to us producers. This is market manipulation.

Captive supplies, including packer-owned cattle, are making the markets thinner and thinner and more subject to manipulation. Though you in Washington may think that there is a cattle market every day, the reality is that this is no longer the case. Packers have a captive inventory every week that they use against us producers to say that they do not need our cattle. We have only 15 to 30 minutes each week to sell our cattle. Bids during this time are offered on a take-it-or-leave-it basis. This facilitates panic selling and further depresses the cattle prices. This is not a market, it is a market failure.

I keep hearing that the packers need captive supplies to keep their plants full. That is not true. Packers kept their plants full in the many decades prior to the advent of captive supplies. Rather, packers want to avoid competitive bidding for livestock at all costs. Captive supplies allow them to do so.

I also hear that packers should have the ability to control quality so they can respond to consumers. But Nebraska's independent feedlots have the highest quality cattle in the country, if not indeed the world. We buy from the same sources as the packers, we sell according to quality specifications sent by the packers. There is no evidence of a quality difference between packer-owned cattle and those purchased from the open market. It is merely a price manipulation tool. If packers want higher quality, they can pay for it. That is the American way.

Last, I have heard the argument that it is a violation of packers' freedom of contract if the government restricts captive supplies. When ADM fixed the price of lysine and vitamins, that was a contract with its competitors. It just so happens that price fixing contracts are illegal because they harm the public interest in free market competition. Packer-owned livestock should also be unlawful as a tool that facilitates their ability to restrict free market competition.

As a feedlot owner, I live and breathe the market each day as I try to sell my customers' cattle for the highest possible price. You can show me any study or report you want to produce, but I do not need a study to tell me it is raining outside any more than I need a study to tell me whether the cattle markets are broken due to captive supplies. Expensive lawyers and economists cannot obscure the fact that we need competition to return the livestock product industry to a chance at prosperity.

Please do all you can to reduce or eliminate captive supplies and packer ownership of livestock. To do otherwise is an economic death sentence to independent agriculture and rural America.

Thank you.

[The prepared statement of Mr. Sears appears at the conclusion of the hearing.]

Mr. HAYES. Thank you, Korley. Next, Jeff Rudolph, manager of the HiGain Feedlot.

STATEMENT OF JEFF RUDOLPH, MANAGER HIGAIN FEEDLOT, COZAD, NE

Mr. RUDOLPH. Chairman Hayes and members of the committee, thank you for the opportunity to testify today before the Livestock Subcommittee of the House Agriculture Committee. My name is Jeff Rudolph, I am the managing partner for a commercial cattle feeding operation in Cozad, Nebraska. I am responsible for marketing over 50,000 head of fed cattle annually and I have been an active participant in the beef industry for 18 years. I have been involved in the marketing of fed cattle for the last 12 years.

Further, I am a producer member of the Nebraska Cattlemen, Inc. My testimony today represents the policies of the association.

Direct packer ownership of livestock has been a divisive issue facing the U.S. livestock industry for years. Direct packer ownership represents one element of the larger focus on captive supplies, which has received more attention recently by producers and elected officials. Direct packer ownership represents a small element of captive supplies in the beef cattle industry, but a significant portion of swine captive supplies.

In the beef cattle industry, packer ownership represents 6 to 8 percent of annual fed cattle sales, while captive supplies are pegged at 40 to 70 percent of the same figure. While the House Agriculture Committee's Subcommittee on Livestock and Horticulture hearing is to focus on the more narrow issue of packer ownership, Nebraska Cattlemen's written testimony will address the larger issue of captive supply as well.

The relevant policy of the association states that feedlot ownership and feeding of cattle by packers is not desirable. This policy statement was developed in 1995. It has been renewed, challenged, amended and returned to its original form over the past several years. The policy is grounded in the notion that there always forces at work in the market that may be either beneficial or detrimental to the marketplace.

The membership has held the belief that over the long term, inventory controlled by the packing segment is not desirable to the marketplace. Today, this policy is of little consequence as Nebraska banned beef packer feeding of livestock and ownership of feedlots. This bill, L.B. 835, was signed into law in 1999.

In June 2002, the membership directed the association to commission a comprehensive study of segment profitability in the beef industry and to identify any shifts in historical margins and the reasons for those shifts. The motivation for this study was largely a result of extended losses in the feeding segment, poor market access due to large supplies, and a growing frustration with all forms of inventory control and its perceived effect on price and margins.

The association has been unable to secure a suitable firm to conduct a credible, unbiased study. The association believes the results of such a study would lend itself to sound policymaking actions in the future.

Also prices and margins in the feeding segment have improved dramatically in the last 6 months, there is still uncertainty about the functioning of the cash market and the effects of various forms of inventory control on the market. Shifts in margin and the producers' share of the retail dollar are long-term points of concern. With this in mind, the Nebraska Cattlemen would ask that GIPSA conduct a thorough, unbiased review of livestock markets in an expedited fashion and that Congress suspend any legislative initiatives pending the completion of this study.

Thank you for the opportunity to provide the association's perspective on direct packer ownership of cattle as well as our support for the pending GIPSA study of marketing practices in the livestock industry. I would be happy to answer any questions you may have. Thank you.

[The prepared statement of Mr. Rudolph appears at the conclusion of the hearing.]

Mr. HAYES. Thank you. Next, Mr. Marcus Harward from Richfield, North Carolina.

STATEMENT OF MARCUS HARWARD, CATTLE PRODUCER, RICHFIELD, NC

Mr. HARWARD. Now I am from the South, so y'all are going to have to understand my voice will be a little bit different than y'all's is.

Chairman Hayes and members of the subcommittee, it is a pleasure and an honor to be here in Grand Island, Nebraska to discuss with you the issue of packer ownership of livestock and legislation that would ban this practice.

My name is Marcus Harward, I am from a small town of 500—it says 5,000, it is 500—people of Richfield, North Carolina, located in the part of the State called the Southern Piedmont region. Our main agricultural crops are beef cattle, pork, chicken, turkey, corn, soybeans, cotton, a few dairy cattle and small grains. All my life, I have lived on the same farm that my father bought in 1961. We started out growing beef cows, hogs and small grain. Now we grow our beef cows, along with some hay. I also own and operate the

Stanly County Livestock Market, a local sale barn facility that sells approximately 600 head of cattle per week. I have a customer base of 1,500 producers and the average customer sells about 45 head per year with us. We also sell 43 percent of all the State graded feeder calves marketed in North Carolina through our special sales, State graded sales.

When I was asked to talk to you today about my thoughts on this issue of packer ownership of cattle, I tried to look at the whole picture of our beef industry. I have a perspective on asking our Government for help that I would like to share. My father worked as a Federal livestock inspector for the USDA for 27 years. During his time as an inspector, I saw first hand as a boy the paperwork and red tape involved in his job. I also saw the lack of cooperation and coordination of the different USDA departments. I saw him perform tasks and fill out surveys that did nothing to add value or help in any way except help the bureaucracy. I respect the work that Government officials do to help make our country the greatest Nation on the planet. But I am against the Government controlling my rights as a livestock owner. I opposed legislation seeking to ban packer ownership and would like to simply tell you why.

The market I run in North Carolina is not a big market, but it helps pay our bills. We need the sale barn as well as our beef cattle operation to get by and keep our family fed. I sell all my cattle through my market. If we let our Government control who owns or feed cattle, then where does it stop? Who is to say that one day some one or some organization would say that by me selling my personal cattle through my marketplace, I am running the local farmers' cattle prices down. I could be accused of flooding my market. Who is to say that they will stop there? I know this sounds like I am out in left field behind the fence, but ranchers have to face something—do you want Government folks, who have never been on a ranch or farm dictating how you run your operation? I do not.

If you ask me what the solution is to the problem, I cannot give you a complete answer on that. All I can say is what I have seen in my marketplace. Supply and demand are two words that mean everything to any business—especially the cattle business. I know there are many efforts underway to help solve the long-term problems with producer profitability and identify ways to improve price discovery, manage risk, and find new ways to add value. I also know that different parts of the country have different problems. But I do not want legislation to pass that benefits one class of producers or one region of producers and hurts others. I am afraid this legislation will do that by hurting me and the cattle farmers that sell cattle through my market.

I know there was a study done on this issue. The results show that I could lose $44 on each calf that I sell. I do not want this to happen to my family business or to my customers. Sure, there are other studies that may say something different and that is the point. Not only is there no consensus among producers, there is nothing near consensus among those that do these studies. Included in my testimony is a document from leading agricultural economists asking themselves how agriculture economists can do a better job evaluating these policy issues. Not only do they disagree on the results of the study, it has forced them to address even more fundamental questions about the way they receive and handle these tough issues.

To do something without solid consensus is an invitation for disaster. To help find some common ground, NCBA requested for Congress to provide money for a broad study on packer ownership, captive supply issues and the entire meat side of our business. USDA is in the process of putting this study together using the $4.5 million provided by Congress. Included in my testimony is a recent Federal Register notice asking for comments on areas for further study and suggestions for those that could do the study. This is the type of information we need to make the best decisions for our families and our business.

When the Canadian border shut down, we were first concerned, and then we saw the prices went up, meat started coming to market earlier, calf prices went from 85 to 95 cents in just weeks. But I do not think we need to shut down our borders. We are in a global market, whether we like it or not.

Mr. HAYES. Got to cut the home boy off, Marcus, the red light is on.

Mr. HARWARD. All right.

Mr. HAYES. We will come back to you. Sum up in 15 seconds.

Mr. HARWARD. Sum up in 15 seconds—I believe whatever direction we take, things have a way of working out, but at what cost? I do not want to run on blind faith and rely on would have, should have, could have for my livelihood. I do not want to tear my house down in hope to build back a mansion of pieces.

[The prepared statement of Mr. Harward appears at the conclusion of the hearing.]

Mr. HAYES. Thank you, sir. Dave Hansen from Hartington, a pork producer.

STATEMENT OF DAVE HANSEN, PORK PRODUCER, HARTINGTON, NE

Mr. HANSEN. Thank you for the opportunity to visit with you this morning. My name is Dave Hansen, my family and I own and operate a family farming operation near Hartington, which includes a farrow to finish pork production operation. I am currently serving as the president of the Nebraska Pork Producers Association.

The members of the Nebraska Pork Producers Association have continuously supported the State's constitution, which includes the provision of our Initiative 300. In essence, Nebraskans have been living a packer ban for the last 20 years.

During my 30 years that I have been involved in my operation, we have all seen the structure of agriculture change considerably. The pork industry in Nebraska is no exception. The most obvious change has been the reduction in numbers of producers as we have lost nearly 9,000 producers in the last 10 years, with the current number dipping below 2,900 producers.

USDA Agriculture Statistics also reported our loss in pork production, with inventories dropping from 4.6 million to the current number of 2.9 million. Associated with this loss of producers and the loss of production, we have also seen a loss of many of the goods and services needed for our rural communities to survive.

Nebraska is fortunate to be the home of three major pork processing facilities and producers have access to several other major as well as smaller facilities. One of the concerns that we have is the fact that a major percentage of the hogs processed in our State are imported from other States, to supply the necessary numbers to keep the facilities operating. The loss of any one of these facilities would adversely affect the marketing ability of all Nebraska producers.

We are also concerned about the economic viability within our industry. This includes the economic future of individual producers as well as the economic stability of many rural communities across our State.

Recognizing the needs of our producers and our communities, in 2001, the Nebraska Pork Producers Association carried a resolution to the National Pork Forum requesting that "The National Pork Producers Council ask USDA and/or corresponding agencies outside NPPC with expertise in the swine industry to conduct an immediate study regarding the direct effects of packer ownership on the marketplace and independent producers." This resolution was also passed at the national level.

In requesting this study, we recognized that the issue of packer ownership of livestock and the implication of what many refer to as captive supply is an extremely emotional and controversial issue among livestock producers.

We are pleased to note that the Grain Inspection Packers and Stockyards Administration will spend $4.5 million of its fiscal year 2003 budget appropriation to conduct a comprehensive study analysis of the livestock and meat marketing industries as mandated by Congress.

There are two major issues involved in this discussion.

The first issue is the actual ownership of animals by packers. While packer ownership is prohibited in Nebraska, we recognize that what happens across the country has a direct impact on our producers. We have questions regarding these impacts. Are packers controlling the market through their ownership, and what impact does that have on the actual supply and demand that is supposed to direct our prices?

Next, we wonder what the effect will be if a ban on packer ownership were to be put in place. Will we lose packers and markets? With the packing industry we have access to in Nebraska, if we lose a packer, we are concerned what impact that could have on all producers and if further producer losses would take place.

Again, we feel we need to understand what the effect will be on all producers in Nebraska before any legislative actions can be taken.

The second issue involves the use of advance marketing arrangements.

In a pork industry like we have in Nebraska, most of our independent producers work closely with their financial partner. Many of these banking arrangements are dependent on a producer having an adequate risk management program in place in order to obtain a financial commitment. For many of our producers, their risk management plan involves arrangements made with a packer in excess of 14 days prior to delivery of the animals.

As an independent producer, I have found a long-term packer relationship is a vital link in the overall success of my operation. In visiting with other producers across the State, I have identified that this is a key factor in the success of many producers of varying sizes and operating styles.

I also recognize that there are those who have very strong feelings on both sides of this issue. When discussing a situation that will have a major impact on an entire industry, we need to be sure the base any decisions on sound facts and not on emotional considerations.

For any enterprise to progress and be as efficient as possible, it needs to be using the most modern and up to date technology available. In pork production, as in many agriculture enterprises, maintaining a modern operation involves the investment of thousands of dollars.

Mr. HAYES. Wrap up in 15.

Mr. HANSEN. As a trade association for the pork industry in our State, Nebraska Pork Producers Association has developed a mission statement to communicate our within the pork industry and encourage profitability and sustainability for Nebraska's producers of pork.

[The prepared statement of Mr. Hansen appears at the conclusion of the hearing.]

Mr. HAYES. Thank you, sir. If you miss something in your opening statement with the red light, when we ask questions, we will have time to finish up. This happens to us back in Washington all the time. You all are doing a great job.

Mr. Kornegay.

STATEMENT OF ROBERT KORNEGAY, PORK PRODUCER, MT. OLIVE, NC

Mr. KORNEGAY. Thank you, Chairman Hayes and members of the subcommittee for giving me the opportunity to speak here today.

My name is Bob Kornegay and I am a pork producer from Duplin County, North Carolina. And I am speaking here today on behalf of thousands of North Carolina farm families and their communities that would be negatively impacted by the ban on the ability of packers to own animals and contract and partner with pork producers.

Let me start by telling you the importance of contract production to me and my family. I have been in the pork business since 1987. Contract pork production has afforded me and my family the opportunity to earn a reliable income and stable means of providing for my family and remaining a vital part of the economy of my community. Pork production and other farming endeavors have enabled Duplin County to grow and prosper over the last 10 years. This would not have occurred without the ability of producers to partner with packers and integrators to raise animals and remain on the farm.

The importance of contract production is not limited to my family, but is critical to the economic vitality of rural North Carolina. Individual farm families dominate North Carolina's pork production business with over 80 percent of the approximately 2,400 hog farms in North Carolina under contract with one of the packers or integrators in North Carolina. Proposals that seek to dismantle the current practice of packer ownership would have enormous and devastating impact on people and the economy of North Carolina. Hogs are a leading source of gross farm income and production contributes nearly $8 billion to the North Carolina economy. In addition, pork producers generate more than $62 million in State and local income taxes, allowing many rural communities to experience enormous economic growth and development over the last decade.

Bankers and financial institutions in North Carolina recognize the inherent risk and losses that occur in the business of farming. Without a stable income and risk management opportunities provided by a contract to raise livestock, many farmers would be unable to obtain the necessary resources to remain on the farm.

Contract production also helps producers manage the changing that have occurred in pork production over the last 20 years. From global competition, increased regulatory oversight, new production and environmental technologies and specific demands from consumers around the world, producers are facing a constantly changing business and marketplace. Through the partnership that exists between packers and pork producers, pork producers are able to meet the changes in the way hogs are raised and the changes in demands of the marketplace. Today's pork producers provide a safe, healthy and affordable product to consumers around the world.

In closing, North Carolina pork producers support the right of any size or type of production system the right to market access and we are opposed to anything that hinders market access. However, the proposed ban on packer ownership will only serve to ensure that I and my family and thousands of North Carolina citizens would not have the opportunity to continue in the pork business.

Thank you again for the opportunity to be here today.

[The prepared statement of Mr. Kornegay appears at the conclusion of the hearing.]

Mr. HAYES. Thank you. Claire, how much time did he have left? I am going to give that back to you, Dave. How much time have you got left? I did not mean to cut two folks off, we do have some time left. I can tell time better than Claire can. Have you got anything else you want to add, Dave?

Mr. HANSEN. No, I was basically done.

Mr. HAYES. Marcus, you OK? Miss anything?

Mr. HARWARD. The only thing I wanted to say is that we are a family. I know how much money people have lost out here in the packers, but we are all family and somehow the family fights during the day, but when we get together at night we love each other and we come together. And somehow we need to do that today, is come together and form a solution on this to help each other out.

Mr. HAYES. Korley, have you got anything else you want to add? You won the prize on time.

Mr. SEARS. I really do not have anything to add; no, thank you.

Mr. HAYES. OK, Mr. Rudolph.

Mr. RUDOLPH. No.

Mr. HAYES. Good. All right. First, I am going to have Coach Osborne get the first round of questions.

Mr. OSBORNE. Thank you. Probably the hardest thing that I have had to adjust to in Washington is those lights. It is easier to talk for an hour than to talk for a minute when you know that light is about to come on. We appreciate you being here and you all did a good job today. Obviously there are differing points of view here.

The first question I would like to ask is, we hear the term "captive supply" all the time or often, and I wondered if you guys could put it in layman's terms that Congressmen even could understand, what captive supply means to you. And then it seems like that really comprises a whole lot of different contractual arrangements and if you could identify those arrangements that might be somewhat price distorting, that might lead to disparity in the markets. I think some contracts are obviously advantageous and maybe necessary, but any thoughts that you guys have as to how you would define captive supply and then if you see any type of contractual arrangements that you feel maybe gets in the way of market transparency. I am asking any one of you to respond there.

Mr. SEARS. I will try to respond to that a little bit anyway. I guess one of the reasons I got involved in this issue—I started back at the feedyard out of college in 1992 and I can remember growing up with my grandfather, being around the place there, and with my dad. And the way things used to work, we had a market every day of the week, and it would develop and you could essentially get a bid just about every day and then it seems like it changed in the last few years and that is when I really got involved in the issue of knowing that I had to sell the cattle for my customers and if I went to get a haircut, I might miss it. So that is why I got involved.

As far as the numbers of captive supply cattle that we see, I guess from my perspective we have some of those same cattle ourselves, we have some cattle that are sold that way. At different times of the year, it might be as high—maybe not last year, but in the past, it might have been as high as 95 percent of the cattle going out of our feedyard. So I always figure we was kind of a microcosm of what might actually be going on out there. And then other times, when we have got cattle that for us generally—there are a lot of intricacies to it but spring-born calves sold the following spring are generally the size of the cattle that the packers seem to—we have no problem buying; however, when we start buying big yearling cattle in the fall, we have had trouble selling those cattle with heavier carcasses. So consequently, the bigger cattle will end up under contract while the other cattle are more merchandisable and they will not.

So I have seen it go from zero to almost 95 percent and it got us in a position where it seems like it was awful tough to sell the cattle—just could not sell the cattle. Not quality issue really, but just not enough hooks on the chains I guess or something, but just could not get rid of the cattle. So that is when I felt like I should get involved just out of principle.

Mr. OSBORNE. Do you include forward contracting in the definition of captive supply then?

Mr. SEARS. Yes, we have had all sorts of arrangements. We have had just handshake arrangements, one over the top of the market, whatever the market is, the top of the market, forward contracts, everything you can think of. And we know at different times when the packers aggressively contract cattle, that I am going to get a little bit nervous about having cattle ready to go in specific months just because I know there are quite a few of them type cattle around. Generally it has been my experience the market goes lower. Now there are supply and demand factors out there but seems like we have seen a distortion of that.

Mr. OSBORNE. Anybody else want to take a crack at that as to how you would define captive supply?

Mr. HANSEN. I have got—in the hog industry, it is a little tougher to define captive supply. Currently all my production is contracted to John Morrell in Sioux City, but there is no definite date on delivery. They know that they are getting my pigs, but they have no idea what date, what week because our sale dates do change somewhat. So we have had trouble defining that also. Is that a captive animal or is it not? And we do not know how to respond to that.

Mr. OSBORNE. I think my time is up. Thank you, Mr. Chairman.

Mr. HAYES. Next we will go to Steve King from Iowa and then Bill Janklow, you will be after Steve.

Mr. KING. Thank you, Mr. Chairman. I would like to thank the panelists for your testimony this morning and the information that you are about to impart in the balance of your time here.

I would direct my first question to Mr. Sears. I would just say, as you listen to the testimony across this panel—and I happen to be working to always take a look at all the sides of the issue, but after you hear this other testimony, particularly the testimony from North Carolina, which I am assuming you might not have had an opportunity to hear face-to-face in the past, does that do anything to change your position on whether we need a study to evaluate the impact of this across the Nation?

Mr. SEARS. Well, like I stated earlier, we have seen the effects first hand. I mean, I really truly believe that there is a problem out there, just from what has happened to us.

Now as far as the pork producer, I would have no idea what goes on in the pork world really, but I know what happens to us up there and so that is why I stated that report, I did not think it was necessary, might even be a waste of money. I am quite certainly it probably would be a waste of money, as far as that goes.

Mr. KING. With regard from the perspective here in Nebraska, from your viewpoint, but looking at the Nation on balance—I point this out because recognizing we have to evaluate how this affects the whole country, as the chairman pointed out this morning. From your viewpoint, I can see that; from the rest of these viewpoints, I do not necessarily agree. Do you hear what they are saying this morning though?

Mr. SEARS. Yes, I hear what they are saying. However, like I said, I guess my gut tells me it is not necessary. But I am open, certainly would stay open to listen and look and learn, but I do not know—I honestly do not feel that it is probably necessary.

Mr. KING. Then say we move forward with a ban on packer ownership—and I know nobody is going to claim this is a solution to the problem—but what portion of that solution might it be, in your mind?

Mr. SEARS. Can you restate the question?

Mr. KING. Say we go forward and we are able to implement an effective ban on packer ownership across this country. What percentage of the solution to the marketing problems that we have would you think we might be able to solve with a ban on packer ownership?

Mr. SEARS. Well, it has been suggested, what, 25 percent of the spot market, those sorts of things. That would be a great start, I think.

I was looking at some information last night regarding some different studies in the past done by GIPSA and those folks, and research by OCM and R-CALF. And I think if you folks would take a look at those type of publications, from them fellows, that would kind of help put this into light. I guess it bring it to light for me anyway.

Mr. KING. Thank you, Mr. Sears.

I would go to Mr. Hansen. This was new information to me and I think if I heard correctly, that over that period of time you testified that the hog numbers in Nebraska have dropped about half, approximately? And those numbers, I would hate to think went down because you do not have the grain to feed them.

So how much has this ban on packer ownership here in Nebraska affected the reduction in your production across the State in pork production?

Mr. HANSEN. I think the hog inventory has dropped dramatically because of our ban on packer ownership. I think States like North Carolina, Oklahoma have had a large increase in pork production because of allowing corporate hogs to come into their State. Yes, I think that is the major part of it in the State of Nebraska.

Mr. KING. Thank you, I appreciate that. I know the time is moving along, but I would go to Mr. Kornegay and ask you the question about, you see this from the perspective of vertical integration is something you are compatible with and you can compete in that market. What level of vertical integration would be too much? I mean we are not talking about poultry here today because it is completely vertically integrated and there are not a lot of folks involved in that that are not working by the hour or else at the top of the chain. So what would be too much in your industry?

Mr. KORNEGAY. Well, the way we are set up in North Carolina, on our farm, we are under a contract where I like to refer to it more as a partnership with Murphy Brown, originally Murphy Family Farms. They did not come out on our farm and hold a gun to me and say contract with us. It is a partnership that we work together on to raise livestock.

There is some opportunity out there to go to—if I was not happy with Murphy Brown, I could go to another integrator or contractor in the area and go into contract, because I am providing a facility and management of the animals. They own the animals but I provide the management and facilities and grow the hogs out.

Mr. KING. I see the light turned red and I would just say that vertical integration is OK as long as you have access to markets.

Mr. KORNEGAY. Right.

Mr. KING. Thank you, Mr. Chairman.

Mr. HAYES. Thank you. Bill.

Mr. JANKLOW. Thank you very much, Mr. Chairman.

Mr. Rudolph, if I could—excuse me, Mr. Harward, if I could ask you, sir. Sir, you run an auction I believe I read in your testimony or you said orally, is that correct?

Mr. HARWARD. Yes, sir.

Mr. JANKLOW. And your auction price is set by the highest bidder gets the livestock, is that not correct?

Mr. HARWARD. Yes, sir.

Mr. JANKLOW. And so if you have competitors that are there bidding on every critter that comes through, the price for the marketplace is set for that livestock by what the top bidder is willing to pay.

Mr. HARWARD. Yes, sir.

Mr. JANKLOW. Is that correct?

Mr. HARWARD. Yes, sir.

Mr. JANKLOW. And I think we are dealing philosophically here because as I read your testimony, sir, I believe you indicated that your major contention is you just do not want the Government in any of this business. Did I say that right?

Mr. HARWARD. I think the Government has done a lot of good things for us, I am not against the Government. I do not want the Government telling me when I can sell or own my cattle. I mean that is——

Mr. JANKLOW. But if I am a packer operating in your area and I control—let us just say, I am going to make up a number, 15 percent of the livestock so they do not go through your sale barn, I control them. Does that affect your price, sir, on what people are willing to bid in your auction market?

Mr. HARWARD. Well, if you were in my area and you took 15 percent of the cattle out, the other 85 percent, there might be a little more bidding on them because we are a calf market, we have no fat cattle in our area, we are mainly calves.

Mr. JANKLOW. Let us say you had fat cattle, sir, that would make a difference, sir, would it not?

Mr. HARWARD. I am not in the fat market, so I am looking at the perspective from my side of the fence or whatever you want to say. I am not in the fat fed cattle market. You would like to have everybody available as you can to bid on your cattle that can pay for them. That is the main thing I heard when I bought the barn was you can sell the high, but make sure you sell them to people that can pay for them.

Mr. JANKLOW. Mr. Hansen, you are contracted to Morrell. How is your price set, what is the price you get, how was it determined? Was it determined some basis spinning off the market?

Mr. HANSEN. Yes, it is based off the Iowa/southern Minnesota weighted average.

Mr. JANKLOW. And to the extent there are not people out there bidding, that affects that weighted average, does it not?

Mr. HANSEN. Yes.

Mr. JANKLOW. And so am I correct that if you sell to Morrell, but Morrell is owned by Smithfield.

Mr. HANSEN. Yes.

Mr. JANKLOW. Which, by the way, also owns Murphy Farms, do they not, since Murphy went broke back when the prices were really low. To the extent Morrell supplies its own cattle—excuse me, its own pigs to the packing plant at Sioux City or Sioux Falls, to the extent they supply their own pigs, they do not have to buy them in the competitive market in those three States, do they?

Mr. HANSEN. No, that is right.

Mr. JANKLOW. And to the extent they do not bid for those in the three States, it may or may not affect price, depending on what the demand is in the free enterprise system. Am I saying that right?

Mr. HANSEN. Yes, that is right. Except that the Iowa/southern Minnesota weighted average is based off all packers' price procurement.

Mr. JANKLOW. Any of you have any idea what percent of the hogs in this country are captive? Not packer owned but either owned or controlled by contracts, I will call them captive, the definition of captive.

Mr. HANSEN. I think Glen Grimes reported that about I think 17 percent of the hogs are purchased on the open market.

Mr. JANKLOW. About 17 percent?

Mr. HANSEN. Yes. And the rest are under some sort of purchase arrangement.

Mr. JANKLOW. Mr. Kornegay, if I can ask you, sir, how was your market set with your sales?

Mr. KORNEGAY. We have a contract with Murphy Brown and we get—we have two types of operations, we have finishing houses and we have nurseries. It is an amount per animal and with the finishing operation, it is a price per animal plus feed conversion.

Mr. JANKLOW. And are you guaranteed that, sir, no matter what the auction market is?

Mr. KORNEGAY. Yes. When hog prices were nine cent a pound, we got what our contract was; yet on the other hand, when the hog price is real high, we do not enjoy the real high side, but we have the level and the——

Mr. JANKLOW. So you do not sell out in the competitive market at all, do you?

Mr. KORNEGAY. No, sir.

Mr. JANKLOW. Nobody bids for your cattle ever. They are set going in.

Mr. KORNEGAY. Right.

Mr. JANKLOW. Thank you, Mr. Chairman.

Mr. HAYES. Mr. Neugebauer.

Mr. NEUGEBAUER. Thank you, Mr. Chairman.

Mr. Sears, do you feed cattle on your own too or for customers only?

Mr. SEARS. Approximately 80 percent of our cattle are customer cattle, we feel cattle, company-owned cattle and the feedyard's cattle. I feed cattle, my own personal cattle as well.

Mr. NEUGEBAUER. Do you forward contract any cattle on your own account or for any of your customers?

Mr. SEARS. Yes, we do.

Mr. NEUGEBAUER. About what percent of your business would be forward contracting?

Mr. SEARS. Well, like I stated earlier, it varies depending on the time of the year. One thing I have noticed with that, I have some good friends in the packing industry, in the packing business in Omaha, and we had—we feel a high quality of animal at our place and just the kind they like. One thing we have noticed however with doing this, and this is why we are doing probably less of it than ever before or since then, is we have noticed for the really high quality cattle, before they were really coming out there and really trying to buy the cattle. They would pay up to get the cattle, set the market. We actually had a region in Omaha setting the market and then some of the other fellows following behind, which to me is competition and I truly believe in competition.

Since then, I know they have had a lot of these deals come into effect, a lot of these contracts and these sorts of arrangements, and to be quite honest, we do not see that level of competition there any more, they are not a market leader. Generally they are par with the market if not behind. And so I guess that is why I have stated, I have actually seen this first hand and felt it, at least at our feedyard anyway.

Mr. NEUGEBAUER. Mr. Rudolph, do you go out and contract for feeders to come into your lot, in other words, to work on your supply, the supply side of cattle coming in to your feedlot?

Mr. RUDOLPH. Yes, at times, we do have forward contracted feeder cattle.

Mr. NEUGEBAUER. Because you need a supply of cattle coming into your lot, is that correct?

Mr. RUDOLPH. Yes.

Mr. NEUGEBAUER. There has been a lot of discussion about transparency of the market and it is a really good word. I think what I would like to hear maybe from Mr. Rudolph, is where do you think that there is not transparency in the market?

Mr. RUDOLPH. Well, I know the State association's motivation to support mandatory price reporting had to do with transparency of markets and the legislation and the initiation of it, has really been criticized as a failure, and initially there were some problems. But if you look at the numbers that are created today, I think that that required price reporting is providing information that we can look at long term and use as a basis for what is going on in the marketplace.

We still have issues with how some of the numbers are generated and when they are supplied to the marketplace, but by and large, it has created a number that a lot of people would think is more descriptive of what is happening in the weekly marketplace. So I think that was something that did aid in transparency of market.

If the market is not transparent today, it has more to do with the timing of when that information is released by USDA than anything else, in my opinion.

Mr. NEUGEBAUER. So what you are saying is that is a good thing to—the Act was a positive thing but that the information is not timely and so if we looked at a delivery system of that information that was more real time, that that would enhance the transparency in the marketplace?

Mr. RUDOLPH. I think it has the ability to. Probably the easiest way to describe it is the cash sales, negotiated cash sales, are reported daily to USDA and released immediately. The captive inventory is always looking a week behind. So we know what is going on today in the cash market and we know what happened last week in the captive market. So I think that describes the lag time in the information.

Mr. NEUGEBAUER. Thank you very much, sir.

Mr. HAYES. Mr. Harward, I believe in your testimony, you made a statement that I really liked, it was that if we got people in America to consume 10 more pounds of beef every year, that would dramatically affect everybody's situation here today in a positive way.

Do the packers as marketing people help to increase the consumption by the money they spend on marketing? And I would like anybody else to take a crack at that as well.

Mr. HARWARD. I would say definitely yes. I was on a tour 2 or 3 weeks ago and went around to the packing—the killing plants and packing houses and they are spending an awful lot of money on safety issues, trying to make the produce safe to provide the consumer, the American housewife to feel like she has a safe product there to give to her children. I know they are spending a lot of money, in that area promoting the beef product. In other areas too, but that is just one area.

Mr. HAYES. Anybody else want to comment on marketing that packers provide? Mr. Hansen.

Mr. HANSEN. I know that there has been a joint venture between retailers, packers and checkoff dollars used to promote consumption of pork throughout the United States in the last years and it has all been a joint venture working in cooperation.

Mr. HAYES. Mr. Sears, you talked about the markets go up and down, but as long as the markets are going up and down, it is a little bit harder to—how do you reconcile that the packers are manipulating the market, as long as the prices are going up and down?

Mr. SEARS. Well, certainly markets are going to go up and down, based on supply and demand. However, like I say, we have seen what I would describe as a distortion. One of the things we look at a lot—and there I go back to my dad again—he tells me and I remember, we used to sell based on the USDA box cut out values, at par with those values. Not any more and the packers were making the money on the drop credit, in other words, the hides and offal and such. And now, if you look in the last few weeks, we had choice cut out beef up to $1.50, we were being bid $1.30, so we are way off of what they are selling to boxes for, what we receive in the feedyard. We have seen that middle cut there or that slice of the pie get bigger for them and smaller for us.

What concerns me as much for my financial security, but not only for the consumer, we are still seeing high retail prices of beef but we are seeing lower prices, lower live cattle prices, higher retail prices. And to me, the consumer is probably the biggest loser. We are almost in a way, to me, denying access to some of those lower income families that if this thing was split up a little more equally, they would probably have more access to those types of foods.

Mr. HAYES. Now what creates the very narrow 30-minute window in which you can make a sale? I read your testimony but I was not sure what happens in the marketplace that causes that period of time to be so short?

Mr. SEARS. Well, I guess what I see from our standpoint is pretty much everybody knows what everybody else is doing. And whether it is Wednesday or Thursday or Friday, whenever it is, a lot of times the futures market in Chicago dictates what happens. So if you are going along Monday, Tuesday, Wednesday, nothing happens, and all of a sudden it is Thursday and the futures open lower, which it seems like it happens all the time, but the futures drop pretty good, then producers go, uh-oh, I had better sell my cattle. And so that sort of thing, when the cattle get to rolling, there is only so much shackle space and that facilitates that panic selling I described. So producers really feel a total lack of leverage, total lack of leverage. I mean almost panic selling would be—to the guys I talk to, they are so darned nervous and so scared, if they get anything close to what they want, they sell the cattle.

So if we are sitting there trying to negotiate, I want this and you are offering that—that really does not exist any more, it is more of a deal where—most of time as a matter of fact, they come in and say hey, let me give you a little advice, you had better sell your cattle, it is not going to get any better. As a matter of fact, 15 minutes later, a call comes in, I am shut off. Then you cannot get a bid then.

Mr. HAYES. So obviously we have got folks from the packers listening as well. What suggestion would you have to help solve that problem?

Mr. SEARS. Well, I thought about that on the way down here too.

Mr. HAYES. We are out of time I know, but——

Mr. SEARS. I guess I will run a little deal by here, but I was driving down here and I thought when they first asked me to do this, I thought I do not know if I want to do that, not because I am a little nervous about speaking publicly, which I am, by the way, but more so I was concerned about retaliation actually. And I have seen this first hand from some of our customers and ourselves even. So I thought geez, I do not know if I should do that. But my grandpa and my dad always told me you have got to be honest with yourself and honest with other people, and so I thought I was obligated to come down here and speak about that.

As far as what these guys do, if I was in their shoes, as a businessman, I might do the very same thing, as far as that goes. If I had the hammer, I am probably going to use it. I just wanted to give you my perspective, what we see happening there.

Mr. HAYES. Thank you. Coach.

Mr. OSBORNE. Thank you, Mr. Chairman.

Just a quick comment. We have seen a lot of diversity of opinion here on the packer ban. And on the captive supply issue, the reason I asked you early on how you define it, I am not sure I got a real clear answer because maybe nobody has it, but this is where things broke down over in the Senate. They could not really define control or captive supply.

We have heard some discussion of contracting today but it seems like there are all kinds of contracts. I think Dave mentioned that his hogs had no delivery date, I sure you have some specifications. And there are some folks who have a delivery date, probably a weight, something in the contract that says what they will be fed, how often they will be fed. And so it kind of got to what Senator

Grassley referred to as material participation. Where in other words, the packer was really pretty much dictating everything about that contract.

So what I am suggesting here is that maybe if there is some regulation, it may at some point come down to the point of what types of contracts are acceptable, what types of contracts really distort the market. And so that is just my comment, it is not a question.

I will ask a couple of questions here. Let me start with Mr. Sears and maybe Mr. Rudolph. Are you aware of any collusive behavior on the part of packers? As I travel the third district, people always take me aside and say I know they are doing it and this happened and therefore this must have happened. And I say well if you have any specific evidence, we will carry it forward, but it always breaks down at the point of any hard evidence.

But what we are asking you is have you seen collusive behavior or are you simply guessing at it or what are your opinions on this. Because that is a violation of the Clayton Act and probably Packers and Stockyards both.

Mr. SEARS. Well, I have never seen two guys sitting there talking about those sorts of things. But they really do not have to. There are three of them basically in my area and they know what everybody else is doing. As a matter of fact, they will ask me. I generally do not tell them, but they will—it is quite common for them to say—I will say, for example, I have been bid $1.20 on the cattle—who was that. Or was it this guy and I generally do not tell them, but there is only two other people to choose from, so if you are getting a $1.20 bid, it is not too hard to figure out what is going on. They really do not have to. I do not honestly believe there is collusion, but they do not have to do that, because they know what is going on, I know what is going on and everybody else knows what is going on.

Mr. OSBORNE. Do you see a solution to that?

Mr. SEARS. It is funny, people ask me were you against the packers? I certainly have never been against packers, I have always been in favor. As a matter of fact, I like the packers so much, I think we need more packers. And that might be my solution, is to have more competition. [Applause.]

Mr. RUDOLPH. I do not think I have got a one liner like that. [Laughter.]

I do not have any first hand knowledge of collusion. Things happen very rapidly, largely because of technology. Cell phones have made information—not only do we have access to it, but you can do something with it on both sides of the coin, and there are times when the packing industry is a lot better at managing that technology than we are. They get organized and they are in and out in a hurry. So I think it is a little bit a function of technology.

I do want to throw in just one piece on captive supply. You asked for a definition, we have got the rectify between GIPSA and the industry. We say it is 7 days, they say it is 14 days. So we have got to move—the industry would favor moving to a 7-day definition of captive supply.

Mr. OSBORNE. I have one last question, and this may pertain more to the people from this part of the country. I believe there was a four-State group that advocated some type of a group marketing endeavor where a large number of cattle would be pooled and maybe give more market clout. Any thoughts you have on that very quickly?

Mr. RUDOLPH. I was a member of that four-State working group and it was easy to meet when the market was really bad and there was less interest when the market got better. So people managing their businesses to their advantage, to do a better job of marketing, whether it is collectively or individually, I think that is just good business.

Mr. OSBORNE. Thank you, Mr. Chairman.

Mr. HAYES. Steve.

Mr. KING. Thank you, Mr. Chairman.

It is my understanding that we will be killing cattle on about July 21 in Iowa and that is one more packer, Mr. Sears. So that should help your morning a little bit.

I appreciate all your testimony. Still back on this issue of what does this industry look like in the long term. And I think I would go to Mr. Kornegay again on that, and that is, we know what the poultry industry looks like and we know where the pork industry has gone over the last say 10 to 15 years, and we are looking at the cattle industry coming behind that and that is the undercurrent on this discussion on packer ownership. So what does this industry look like to you 20 years down the road? What kind of changes do you see taking place if there are not restrictions put in place to interfere with the continual development of vertical integration in the meat industry?

Mr. KORNEGAY. I think you are going to see more partnership arrangements in the meat industry because in our area it is working so well. Referring back to a question earlier, we can negotiate—our contracts are set, but I have served on an advisory board with Murphy Brown, a nursery advisory board, and in the last year we were in negotiations under a contract. Yes, they write the contract, we have to sign it, but there are negotiations that go back and forth and we have that ability to negotiate. It's just not like a straightforward you take it or leave it. And we got some nice increases in what we receive for the contracts.

But as far as your question, I think you will see more contract production.

Mr. KING. One of the distinctions between the poultry industry and the pork industry that would allow for more family involvement and more contractual involvement as opposed to more centralized production that is operated from top down management and hourly employees?

Mr. KORNEGAY. I am a family farm. We are under a contract but we are a family—there are hundreds of family farms in Duplin County that are under this arrangement. Personally, I would not be on the farm today if it was not for the contractual arrangement that we have with Murphy Farms.

I graduated from N.C. State in 1983. Our farm was on the verge of going under and we got involved in contracting with Murphy's and we dug our way out of that hole. I served as a county Commissioner in Duplin County, I know what—when I was on the board in the mid–1990's, we built three new elementary schools in a county that is very rural, we have 40,000 citizens and it is all agribusiness. There is no way we could have built three new elementary schools, expanded the hospital in Duplin County if it was not for solely livestock production. And there are a lot of farms in my area that guys like me who wanted to be on the farm and stay on the farm, that would not be there if it was not—I live half a mile from where I grew up. I have got three boys that are growing up there in the community, it is a great place to live and they are going to one of those new schools.

Mr. KING. And I want to say I do recognize that and I have seen that happen in my district and some of the regions where we have worked as well. But in the end, the bottom line is, is it for you the recognizing that you have to be able to compete and produce that livestock for a price cheaper than they can raise it by hired employees, if you are going to stay in the contractual relationship that you have?

Mr. KORNEGAY. Right. I mean, we have to do a good job because they can cut the contract off after a period. And we work hard to do a good job, to raise a good animal for the market out there. And we live in the community and we do what we can to raise the animal that they want to produce. We do things as far as the environment—because we live in the environment, we do everything we can to do it the right way and follow the regulatory authorities from the county and State and Federal.

Mr. KING. Thank you, Mr. Kornegay.

Mr. Hansen, how do you see the future of the industry if there are not any changes made?

Mr. HANSEN. I think we are starting to see some of those changes already. I agree with Mr. Kornegay, that we are starting to see more contracts, contract producers, and less direct packer owned facilities going up, because—if I remember right, I think earlier, Smithfield released a statement that they had lost close to $17 per head produced last year on the production side. And I know that myself and other producers in my area did not lose close to that much. In fact, some individual producers made some money last year.

I think the private producer is much more efficient than the corporate style of production. So I think the trend is going to be more to contracting with individual producers for production by packers.

Mr. KING. Thank you, Mr. Hansen. Thank you, Mr. Chairman.

Mr. HAYES. Bill.

Mr. JANKLOW. Thank you, Mr. Chairman.

As I listen to you gentlemen, I can see a lot better the nexus of the problem. Mr. Sears, you are a custom feeder, feeding other people's livestock and you basically sell everything out of an auction market, a bid market. Mr. Rudolph, you are representing really a group of people, the cattlemen of your State, the various organizations. Mr. Harward, you farm but you also run an auction market, you have about 1,500 producers that do business with you in a year in your area, but they sell about 45 head of livestock a year, the average producer. So really, they are small family farmers. Mr. Hansen, you grow hogs and you basically sell them to one company on a price that is fixed by the marketplace. And you, Mr. Kornegay, you grow hogs basically and you really are a partner, a real partner, with Murphy Smithfield and your price is set going in.

My only concern is the price paid to the producer, the independent producer. So Mr. Kornegay, I understand your situation completely, you are in a partnership. But Mr. Hansen, to the extent somebody does not have to bid on the marketplace for livestock in a rising market, it affects your price, it affects your price. And I realize you may have a limited downside and a limited upside, but you are not subjected to—you do not get the big benefit when the big swings goes up and you do not get the big loss when it goes down, because you are blending all the time.

But when USDA says, when they define the word captive, they say in the fed cattle industry, the term captive supply generally refers to cattle that have been committed to or owned by a packer before they are ready for slaughter. GIPSA defines captive supply as livestock that is owned or fed by a packer more than 14 days prior to slaughter, a lot of it is procured by a packer through a contract or marketing arrangement that has been in place for more than 14 days or livestock that is otherwise committed by a packer more than 14 days prior to slaughter.

So Mr. Hansen, Mr. Kornegay, you folks have captive stuff. The law does not prohibit Smithfield from selling cattle to IBP. As a matter of fact—excuse me, pigs. As a matter of fact, they do—they do. Well, if you have got two packers out there that control livestock, selling to each other, that is a way to communicate price without sitting down in a room and deciding how they are going to rig a price. And I am not saying anybody is doing anything crooked, everything that is being done is legal. But the system allows packers to deal with each other, selling livestock to each other, at the same time they are out there bidding in the marketplace. That affects your price, Mr. Hansen, in a very material way, and anybody in your type of arrangement.

And you, Mr. Sears, it is the only way—that is an incredible way that it affects the price that your people pay.

So I guess my question is—I have made some comments, drawing conclusions here, but I guess my question is—and it is simple—if I am a packer and I have captive livestock, either because I own them or I control them, when the price is going up, am I going to buy Mr. Sears' livestock first or use mine, assuming they are both ready for market. When the price is going down, am I going to use mine first or am I going to use Mr. Sears' first.

Let me ask you, do you understand what I am getting at, Mr. Kornegay?

Mr. KORNEGAY. Yes, sir.

Mr. JANKLOW. Do you disagree with my analysis of this?

Mr. KORNEGAY. I understand what you are saying. I mean there are probably going to have to be some things—make some corrections there, but the ban of packer ownership I do not think is that answer.

Mr. JANKLOW. What about you, Mr. Harward, do you agree with my analysis?

Mr. HARWARD. All I know is in my market, there is only three or four big time buyers that buy most of our cattle. We have a lot of other small buyers, but the five way heifers this week were 80 cent and all four buyers had the same money at 80 cents, and they brought 79, 81 cents. But yes, I do understand what you are saying.

Mr. JANKLOW. My time is up, but thank you, sir. Do any of the other three of you disagree with the conclusion that I drew?

[No response.]

Mr. JANKLOW. Thank you, Mr. Chairman.

Mr. HAYES. Mr. Neugebauer.

Mr. NEUGEBAUER. I think one of you made a point that we had lost approximately 9,000 producers and we have lost a proportionate amount of packers also. I think about the business 20 years ago or 25 years ago when I was in the banking business, the number of packers out there. So there has been a consolidation throughout agriculture, not just in the livestock area, but in farming and the livestock business. And I think part of that is the market seeking what is an efficiency, because when markets are efficient, that is when people can hopefully start making money.

So the key in agriculture has been and it continues to be today, is productivity, of getting the maximum amount of output for the capital invested. The producers are generally the group that are under-capitalized and make it more difficult for them to be in the game. What it looks like to me has been developed through this contracting, both down and up, both the feedlot guys were using, is the ability to loan credit. And obviously the large packing companies today have the stronger financial statements and are able to loan then that financial statement to the producers in a way by the contracting.

I think one of the things that begins to concern me when we talk about this, if we talk about any changes, is messing with that particular aspect of the marketplace today, because I would tell you—and I thought I heard these two gentlemen on the end saying that they would not be at this table today if there was not a vehicle to provide that for them.

So I think the question I have is that is the lack of—the fact that you only have three or four bids today, I do not think that is the packers' fault, I think that is just the nature of the industry. Do you—I guess, Mr. Harward, would you agree that that is—that there has been consolidation throughout the business and that is just the nature of the beast today?

Mr. HARWARD. Yes. I mean on the east coast, we have three or four buyers that buy 80 percent of our calves to ship out here to you boys. I mean there are only three or four of them, they have got it big enough where they buy, but them three or four are very competitive in bidding on our cattle. We are blessed to have them three or four really, to tell you the truth.

Mr. NEUGEBAUER. In reference to risk management, just kind of across the table there, how many of you are using futures for risk management? Mr. Sears, do you use futures for risk management?

Mr. SEARS. Well, we have in the past, have not ever been that successful with it. But yes, we have off and on at different times.

Mr. NEUGEBAUER. Have you found that contracting is a more effective risk management tool for you than futures were?

Mr. SEARS. I certainly think it probably would be in our particular situation. However, we do not do very much of even that any more. I would rather have the exposure in the open market.

Mr. NEUGEBAUER. But now I thought you said you did forward contracting for a number of your customers.

Mr. SEARS. We have done some in the past, yes. And tried that, I think we are probably the last larger feedlot in the State to be approached to do that and we tried it. We are still doing some, I am not going to say that we are not doing any, but we have not been as satisfied that way as we have just staying in the open market, the live market.

Mr. NEUGEBAUER. Has there been a consolidation also in the number of feedlots in the region or is the number of feedlots about the same?

Mr. SEARS. Well, yes, I certainly think not just Nebraska, but nationwide, I mean that is the way of capitalism, the big fish eat the smaller fish. As far as three big packers, that is probably enough.

But I guess what I have really been getting at and trying to drive my point home here is just open market competition, as far as—if they have their cattle—and lie was stated earlier here by Mr. Janklow, they are probably going to use their cattle first and that is what concerns me. At times when I just frankly cannot get a bid, cattle are a perishable product. They are not like a car that can sit there for a month or two. When they are ready, they are ready and if they have to wait a week or 2 weeks too long, then you get in a situation where your cattle are actually over fat and then you start talking about discounts and selling them them sorts of ways. So that is what really concerns me, is just being able to get the cattle on the hook.

Mr. NEUGEBAUER. Mr. Chairman, just one follow up question if I might.

Mr. HAYES. Sure.

Mr. NEUGEBAUER. I think one of the things I also wanted to point out was that probably the cow/calf guys are thinking the same thing today because there has been a massive consolidation of feedlots. So they would tell you today probably that they got fewer number of people to go get bids for their feeders because there are just fewer bids in the market from the feedlots. So I think that process is all throughout the system.

Mr. SEARS. Yes, I would certainly agree with that. I think that is true.

Mr. HAYES. I want to ask a question and I want each one of you to answer it and I do not want the ones down the line to change your answer because of something somebody in front of you said.

Is it in the best interest of the packer to have more producers or less producers? I want you to give me either more or less. Mr. Sears.

Mr. SEARS. I guess if I was those fellows, I would just as soon have a few to deal with, if it was me.

Mr. HAYES. Is it better for the packers to have more producers or less producers?

Mr. SEARS. I would say less producers.

Mr. HAYES. Mr. Rudolph.

Mr. RUDOLPH. I would say less.

Mr. HAYES. Mr. Harward.

Mr. HARWARD. You want the packers to have more producers or less producers producing——

Mr. HAYES. Is it in the best interest of packers to have more producers or less producers?

Mr. HARWARD. Producing fat cattle, is that what you are saying?

Mr. HAYES. Fat cattle, skinny cattle——

Mr. HARWARD. I come from the cow/calf side, I think it would be less.

Mr. HAYES. Dave.

Mr. HANSEN. Well, I am going to say more because I think with more producers, we have more production and they can buy their inputs which we are inputs to them, cheaper.

Mr. KORNEGAY. I would say more producers because a smaller farm can do a better job in managing the facility, so I believe more producers.

Mr. HAYES. Well the more supply, potentially the lower the price, is what I am getting at. So it is in the best interest, it seems to me, of the packers to have more producers. You have got more producers, and you are a producer, you get to a certain point, more means less price to you because more supply competing for less demand, so I think the packers have realized or will realize that there has to be some safety in the market. We have got to keep producers, there is no reason for a packer—they cannot do it on their own. Yes, sir?

Mr. KORNEGAY. Do you mean more production or more producers?

Mr. HAYES. Well, I am assuming if you have got more producers, there will be more production.

Mr. KORNEGAY. Not necessarily I do not think.

Mr. HAYES. Not necessarily, but tying the two together.

All you in the audience hearing this, if you have not signed up for 3 minutes to speak, this may prompt you to want to get on the list.

It is in the best interest of the producers to have more packers or less packers? Mr. Kornegay?

Mr. KORNEGAY. I would say more packers.

Mr. HAYES. Mr. Hansen.

Mr. HANSEN. Yes, I agree, more packers.

Mr. HAYES. M. Harward.

Mr. HARWARD. More.

Mr. RUDOLPH. More.

Mr. SEARS. More.

Mr. HAYES. If you do not see it again today, you have just seen consensus. [Laughter.]

If it is sauce for the goose, it is sauce for the gander.

I do not have any more questions right now, do any of our members—would you like to take my time to ask another question?

Mr. JANKLOW. I just have one.

Mr. HAYES. Can you do it in 30 seconds? This will be a record.

Mr. JANKLOW. When you answered the question about more or less producers, it obviously makes a difference whether or not they are producing—one producer selling 10,000 head is no different than 100 of them selling 10 head. So the number of producers is not relevant unless we know how many they are each producing. Same way with packers.

Mr. HAYES. There is one lawyer in every crowd.

Anybody else got a question while my green light is on.

Mr. OSBORNE. One quick question. Mr. Hansen, I think you took a shot at it maybe earlier, but one of my main concerns, one of the main reasons we are here today is Nebraska has lost roughly 40 percent of their hog production in the last 10 years, yet the cattle inventory has stayed fairly constant. And I wondered if you had any thoughts as to what has caused this, why the disparity, why have hogs gone down where cattle have stayed about the same and maybe Mr. Rudolph or Mr. Sears could give just a short answer.

Mr. HANSEN. I think part of it is the hog industry has lot—is not as glamorous as the cattle industry and the investments needed to get into pork production have become huge. And I think that it is hard to get bankers to go along with borrowing money to producers to get involved in the industry because of some of the issues out there—the legislative issues and those type of things, and I just want to say as far as risk—my contract, I would rather not be on a contract with the packers, but when I was 30 years old and I wanted to spend a million dollars on facilities, my bankers forced me to get into a venture with a packer before they would borrow me the money.

Mr. HAYES. Gentlemen, you did a great job, thank you and I want to make sure everybody understands that I want more markets, I want more demand for your products and I also want more of you producing. I do not want to get my lawyer to tangle me up on that question there. The point is more markets, more producers because one of the greatest strengths of America is that family farm and the network that comes from keeping that not only going, but keeping it growing.

So thank you all very much. We are going to have a 10-minute break here for whatever purposes you need and then we will get our second panel seated.

[Recess.]

Mr. HAYES. Thank you all for a great first panel and we are looking forward to a great second panel. Even sold a few more slots on the open mic.

Our second panel will be first Mr. Ken Bull, vice president for cattle procurement for Excel Corporation in Wichita; Mr. Timothy Seely, president and chief operating officer for Smithfield Packing Company and Gwaltney, Smithfield, Virginia; Mr. Tim Schiefelbein, director of live beef procurement for Swift in Greeley, Colorado; and then Mr. Gary Machan, vice president of hog procurement for Tyson Foods in Dakota Dunes, South Dakota.

Mr. Bull, when you are ready, sir.

STATEMENT OF KEN BULL, VICE PRESIDENT, CATTLE PROCUREMENT, EXCEL CORPORATION, WICHITA, KS

Mr. BULL. Thank you very much. Mr. Chairman and committee members, thank you for the opportunity to speak before you today. My name is Ken Bull and I am Vice President for Cattle Procurement for Excel. I come from central Texas where my family has ranched for over 100 years.

I appreciate the leadership of this committee in holdings hearings on this divisive issue. This is the kind of thoughtful discussion that could have prevented the disastrous implications embodied in the country of origin labeling law.

It is important to put the packer ban into appropriate perspective. Consider the following:

Of the five largest beef packers, only directly own any feedyards and these feedlots were purchased prior to their purchase of a packing house;

None of the major beef packers own cows or produce calves, all of our cattle are purchased from producers;

Direct packer ownership, as reported by GIPSA and AMS, amounts to 5 to 7 percent of the beef packers' cattle needs. The cattle produced by my company are focused directly toward supplying our proprietary branded beef programs with retailers. We cannot enter into these retail arrangements without assurance we have a committed supply. Our company has increased our direct marketing expenditures from $500,000 10 years ago to $20 million a year today. Our retail partners are also making significant investments.

Legislating out of existence these three cattle companies will take out of the market bidders and buyers of cattle. Put simply, ranchers need to decide if they would be better off eliminating potential buyers of their livestock. Finally and most importantly, the answer to market prices can be found in economic studies of supply and demand. For example, look at September 2002. The industry was producing 550 million pounds of beef per week and the market price was $64 a hundredweight. By January 2003, the supply had dropped to 480 million pounds per week and the market had climbed to $81 a hundredweight. A drop in production of 13 percent caused a price increase of 27 percent to the producer—all on steady to higher captive supplies. This is exactly what we would expect in a competitive market.

One cannot logically consider the notion of banning ownership or control without first understanding why these arrangements have become popular and are necessary to the industry.

The advent of branded beef has required unprecedented packer/producer collaboration and coordination to ensure the retailer has the consistent, high quality supply a brand requires. These brands are now being embraced by retailers and are critical to our survival.

Special production protocols are being required by retailers to meet specific brand requirements and producers must have the ability to ensure a home for these cattle before they invest these additional dollars needed.

Formula pricing structures enable producers to differentiate their animals, creating important tools for producers to increase their income and for processors to find a niche in the competitive marketplace.

Formula and grid pricing structures allow the producer to better respond in a more timely fashion to the desires of the consumer.

And finally, direct ownership of a relatively small number of cattle is critical as an insurance policy to keep our plants running at full speed and efficiency.

Supporters of these type of restrictions lose sight of an important point. We would not have the vast majority of captive supply arrangements if producers did not want them. And producers would not want them if they did not benefit from them.

It is important to understand that if a packer ban is passed, there will be a forced divestiture by three cattle feeding entities. The capital needed to replace this divestiture would be around $600 million. Currently attracting capital to agribusiness is difficult at best, and so the result could very well be the loss of these feeding enterprises from the marketplace. This would severely impact cow/calf operators who depend on these feedlots as their marketplace.

Legislation would also harm cattle feeders in regions served by fewer packers. According to the Purdue study, "in fringe areas where livestock production is limited, packers may need to own a portion of their livestock to maintain an economically feasible throughput in their plants. By eliminating ownership, these plants may have no alternative but to shut down or be sold at a loss."

Another important point to consider is that if a partial ban is implemented, then some producers will be forced out of these arrangements. Who will make the decision on which producers get eliminated? Will that be the packers or GIPSA?

Some important questions this committee will want to ask before embracing this type of legislation:

1. Should people support a packer ban, knowing without a doubt that it places readily identifiable packing plants at risk, which would in turn harm the producers?

2. Should we embrace policies that take some of the most competitive bidders of feeder cattle out of the market?

Is this worth eliminating some of the most innovative marketing programs in the industry?

Will this harm programs that reward producers for creating value?

Will we create new laws that make agribusiness a less attractive place?

Thank you for the opportunity to speak today.

[The prepared statement of Mr. Bull appears at the conclusion of the hearing.]

Mr. HAYES. Thank you, sir. Mr. Seely.

STATEMENT OF TIMOTHY A. SEELY, PRESIDENT AND CHIEF OPERATING OFFICER, SMITHFIELD PACKING COMPANY AND GWALTNEY OF SMITHFIELD, LTD, SMITHFIELD, VA

Mr. SEELY. Thank you, Mr. Chairman, committee members, for allowing me to be here today.

I have presented to each of you gentlemen a copy of the Sparks Report that was produced in March 2002 I would like to enter into the record. It was alluded to during your opening comments, for the record.

Very briefly if I can—5 minutes go by very quickly—but I am currently serving as president and chief operating Officer of Smithfield Packing Company and Gwaltney, both are part of the Smithfield Foods organization. Been in the industry, the pork industry, from the growing and processing side for over 35 years.

Smithfield is part of a great agricultural tradition of producing the highest quality food in abundance to feed the country and the world. And I will come back to this—the world. This is what is driving so much of what we do. So many of us at Smithfield actually come from deep-rooted farm backgrounds throughout the Midwest, as well as the rest of the country. We attempt to work with this industry.

I think the term that you will hear most often, and we have today so far, is supply and demand, Economics 101, as well as change in the industry. The hearing and much recent debate is about vertical integration and how much vertical integration should be permitted. Since the days of Teddy Roosevelt, there has been consensus in our country that vertical integration should be permitted until it goes too far. When it goes too far, we have in place nearly a century's worth of laws that provide the means of our Government to rein it in. Our company and our industry are already subject to restrictions on anti-competitive practices contained in the Sherman Act, the Clayton Act, the Robinson-Patman and key provisions of the Uniform Commercial Code. We are happy to live by those rules, as others do, and even to comply with another law that applies only to us, the Packers and Stockyards Act, as an industry. That law is designed to prohibit meat packers from engaging in business practices that are unfair to their livestock suppliers. We believe this is regulation enough and that there is ample capacity for enforcement of those laws and that there is no reason to place even more restrictions on the industry that are not applied to others who are now competing in the global economy.

Our business practices are driven by the demands of the increasingly world marketplace and the demands of our customers. Our customers want consistent meat quality, ready and predictable supplies, lean, safe and healthy meat products at a fair price. That demand for quality now comes from the largest corporations around the world, such as McDonald's and Wal-Mart, for example. They want their meat not just to be fresh and wholesome, but also to taste and look the same every time, every day, and be there consistently. Fast food retailers and merchandisers put demands on us that require that we negotiate with them on a daily or weekly basis and that we must deliver on these guidelines.

The exact requirements our customers place on us are also relevant to supply issues. The slightest interruption in supply is unacceptable to our customers because they typically are retailers and restaurants that operate 24/7, 365 days a year. So our meat supply must be predictable. That means forward contracting with hog producers must be balanced by company owned animals in order to assure constant, consistent supply.

As Ken mentioned, American consumers and the world abroad is demanding a leaner pork. Smithfield and other companies have given it to them. We have developed our Lean Generation line of pork as a branded product that is certified by the American Heart Association as heart-healthy. We agree that there are good things for Americans' health for everyone who raises hogs.

The next point that I want to go to that has been spoken about this morning, just as our business model relates to food safety and security, it relates to risk management. It greatly reduces business risk for producers, packers and ultimately the consumer. Forward contracting allows farmers to plan for the future. Farmers who choose contracts or marketing agreements with Smithfield or other companies are also finding that their credit options are much more viable and attractive.

Bankers and lenders now routinely demand that farmers produce contracts before providing them with financing to operate their massive operations that are capital intensive.

Of course, not everyone will choose the contracting route, people will decide whether to take advantage or not of these opportunities.

Mr. HAYES. Give me a 15 second wrap.

Mr. SEELY. Very good.

Our point is any added expense in the form of deleting packer ownership of livestock hurts our total industry in this country of feeding the world. And there is a world out there waiting to take your business at the drop of a hat.

Thank you.

[The prepared statement of Mr. Seely appears at the conclusion of the hearing.]

Mr. HAYES. Thank you. Mr. Schiefelbein.

STATEMENT OF TIM SCHIEFELBEIN, DIRECTOR OF LIVE BEEF PROCUREMENT, SWIFT & COMPANY, GREELEY, CO

Mr. SCHIEFELBEIN. Thank you, Chairman Hayes, for inviting Swift & Company to testify here today. I am Tim Schiefelbein, director of live cattle procurement from Swift, and I am a farmer.

I grew up on, I am a partner of and I am on my way to Schiefelbein Farms in Kimball, MN right after this meeting, which is one of the largest Angus operations in the United States.

Swift & Company is the third largest processor of fresh beef and pork products in the United States, and employs more than 21,000 people worldwide. Swift & Company traces its heritage back nearly 150 years and has long been an innovator in the American meat industry.

The fact is that Swift & Company has six beef and three pork processing facilities in the United States and for the most part, the packer ownership legislation would have very little impact on those facilities. But there are exceptions. The biggest exception is our processing plant in Greeley, Colorado, which was founded under the Monfort name more than 40 years ago and was built to process cattle from the extensive feedlot operations the company established throughout northern Colorado. Today, there are three feedlots in that region built by Monfort, each capable of holding 100,000 head of cattle.

Those feedlots were developed to ensure that the Greeley processing plant had adequate supply of cattle to support its operations. Each year, the Greeley plant alone processes about 1.6 million head of cattle. To accomplish that, the plant employs 2,700 people. Several thousand families rely directly on that plant for their livelihood and many more are indirectly affected. A recent economic impact study by Colorado State states that Swift & Company's operation is directly linked to more than 25 percent of the economic activity in Weld County, one of the 15 fastest-growing counties in the Nation. Other estimates indicate that the trickle-down effect of the Greeley plant equals nearly one half of the region's economic activity.

The company-owned feedlots supply about half of the cattle processed in Greeley. This highlights the importance of these feedlots, given that the northern plains of Colorado is a cattle-deficit area with more processing capability than local ranchers or feeders can supply. If the company could no longer ensure that continued supply, the second shift of the two-shift operation would be shut down. Unfortunately, the economics of operating a plant of this size means that it would no longer be economically feasible to keep it running with a single shift. The plant would close and it would no longer draw on the other feedlots in that cattle area.

This may surprise you, but Swift & Company does not want to be in the business of owning and feeding cattle. Owning a feedlot ties up a significant amount of capital that we could be using doing some other things. Purchasing and maintaining up to 100,000 head at a single location is a very expensive proposition. For that reason, we do not a lot of buyers standing in line to take over these feedlots. If we are not allowed to maintain ownership of these lots in Colorado, they likely will be developed into housing, strip malls or left as empty fields. As for ranchers and smaller feedlots that supply the Greeley area, those feedlots will go out of business as well. The price of grain in our region is too high to transport cattle that were fed in Colorado back across the State into Nebraska and would make it prohibitive to enable those small independent ranchers and feedlots to remain competitive in the beef market.

A somewhat similar situation at our beef plant in Hyrum, Utah, where our company-owned feedlot supplies 25 percent of our cattle. Having to close that feedlot may not instantly close down that processing plant, it could start a spiral effect.

With all of that said, I would like to leave you with two key message:

1. First, while cattle ownership is not desirable to us, it is a necessary evil. Without it, we believe our Greeley plant would be mothballed and our Hyrum plant would follow.

2. Perhaps most importantly, we do not believe it is either fair or right for the Government to tell us whether we can or cannot own cattle. History has shown that having a captive supply is neither a significant advantage nor disadvantage. At some of our plants, we do not feed any cattle ourselves. However, denying us the right to own cattle will unfairly punish us in those cattle deficit areas. And in a touch of irony, in areas like northern Colorado, legislation banning packer ownership would put out of business those small farmers and feeders that it is intended to protect.

Thank you for your time.

[The prepared statement of Mr. Schiefelbein appears at the conclusion of the hearing.]

Mr. HAYES. Thank you, Tim. Mr. Gary Machan.

STATEMENT OF GARY MACHAN, VICE PRESIDENT, HOG PROCUREMENT, TYSON FOODS, INC., DAKOTA DUNES, SD

Mr. MACHAN. Good morning. Thank you, Chairman Hayes and committee members for inviting me to testify at your hearing today. My name is Gary Machan and I am vice president of hog procurement for Tyson Fresh Meats, a subsidiary of Tyson Foods.

I am one of five kids who grew up on a small farm in central Wisconsin, so I know what folks mean by the term small, independent producer. I have been with IBP, now Tyson Fresh Meats, since 1982.

Tyson Fresh Meats depends upon independent livestock operations of all sizes to supply our plants with cattle and hogs. In other words, we rely on a successful livestock production industry in order to stay in business.

We have no interest in becoming a large player in the livestock feeding business and would probably be affected less by the legislation prohibiting packer feeding than most of our major competitors. However, depending upon how the legislation is written, such additional Government regulation could produce unintended consequences and be detrimental to the livestock industry.

If a packer ban on feeding were to be implemented, it is our hope it would allow livestock producers to continue to seek out and develop innovative marketing relationships with packers. We also believe that if packers are going to be prohibited from owning livestock, then livestock producers and livestock producer owned cooperative should be prohibited from owning packing plants. If the industry is best served by a separation of ownership between segments, then it should be applied equally to everyone in the business.

The cattle and hogs we buy are purchased on either a daily cash market basis or through marketing arrangements with livestock producers. All of our cattle and hog marketing arrangements have been requested by producers. They came to us because they wanted a more efficient way of marketing their livestock. Rather than spending valuable time following the cash market, dealing with buyers every day, they wanted an ongoing, fair pricing system, based on current market conditions, which would also reward them for quality improvements and allow them to concentrate their efforts on reducing their own costs.

Another factor behind the development of marketing arrangements is the desire to reduce market risk. I have heard it said that in the livestock industry, and especially in the pork business today, market risk is trying to find a home. Lenders are encouraging livestock producers to shed market risk. And in some cases, producers are doing this through risk sharing arrangements with packers. In fact, many producers today are compelled to seek such arrangements in order to obtain financing as a condition of their lender. Packers are also being asked to loan money to producers during periods of low markets. If a packer livestock feeding ban was to be put into effect, it may eliminate lending or risk sharing options for livestock producers.

Opponents of marketing agreements, which they inappropriately refer to as "captive supply" claim that when packers do not like to live price, they will pull in livestock purchased through their marketing agreements, exit the cash market and lower the cash price for the week. This statement is completely untrue when it comes to Tyson. Under our marketing agreements, the producer, not Tyson, chooses the week when this livestock is ready for slaughter.

Cattle feeders and pork producers link with packers for any reasons, to include the following: improved price risk management, access to more financing options, improve the opportunity for carcass quality premiums and obtain carcass information and reduce marketing costs.

According to agricultural economists at Purdue University, “Prohibiting such linkages will result in reduced coordination, efficiency and global competitiveness of the beef and pork sectors.”

Despite the changes in the number of producers selling livestock through marketing arrangements, there has been no significant change in the packer profit margins. Cattle Buyers Weekly analysis of IBP after it went public in 1987, showed the following: In the 14 years to the year 2000, its net margin averaged 1.05 percent of sales.

Those opposed to captive supplies and packer ownership of livestock claim the share of the consumer dollar the producer receives has gone down while the share the packer/retailer receives has gone up. They make this claim in an effort to make you think the packer is receiving more and that the increase is due to captive supply. While the percentage the retailer has received has gone up in recent years due to such factors as their investment in value-added products, the packers’ share has remained relatively constant. In fact, over the past 30 years, the share of the consumer dollar received by the packer has remained relatively consistent between 9 percent and 13 percent.

In the United States, the top five supermarket chains are responsible for almost 50 percent of all the grocery sales in the country. Food manufacturers are consolidating to match retailers’ needs. Some are teaming with retailers to access markets and consumer data while others are providing just-in-time service for products tailored to meet retailers’ needs.

Retailers want suppliers with expertise and resources to actually handle stores’ inventory management. This changes the way we will do business in the future. It is no longer only about producing a commodity and selling it at the best price, it is about producing what the customer wants and delivering the product when the customer wants it. It is a service and value-added game versus a commodity game.

Do you want me to quit now? I have got some more.

Mr. HAYES. Ten more seconds.

Mr. MACHAN. Legislation restricting packer involvement in livestock production may lead to numerous unintended consequences. I am going to point out a couple. One being contribute to more consolidation of the industry. As Ken indicated, by divesting the packers of these operations, there will undoubtedly be bigger consolidation in feeding. And the potential risk of a packer ban on ownership to include all the language in the legislation could not permit the contracts and marketing alliances of the producers which they need in the future.

Thank you for your time.

[The prepared statement of Mr. Machan appears at the conclusion of the hearing.]

Mr. HAYES. Thank you, sir. And it is unfortunate, because of time constraints that we do have the light system, but rest assured, every piece of information that you have heard today is public. The packers, the producers, have clearly staked themselves out.

That is available to you to study after this. This is a beginning, this is not an ending kind of situation.

Those of us here will look at this carefully and I would recommend that any of these materials that you all want to look at, it is good subject matter for moving this discussion forward in the right kind of way.

Coach Osborne is going to go first, but let me assure you any time Government intervenes, there are unintended consequences.

Mr. OSBORNE. Thank you, Mr. Chairman.

First of all, I would just like to thank you all for being here. I know it is not easy, schedules have to be adjusted, so we appreciate you taking time and preparing the testimony.

First, just a general question. I know ofttimes packers will say the amount of livestock that they own is inconsequential, 5 to 7 percent, and yet they often say that dire consequences will result if there is a packer ban. How do you reconcile those two statements? If it is inconsequential what you do own, and yet it is going to be catastrophic if that ownership is eliminated? Anybody want to comment on that just very quickly?

Mr. BULL. I will take it because I think it came out of my testimony that I did not read.

We say it is inconsequential, particularly in the beef industry, because it is a small enough percentage that if we owned 5 or 7 percent of our supply, you are not going to change a market with 5 or 7 percent of your supply.

Where it becomes very consequential is, as I state in my testimony, that is about $600 million of capital needed to replace those people if they are legislated out of existence. And in an industry that obviously has gone through a lot of strife—we had a year and a half of cattle feeding losses. I am sure bankers are very reluctant to loan a lot of money to open up these feedlots if they were to be up on the marketplace.

I will not try and speak too much for Tim, but I do not know of anybody that would want to go to Greeley, Colorado and buy those feedyards from ConAgra and reopen those things without some sort of assurance that they have got the ability to sell those cattle.

So it is inconsequential from the standpoint of being able to alter markets; it is very consequential from the standpoint of the amount of dollars that could be taken out of the marketplace if somebody did not come forward with $600 million to replace them.

Mr. OSBORNE. And I guess I would address this to Tim. I believe you probably have the highest percentage of outright ownership of the people sitting here, I think.

Mr. SEELY. I think you are aiming at me, Congressman. We probably have the largest ownership as far as the pork side of it, I cannot speak for Tim and what the actual in the feedyards are.

Mr. OSBORNE. I was talking more to Tim. I think you have got three—Tim Schiefelbein; yes, that Tim.

Mr. SCHIEFELBEIN. You just did not want to say my last name. [Laughter.]

Mr. OSBORNE. We are calling you Tim, because we are not sure how to pronounce the last name.

But anyway, let me proceed. This is for the gentleman from Swift. Let us assume that those feedlots, I think you said there are three of them with about 100,000 head, which I think you own—if somehow your ownership went away, do you not feel that that vacuum would be filled, that there would be a market for those cattle?

Mr. SCHIEFELBEIN. There would be a market for the cattle, but not for the feedlots. And the cattle—it would not be in Colorado. If you shut down those feedlots, the plant would shut down. And to answer your question, first of all, the percentage is small. And we have a feedlot in Texas and if the packers could not feed and we did not have that feedlot in Texas, it would have—it would not affect that Dumas plant one bit, but in Colorado, although the percentage nationwide is small, 50 percent of our cattle come from those lots right in Colorado and that is why it is significant for us, is because they are located around the Colorado plant and the Hyrum, Utah plant.

Mr. OSBORNE. Well, I guess I would be open to dispute as to how exactly that vacuum would be filled, but I can understand your answer.

I understand that at Tyson, you do not own livestock directly, is that correct?

Mr. MACHAN. Both cattle and hogs, we would have ownership of probably less than 1 percent. We have a herd in Arkansas, a sow herd, which we finish out a few of those animals. We do finish some cattle, which we do not really per se own the cattle, but we take 100 percent of the risk on the market and that amounts again to less than 1 percent.

Mr. OSBORNE. Well, my question is apparently your philosophy is minimal ownership, outright ownership. And yet you seem to be doing OK and yet in the case of Swift, at least in one or two locations, there is a very large ownership. How do you reconcile the difference? I mean why can Tyson do well with very little, if any, and yet Swift has to have such a large percentage?

Mr. MACHAN. Well, we were fortunate, I believe, to locate our facilities in areas where there has been sufficient and sustainable livestock production. It is probably worth noting though in the northwest, when we went there some years back, we actually owned cattle and fed cattle to support the plants because the plants were very seasonal in the production of cattle up there, very cyclical in the production of cattle, and we owned cattle for a period of time. But over a period of time then, we had livestock feeders that moved into the area, began to feed cattle, and we actually moved out of the cattle feeding business.

We do have a facility in Alberta, Canada that does have a feedlot as well as about 20 percent of the cattle, I think, in that feedlot to supply that plant. And that would be of critical nature to that particular plant, if we were not feeding cattle there. So I think it is somewhat geographically related.

Mr. JANKLOW. Mr. Machan, you may not own the livestock, but do you still use that formula pricing that IBP used to use, that type of pricing?

Mr. MACHAN. Yes, we buy a considerable number of our hogs on a formula, as far as hog production.

Mr. JANKLOW. All of you gentlemen are familiar with Mr. Bob Peterson. I think it was identified as Mr. IBP for an awful long period of time, built it into a true powerhouse.

At the Kansas Livestock convention in 1994, Bob Peterson said, second, not formula cattle but packer-fed cattle, which can be killed early or late to fill a particular time frame, be it a day or a week, grant the packer far greater flexibility to move in and out of the market. On the way down in price, he kills his cattle first; and on the way up, last.

I think that gets to the heart of it. I understand why bankers want producers to be tied up. I do. I understand why you gentlemen in your businesses, especially as you are going into the branded areas now, want to have livestock tied up. I understand why you are concerned about guaranteeing that you will have that constant supply that you have to have for your purposes.

But I can concerned about price, the independence of price set in an independent marketplace. So that is what my big concern is.

So Mr. Bull, in your testimony, you said longer term supply arrangements with retailers are enabling packers to help even out the highs and the lows of the market for packers and producers. And so that is the very point, sir. By making your deals with retailers, what you are doing is taking away the lows for the producers, but also the highs for the producers. And that is market manipulation. That is manipulating and controlling a market.

You talk about small ownership. Mr. Bull, I think it was you who said you owned 5 to 7 percent and that is not a big number in the cattle business. But when a company like Tyson—or excuse me, like Smithfield produces about 20 million hogs a year or I should say processes about 20 million hogs a year and owns about 12 million of those or something like that, that becomes very substantial, does it not, Mr. Seely?

Mr. SEELY. Yes, it does. It is a substantial amount as far as a percentage. But one of the members made the comment earlier, in certain areas we actually do not use those hogs we produce. In some areas of the country, 100 percent of them are actually sold to other competing packers and processors.

Mr. JANKLOW. But by doing that, sir, by selling them to a competing processor, it helps to know the price between the packers, does it not?

Mr. SEELY. The market transparency, again I go back to the supply and demand situation. So much of what is driven for these is do we have orders in the domestic market, is there a demand for——

Mr. JANKLOW. Sir, how do you sell to your competitors, do you do it through an auction market or do you do it through a negotiated price, or both?

Mr. SEELY. Well, I think they are one and the same. When we say auction, we go out, ask them what they are willing to pay, we tell them it is not sufficient and it is a barter situation. It is not a formula in almost all——

Mr. JANKLOW. But you do not run them through a sale barn.

Mr. SEELY. Oh, no, sir.

Mr. JANKLOW. In the testimony of, again, you, Mr. Seely, you said that means the forward contracting with hog producers must be balanced by company owned animals in order to assure consistent supplies in volatile commodities market. So once again, that statement shows, does it not, sir, that what you are trying to do is find supply consistency, irrespective of the price side of the equation?

Mr. SEELY. Absolutely. We know in this market—and there was a comment made by the previous panel in the discussion about the concentration of retailers and the change that has happened there. And I will take it one step farther. The concentration of food service distributor to U.S. food services, the Cisco's of the world, our customers are becoming larger every day. We have to have that to be a viable supplier, both on the amount of product, the type of product——

Mr. JANKLOW. I am talking about price, sir. I understand the need for your company to have reliable supply. My whole emphasis here in every question will deal with the independent price set in the marketplace.

Thank you, my time is up.

Mr. HAYES. Mr. Neugebauer.

Mr. NEUGEBAUER. Thank you, Mr. Chairman.

I think we have sufficiently covered the fact that you, because of the demands of a customer say like Wal-Mart, that you have to make sure that you have a sufficient supply of beef that meets their requirements. And so there is a need to have an ability to make sure that you nevertheless a continual supply of that. Because I suspect with some of those larger retailers that you have a mandatory delivery for them.

There has been a lot of discussion about market transparency. Let us go back to that transaction awhile ago where you are selling cattle or hogs to another one of your competitors. Is that reported that day in the cash market?

Mr. SEELY. I really do not know. I cannot say honestly whether it is reported that day or the following day, depending on what time of the day the transaction actually happens. I might defer to one of the other—maybe Gary might know when it actually shows.

Mr. MACHAN. Again, I would not know the precise time, but under mandatory price reporting in the pork business, I am sure it has to be reported in the system of mandatory price reporting.

Mr. NEUGEBAUER. But you do not know what the timing on that is?

Mr. MACHAN. No, I would not know what that would be.

Mr. NEUGEBAUER. And if I had 1,000 head today and I wanted to stagger my delivery over the next 6 weeks and we negotiated a price for those cattle and maybe they have staggering prices. When would that transaction under the mandatory price reporting law, when would those prices be reflected in your reporting?

Mr. BULL. First of all maybe to answer some of the questions. Under mandatory price reporting, packers are required to report all transactions up until about 30 minutes before the reporting window. And so we have spent millions of dollars to create systems to do exactly that. Takes in all of our transactions up to that time before the deadline window gets them into the system and gets them reported. There are various reporting laws on different transaction types. The transaction that you just indicated would have to be reported the week it was made even though the sale may actually be for a transaction 6 months down the road. And then when those livestock actually move and trade hands, then there is additional reporting as well.

Mr. MACHAN. On the pork side, to dig into it a little deeper, if there was a price determined, regardless of when delivery was made, then that transaction would be reported at that point in time, as Ken just said, within 30 minutes of the actual report that comes out, that price would be reported and then again the reported delivery would be made when the delivery was made.

Mr. NEUGEBAUER. So the forward and the delivery, there is a forward and delivery disclosure in those. And if I want to go back to my office Monday and find that information, how is that information disseminated to producers? How do they have access to that?

Mr. MACHAN. Well, it is posted on our USDA website, for one, and then there is a lot of radio broadcasts that carry it and news services that carry the market information because they access it from the USDA website.

Mr. NEUGEBAUER. And so it is broken down as to what is being sold on the cash market, what is being sold on the forward markets for future delivery—those transactions are broken out, so that if I am a producer, I can kind of know what my friends down the street are getting two and three months out for cattle or for hogs, as well as what they are getting for them today?

Mr. MACHAN. That is correct.

Mr. NEUGEBAUER. So there are some questions about whether this system is working today. What is your opinion whether the transparency—is there sufficient transparency in the marketplace today?

Mr. MACHAN. The answer to your question would be yes, as it relates to reported prices. Mandatory price reporting is reporting historically prices paid; it is not reporting the bid and ask market because there has not been a transaction made. So the bid and ask market, which is often what the producers would really like to know, is not what is being reported, it is being reported what actually sold in history.

As it reports the other forms of arrangements, there is a tremendous amount of data and at some points, it even frankly is difficult for me to decipher all of that, but as far as the cash market is concerned, it is there.

Mr. KING. I would first—let me see—Mr. Seely, you talked about how packer owned livestock was necessary and that it must be balanced by packer owned livestock in order to maintain the quality, and yet if there becomes a ban on packer ownership, there certainly would not be that packer ownership. So what happens to your industry if you cannot control that quality that you talked about? How do you set up your arrangements so that you can continue to kill livestock and stay in that market?

Mr. SEELY. I truly believe that at the moment it happened, some of this quality would deteriorate, customers would disappear, but domestically and on the foreign market. We have got countries in South America, with the cost of growing animals and grain prices, that are sitting there waiting and taking our business every day. If we are not able to deliver that pork loin to a certain spec, size, pack, to Japan that is paying us what we believe to be adequate premium price—you always hope for more—today, pretty soon he has a reason the next time it does not meet his requirements.

Mr. KING. Smithfield has been pretty active on going after market share. To what extent will you expand that production facility outside the continental United States?

Mr. SEELY. At the moment—well, let me, if I can, make a comment that was going—I was going to allude to earlier. Smithfield has made a public announcement that we are not building more hog farms, have no intention of building more facilities. Now we have buffered that, if for any reason, economy-driven or whatever, something comes available in the marketplace, we might acquire an existing one. We are capped out on what we truly want to own and raise our own hogs in the United States. Beyond that, there is no question, it has been made public, that we are trying to expand in our Poland facilities. We are not in Canada. Mexico, I really cannot answer at this moment, it is a very small piece down there.

Mr. KING. Brazil?

Mr. SEELY. Nothing. We do own some hogs down there, we do not process them, they are sold in the local markets down there. It came with part of an acquisition, the Carroll Family Farms, Carroll Foods.

Mr. KING. Thank you. Mr. Schiefelbein, you talked about the potential for the Greeley plant to be shut down should there be a ban on packer ownership and the 300,000 head feedlots. You cannot envision then some other corporate structure that might come in and take over that ownership and market those cattle since they have got a ready market right there? I mean if it is a viable entity to feed those cattle there underneath your corporate banner, why would it not be a viable entity to feed those cattle under a different corporate banner?

Mr. SCHIEFELBEIN. I think what I am kind of trying to say is it is not that viable. The only reason it is viable for us is because we have the packing house. For another corporation to come in and take on that risk and to take on the capital requirements for the 300,000 head, they are not going to be standing in line. And that is what I am saying. The reason we do it is because we have the packing plant. If you are a corporation and you do not have the packing plant, I do not think you want to own 300,000 head of cattle and take all your capital to feed cattle.

Mr. KING. Because then you are in a position where you cannot manage your risk the way you could manage it when you are within the corporate structure that you are in today?

Mr. SCHIEFELBEIN. You can manage your risk. The only thing is it takes too much money, too much capital to make that investment and there are other areas in the country that you can invest in without using that much capital, and get a better return for that much capital invested in the cattle.

Mr. KING. But would another corporation running that feedlot not be in a different marketing situation than you are in, such that they would be more vulnerable because they would not have a guaranteed market? You are locked in, you have got a guaranteed market for those cattle there.

Mr. SCHIEFELBEIN. That is true as well. And it makes it tougher for them, a new corporation, to come in as well; I agree.

Mr. KING. Thank you. And I would go to the aptly named Mr. Bull, and just ask if you could comment. When you take the highs and lows out of a market, and I can see how that can be manipulation of that market, but also could you comment on what you think has happened within the markets because we have taken the risk out, high and low?

Mr. BULL. Yes, I appreciate you bringing that question up because I think our response in testimony is a little bit mischaracterized. What we have is a retailer coming to us saying the volatility of the marketplace is not good for consumers, it is not good for the retailer, it is problematic for a producer and a packer as well. And so we have explored some arrangement with retailers looking on more long-term agreements to try and see if we can even out those highs and lows. And so it is not really trying to do anything to manipulate markets in any way, it is just trying to see if there is a way to get to a more profitable structure that works for all the people in that system.

Mr. NEUGEBAUER. Thank you, Mr. Bull. Thank you, Mr. Chairman.

Mr. HAYES. Thank you, gentlemen.

Speak just a minute directly to your foreign competition. We have a finite number of packers in this country. How do you compete internationally, how does that play into this discussion today?

Mr. SEELY. On the pork side, Mr. Chairman, if you look at the number of hogs being raised in Canada, for example, if you look at what we are trying to do in this country, I think we are looking maybe the tree/forest scenario, because what we have had, a lot of the economy issues that we have worldwide are not just beef or not just pork. If you look at the poultry—and as you are well aware, the issues that the poultry industry has had with Russia in banning poultry coming and going and putting up a barrier.

We all, both Smithfield on the meat processing side, on our growing side, we have suffered just because chickens were not going to Russia.

There has been a glut of protein in this economy for the last several years. Thankfully, in the last 30 to 60 days, we have seen some relief on the pork side of it and hopefully the economy starts to turn. As we all know, much of the world economy revolves around the U.S. economy. I have kind of beaten around the bush a little bit here, but it is amazing how much of our decisions—be it the expense for food safety, be it expense for the traceability of a hog—we are being asked for specific genetics from our customers in Japan, traceability back to where that pork loin actually came from, which animal and almost its pedigree and history through life. These are the kinds of demands that are being made in the Asian market and we have got countries like Denmark that says if the United States cannot do it, we can.

Mr. HAYES. So there is a lot of pressure on you internationally, and we all care about the number of U.S. jobs and growing our economy. So there is a pressure on you financially to respond to those——

Mr. SEELY. An unbelievable amount of pressure and financial demand. And the one thing I would say is that if we raise the cost for anything in this country, be it due to legislation and more food safety or more legislation, we are just opening the doors for the rest of the world, people that do not have the environmental laws or concerns that we have in this country. I do not care whether it is the Sierra Club or if it is PETA or if it is one of the State regulators about air quality, the more and more regulations we put on, the playing field becomes more unlevel all the time. It is amazing, whether you truly believe it, on a lot of this product, we think it is a value added item, but we will miss an order for a quarter of a cent, multiple container loads going out of this country.

Mr. HAYES. Mr. Machan, I think you——

Mr. MACHAN. To report to you the state of the industry, I think is a bit of the tone of your question. And that is over the years, our pork producers have been very good to read the market signals in terms of the type of livestock we are looking for, as far as lean genetics. And so we have been able to source very good quality livestock. The producers themselves have focused on cost of production and have become very competitive in the country or in the world and our plants, we have invested as an industry over the last decade or decade and a half particularly, a tremendous amount of capital in our plants, creating greater efficiencies to become worldwide competitors. Our concerns would be that as an industry, that we continue to look at food safety from a science based perspective, that we do not get hung up on non-tariff trade barriers, that we have the assistance of the Government to work in that regard and we do not go backwards as far as competitiveness and undue cost.

Mr. HAYES. There has been some discussion in Washington about increasing the number of inspections. Personally—and I will let my colleagues comment, but we have got plenty of inspections. These producers out here are our main means of ensuring, as are the packers, the quality of our products. And we are going to do everything we can to keep those artificial barriers from being put up, which hurt all of us.

Coach, round two?

Mr. OSBORNE. Thank you, Mr. Chairman. I want to ask four questions quickly, so I need four quick answers, if possible.

First of all, Mr. Bull we have got a lot of frustration on the part of producers regarding that 15-minute window. Do you see any possible relief, any possible solution? Because you can imagine the pressure or the difficulty being out there and being afraid that you are going to miss that window. So any quick comment you would have on that, I would appreciate.

Mr. BULL. I appreciate that. We are all concerned about that exact same point. When I took over cattle procurement at Excel in 1990, we had kind of a two-way radio system that did not work half the time and it took me hours to track down buyers and to change bids and to respond to what was going on. Today, we can do it that fast, and so can the feedlot operators. And so bids take place every day of the week and then finally the market pressure puts the market into play. And when it does, one side or the other is moving very aggressively to take action. It is a problem that is created by technology, it is a problem that both of us suffer with.

If I have got a buyer that happens to be out of pocket for a minute and that trade is taking place, he has all of a sudden put us at a huge disadvantage, just as was pointed out by the feedlot operator that happened to be getting a haircut and missed the opportunity as well.

We have thought and talked about how do we slow this trade down, how do we make the trade last longer periods of time. Do we only buy so many at a time when cattle start trading and pull off the market? When we try those type of measures, producers get upset as well.

I do not think there is an easy answer. I think it is one that we have to, as an industry, try and figure out how to determine the best solution for both of us.

Mr. OSBORNE. I know there is no easy answer and I suspect that is true.

Mr. Schiefelbein, quick question for you. Let us say we put together a four-State group marketing endeavor, maybe a million cattle. You have got a huge pool to buy from now. Would that not address your concern about that you are meeting with your feedlots there in Greeley? I just wondered what your reaction would be to that? Because it seems like it is one possibility for the producer to answer some of the questions regarding captive supply.

Mr. SCHIEFELBEIN. They have got to be by that Greeley packing plant, because no matter how many numbers you have, if they are closer to Nebraska or Kansas, if you are out the difference of freight, you will not be competitive. We talked about the pork being a quarter cent off, the freight is the huge, huge deal in this situation.

So you can have all sorts of cattle put together, they have just got to be by that packing plant.

Mr. OSBORNE. So you are saying transportation is the——

Mr. SCHIEFELBEIN. Yes, transportation cost.

Mr. OSBORNE. OK, that is well taken. I am not sure all would agree, but I am sure that is a very valid point.

Mr. Seely contracts are certainly good for some. We have heard some of the North Carolina folks saying how desirable it was. But there are also some folks who get squeezed out. Let us say you are a small producer and for some reason you do not have a contract and you are not able to get one easily. A lot of those folks simply, it seems to me, go out of business. Do you have any comment on that as to any possible solution there?

Mr. SEELY. I probably really cannot comment honestly. I would only be speculating. In many cases where I have heard the stories related to me of someone not getting a contract that wanted one, there is usually fine print somewhere in the form of is the facility up to standards, how far from the plant, what is the freight disadvantage. But to specifically say how we would fix it, I really do not know. I could get back to you, if you would like.

Mr. OSBORNE. Yes, that would be good to know. Of course, there is always suspicion that economies of scale, that it is easier to deal with somebody that produces 5,000 head on a weekly basis, as compared to someone who produces 50 head. And that is a concern.

The last thing I will mention, last question I have here, is the issue of retailers and Mr. Machan, we realize there is the Wal-Mart syndrome. To what extent are you gentlemen being dictated to by the retailer? I would assume your margins are getting squeezed somewhat at the other end and I wondered if you would care to comment on that.

Mr. MACHAN. Pardon me, Coach, what was the——

Mr. OSBORNE. Well, I am just saying that many times Wal-Mart and other retailers in the grocery business are having to get large volumes and my understanding is sometimes in seeking shelf space and pursuing the packers, they will sometimes be able to dictate price to some degree. And I just wondered if you had any comment on that.

Mr. MACHAN. Well, they will put an offering. There are five major retailers out there and they will put an offering out and, of course, we might stand firm on our bid but we risk losing the offer and, of course, if it is a large order, it could result in some inefficiency on our part not being able to produce product. So our risk is missing the order. So we have to just make a business decision as to whether we want to take that bid or one of our other competitors will. And they might have that offer out there over a period of time and maybe lower it another cent to see who will take the bid, and then over a period of time, somebody will jump in the business and grab the business.

So it is competitive, it is competitive on a large scale from what we have been used to over the years past.

Mr. OSBORNE. My time is up but I just want to make the point that we are concerned about consolidation in the packing industry but I also think an impact on the producer is consolidation in the retail market as well, and it certainly impacts the producer.

Mr. JANKLOW. Thank you very much.

Mr. Seely, the chairman asked a great question of those producers at the end. He asked them if it was in everyone's interest to have more or less feeders or producers and more or less packing plants. And every one of them said more packing plants. They all felt that that would be a good deal. You are familiar with Dakota Pork here in South Dakota, are you not, sir?

Mr. SEELY. Yes, sir.

Mr. JANKLOW. And that was a packing plant that produced—that packed several thousand hogs a day, was it not?

Mr. SEELY. Correct.

Mr. JANKLOW. And it was a competitor with the Morrell Plant that you own in Sioux Falls.

Mr. SEELY. Right.

Mr. JANKLOW. And it went broke and your company bought is. Am I correct, what they did was shut it down?

Mr. SEELY. That is correct.

Mr. JANKLOW. And actually there was a group of producers who tried to buy that plant and your company just kept it shut down, correct?

Mr. SEELY. Now that one, I cannot answer, I was not involved.

Mr. JANKLOW. Let me ask you this, has it ever opened again, as far as you know?

Mr. SEELY. No, as far as I know today, it is still sitting idle and been mothballed.

Mr. JANKLOW. OK, thank you. When you indicated that you negotiate to sell to your competitors live livestock, live pigs and you said you ask them what they will give you. What if they tell you they will not give you your price, what do you do with your finished hogs?

Mr. SEELY. We do much like the producers talked about here a little earlier. We might have to hold those hogs for another few days, few weeks. There have been times that we may even kill at a reduced margin if we can find an order. There is obviously the perishability as to what the gentleman said earlier.

Mr. JANKLOW. And by holding those hogs that you own, you are not having to go out in that marketplace and bid an auction for hogs that you need for your own packing purposes, are you?

Mr. SEELY. Potentially.

Mr. JANKLOW. Mr. Schiefelbein, ConAgra owned livestock, owned the cattle in Australia, did they not?

Mr. SCHIEFELBEIN. I do not know. I think they might, I think they have feedlots there, so I think that is true.

Mr. JANKLOW. Are you involved with Swift?

Mr. SCHIEFELBEIN. Yes.

Mr. JANKLOW. And they are the ones that bought out ConAgra.

Mr. SCHIEFELBEIN. Yes.

Mr. JANKLOW. Would I be incorrect if I said they owned over a million head of cattle in Australia?

Mr. SCHIEFELBEIN. I do not know that number. We could get it for you though.

Mr. JANKLOW. Could you get that information and provide it to the committee after this hearing, sir?

Mr. SCHIEFELBEIN. Yes.

Mr. JANKLOW. How many head they control or have captive in Australia.

Mr. SCHIEFELBEIN. Yes.

Mr. JANKLOW. Am I correct, their prime cuts go to like Korea and Japan and their other cuts come towards the United States, a lot of it?

Mr. SCHIEFELBEIN. From the Australian packing company?

Mr. JANKLOW. Yes.

Mr. SCHIEFELBEIN. Most of the time, in all packing companies, certain cuts go to Japan and Korea and other cuts come here, but again, in Australia, I am not—if you need any other answer from there, I will have to go back to get it.

Mr. JANKLOW. Mr. Machan, I was intrigued by something you said, sir. Some of the other gentlemen indicated that they have to have these captive supplies because they have to dictate quality. They have to own them, they have to have captives, so they can dictate the quality. You indicated, sir, that you do not have trouble getting quality hogs from independent producers for Tyson. You were pretty emphatic in that statement, am I correct?

Mr. MACHAN. We have been, as a company, very interactive with producers in supplying them feedback of information, so we have been able to—the producers through their efforts—be able to shoot for targets on the evaluation of their livestock and improve the quality to meet our specifications.

Mr. JANKLOW. And Mr. Bull, in your testimony orally and written, you talked about the September 2002 market where there were 550 million pounds a week available and it was 65 bucks and then a couple of months later, it was 480 million pounds a week available, which is a drop of about 70 million pounds a week, and the price had gone up to $81.

If packers did not control livestock that they could put of their own into the market, that price would have been better, would it not?

Mr. BULL. Well, actually I do not think it would, because changing the ownership of captive supplies does not change supply and demand at all.

Mr. JANKLOW. But you do not know that because——

Mr. BULL. Sure I do.

Mr. JANKLOW. You do not know how many independent producers there may have been, so if you were not in the business of owning them, if there had not been any more independent producers and any more livestock, there would have been a greater shortage, which would have driven up the market more. Am I incorrect in that analysis?

Mr. BULL. You are incorrect.

Mr. JANKLOW. Pardon?

Mr. BULL. You are incorrect, yes. [Laughter.]

Mr. JANKLOW. I am out of time, Mr. Chairman, and he is lucky. [Laughter.]

Mr. BULL. We have learned how to read the light too.

Mr. NEUGEBAUER. Thank you, Mr. Chairman. This is for each one of the panelists.

One of the proposals that has been floated on the table was that the packers be required to buy 25 percent of their cattle each day from the cash market for slaughter. How would that impact your business practices today, starting with Mr. Bull.

Mr. BULL. Today, we are in our beef business about 25 percent of our slaughter comes from the various captive supply arrangements we have discussed. So a small portion comes from our own direct ownership. We get some in forward contracts that a producer initiates to protect their market price. The balance in some sort of marketing agreement.

Like the other packers, we do not schedule those in. The producers determines which week they are going to put them in and so we would have some concerns about the ability of trying to make sure that is done on a day-by-day basis.

The other thing is, I think the question came about why does one packer have some specific requirements they do not believe they can get from the marketplace. We have developed a proprietary brand that we have out in the marketplace that requires certain management practices at the feedyard that are not readily available. We process those cattle together in a batch to make sure that they are done uniformly to go to that retailer, and that is their requirement. So that law would also injure that ability to be operationally efficient in meeting our customers' needs.

Mr. NEUGEBAUER. If you were able to average that say on a weekly or monthly basis, that you have a commitment over a marketing period of a week or a month, that 25 percent of your purchases would be from the cash market——

Mr. BULL. I think what we would have to do, even in averaging, is there would be an elimination of agreements with some producers to make sure that we were getting under that window. And our concern is when you start setting requirements, what if these are the better arrangements for the viability of producers. Then you have effectively locked out some producers from being in arrangements that may be in the best interest for their operation.

Mr. NEUGEBAUER. Mr. Seely.

Mr. SEELY. One of the concerns obviously in the pork industry I think goes with what Ken was saying, to try to manage these numbers. It is amazing the amount of variability from heat, from weather conditions, how will these animals rate a gain and so forth. It is a struggle on a daily or weekly basis alone just to manage how many are actually going to come to market that need to be processed this week. But I think Ken is right, if we put a requirement on that a certain percentage had to be purchased, it would create some conditions that were alluded to earlier, about who did not get a contract, who did get a supply contract.

Mr. NEUGEBAUER. Mr. Schiefelbein.

Mr. SCHIEFELBEIN. I do not have a lot to add other than a scenario in April, the price was good, April futures board was good, everybody wanted to grab that price. And if we would have said no, you cannot do any more, we are at the 25 percent, we would have had a lot of mad people, because they wanted to lock their price in, because it was so high.

Same kind of things as these other guys, but that is a specific instance where we would have had lots of trouble because a lot of people contracted cattle in April because the futures were so high.

Mr. NEUGEBAUER. Mr. Machan.

Mr. MACHAN. Again, our concern would be much the same as what you have already heard, and it is that it is not that we are not geared to buy a lot of hogs on the open market basis, but it is that the industry itself, the pork producers particularly as a group, have opted to do a lot of arrangements with various packers. And so therefore, we are concerned as to how this type of proposed legislation would be imposed upon our suppliers—who would dictate as to who would be allowed contracts and who would not. It would end up being a quota system on contracts and we are concerned about the ramifications of that; and who would dictate as to whether ever producer would have to sell 25 percent of his hogs on the open market or some would and some would not.

Mr. NEUGEBAUER. Mr. Osborne asked a good question about the smaller producers, what would you say is the smallest forward contract for number of head in the marketplace today? If I called you up today, would you do 50?

Mr. MACHAN. I think the smallest one we have is 30 head.

Mr. NEUGEBAUER. OK. Mr. Schiefelbein.

Mr. SCHIEFELBEIN. One load, 30 head.

Mr. SEELY. I am not even sure, I would just be guessing.

Mr. BULL. We are the same, one futures contract equivalent or roughly 34 head of cattle.

Mr. NEUGEBAUER. Thank you.

Mr. HAYES. In the last 10 years—I am sorry. Steve, you are up. I am so eager to get at them.

Mr. KING. Thank you, Mr. Chairman.

I was just looking back at some of the earlier testimony and I would direct my question to Mr. Seely. You talked about the need for vertical integration and control of livestock. In your mind is there anything that would be too much vertical integration? If you were going to draw that line on what is good for the industry, would you draw it at all? And if so, where?

Mr. SEELY. I think I can answer one way. I do not envision in our lifetime that it would ever be a 100 percent integration. Tim had talked about it earlier, the risk that you take, we lose money when there are too many hogs, and there literally are too many hogs now. So it is somewhat of a moving target. It would be only crystal ball to guess at what level should be a maximum or a minimum.

Mr. KING. And then if we will not draw a line there, would you draw a line on what would be too much market share for packers?

Mr. SEELY. I really could not, to be honest with you. When you say—slaughter capacity, shackle space? Is that your question, what is the largest——

Mr. KING. Let us try capacity. What would be too much market share for slaughter capacity?

Mr. SEELY. I really do not know. If we paralleled ourselves to the poultry industry, it would be a huge number. If we looked at the pork today and the amount of packers, it would be a much smaller number. So it would be only speculation.

Mr. KING. Thank you, Mr. Seely.

Mr. Machan, I listened to your discussions here and how you have worked with your producers and you have 1 percent or maybe less than 1 percent of owned livestock. And what would be your—one thing is I do not think anybody at this table wants to impose more Federal regulation on anything. And so one of the ways to avoid that would be to take some of the pressure off of the situation.

Would you have some advise to your colleagues in the packing industry on how they might better arrange their contractual relationship with the producers to take some of that pressure off.

Mr. MACHAN. Well, I think every packer has responded to not only some of their geographical needs, but then also some of their needs from a sales standpoint. So I really cannot speak for them. I can tell you for us, we were again able to locate our facilities in good, viable production areas for the most park on livestock, particularly in the pork department. But we should point out that even though we are in a very broad area of a lot of hog production, over a period of time, producers have a tendency to select specific packer grids, if you will, or grade and yield programs that meet their needs as regards the genetics they raise or the size of hogs they raise. And we have producers that have had longstanding arrangements with this and actually invested in maybe specific sorting equipment to just specifically sort their hogs that maximizes our particular grade and yield program, where it may not work well on some other program.

So even though we are in an area of a lot of liquidity in terms of hog production, producers have had a tendency to just channelizes their production toward a specific packer and maximize their opportunities.

Mr. KING. And I know I asked a couple of questions here that nobody really wants to answer, but to the producers, would you have some advice to the producers that are not producers for your company but those that are supplying to some of the other packers across the country, that they might be able to initiate some of these kinds of relationships that you have found successful within your company?

Mr. MACHAN. Again, it is difficult to be real broad on this, but I am aware of producers that frankly globally—I am aware of producers, a producer in Minnesota, for example, that could not get a 2,500 sow facility sited in Iowa, he could not get it sited in Minnesota. He actually went to Canada and sited it to produce pigs and then brings the pigs back into the northwest Iowa area to feed out.

My point being there is a lot of opportunities for producers. Sometimes they have to move from their locale to strike an overall deal that makes sense for them. There are producers—as indicated, there was feeder cattle that is brought through one of the sale barns there in North Carolina and actually the cattle brought back out here to the west to be fed.

So it is the opportunity that the producer has in his area to meet needs, whether it be backgrounding cattle. My brother, for example, is a dairy farmer in central Wisconsin, very small dairy farmer, sold his 55 cows. He now actually has two large herds of heifers that he backgrounds for other large milk producers. So he has found a niche on his farm that serves a broad industry.

And I think that is the advice I would give most livestock producers.

Mr. KING. Agile, mobile, creative?

Mr. MACHAN. That is right.

Mr. KING. Thank you. Thank you, Mr. Chairman.

Mr. HAYES. In the last 10 years, who has grown capacity more, the ones with the most ownership of livestock or less ownership? Do we know?

Mr. MACHAN. Are you speaking of packers or producers?

Mr. HAYES. Packers.

Mr. SEELY. I think we could answer probably by default a little bit. I think Smithfield Foods, who is a prominent owner of livestock but a lot of ours has been by acquisitions of ours.

Mr. MACHAN. Yes, we have stayed virtually flat. We own less than 1 percent and we really do not have intentions of doing it, providing that we can continue to develop marketing arrangements and alliances with producers to supply our needs.

Mr. HAYES. Why was Congressman Janklow incorrect a minute ago?

Mr. BULL. I think the question was was the market price—go ahead. I thought you were saying something to me.

Mr. JANKLOW. I am waiting on you. [Laughter.]

Mr. BULL. I figured you were. I think your question was why would the market not have gone higher without captive supplies.

And your argument, I think, forgets that a captive supply arrangement decreases maybe the packer demand, as you are pointing out, but it also decreases the amount of supply a producer has to sell. So if those are offsetting transactions of the same amount, it has no effect on that supply and demand price.

Mr. HAYES. I will yield the balance of my time to my friend, the doctor coach. If he wants to give the microphone to Bill, that is up to him.

Mr. OSBORNE. I will give it to Bill very quickly. Just one question.

This idea of material participation, I think you are familiar with what that term means, but as I understand it, it is a contract that is very, very comprehensive. It involves a number, maybe the amount of feed, the price, the delivery date, which to me means it is a contract which in most cases would be almost like the packer owning the cattle, somebody else is just raising them for him. And as I mentioned earlier, I think maybe if there is any major adjustment that needs to occur, it is to determine really what is appropriate in the way of a contract.

I just wondered if any of you would want to comment on that because otherwise, if you are getting into that type of contracting and maybe 80 percent of your supply is contracted in this fashion, it certainly gives you a huge market advantage, I would think. So any comments that you would have as to what you feel might be appropriate limits on contracts, or if you feel it should be simply wide open where anything goes.

Mr. MACHAN. I do not know that I can address the question from the fact that you would take that type of contract and spread it out on a broad basis on the industry, but I can tell you that we do over 390,000 hogs a week but we have actually in the past—and this contract just ran out, with an export customer, we killed 350 Berkshires a week—350 Berkshires a week, which we went out and offered to producers to raise Berkshire hogs, so they had to be specifically Berkshire pigs, so that was the specificity of the contract.

And interestingly enough, it could not be 351, nor could it be 349. The contract which was a pass-through basis for us, was for a specific amount of product each week. So we had a segregation in the plant.

So there are contracts out there that would require specificity to exactly the location, which happened to be Columbus Junction, the exact day of the week, which happened to be Tuesday of every week, the exact head count, the exact genetics. And up to this point in time, we had not got into the exact feeding regime but it certainly had to then be under the PQA and the normal good management practices that we had in this country.

So if we did carte blanche that we could not have specific types of contracts, it would maybe shut us out of some of these types of issues, which in this case was a benefit for the producer to raise Berkshire hogs.

Mr. SCHIEFELBEIN. I think a contract is between a buyer and a seller. And if the buyer has certain things he wants, he tries to negotiate that in and the seller wants to negotiate what he wants in there. There always seems to become a middle ground when that contract is signed or else they would not have a contract, no matter what it is.

Mr. JANKLOW. Mr. Bull, I will go back to our little example. There is a reduction of 70 million pounds a week of product. To the extent that you—let us just say you are the only one in the business—to the extent you control a portion of what is still available, you affect the price. If you did not have that portion, there would be an additional shortage in the marketplace, an additional shortage would drive up the price for the remaining producers. Do you disagree or agree with that?

Mr. BULL. I disagree again.

Mr. JANKLOW. OK.

Mr. BULL. And if you will allow me to explain why I disagree, it is because you are still dropping that supply that that producer has got to sell in the marketplace.

Mr. JANKLOW. Sir, dropping supply does what to the price?

Mr. BULL. Pardon me?

Mr. JANKLOW. A dropping supply does what to the price in the face of consistent demand?

Mr. BULL. Dropping supply will increase price.

Mr. JANKLOW. Thank you. [Laughter.]

Mr. HAYES. All right. We have completed round two of the questions and thank you very much to a great second panel. We have had two wonderful panels. You need some exercise, let's give both panels a hand.

[Applause.]

Mr. HAYES. Since the clock is running, we are going to release this panel. You can stand up but do not move more than 20 feet from your seat unless you have a really serious problem, and we will start the open mic.

I am going to call five people at a time in the order that they signed up. Five of you get somewhere close to the mic and then we can move right into that phase of our hearing today.

The first will be Pam Potthoff. Second is my grangemaster Robert Jeary; third is Wayne Frost; fourth is John Nansen and fifth is Jon Bailey.

Pam, you are first. Each person will have 3 minutes. You are welcome to speak on whatever is on your mind. If you have a question rather than just a statement, ask your question and one of the folks will write it down and we will figure out if there is an answer and how to get it back to you. But basically we are here to listen to you for your period of time

Pam, introduce yourself because I am sure I said your name wrong.

STATEMENT OF PAM POTTHOFF

Ms. POTTHOFF. First of all, I would like to thank you for having this hearing in Nebraska. I am Pam Potthoff, I am a farmer/rancher from Trenton, Nebraska and today I am representing Nebraska Women Involved in Farm Economics. Nebraska WIFE supports the ban on packer ownership of cattle.

According to USDA data, four companies control 59 percent of the United States hog slaughter and 81 percent of U.S. fed cattle slaughter. That is a lot of power in a few hands. Time and time again, we have seen that power is addictive. A little power makes one hungry for more power. The bigness of these four companies illustrates the extent of their power. So far, their need to feed their power hunger has led them to not be content with just slaughtering the cattle, now they own them in feedlots and they buy them under contract without even quoting a price.

Enron taught the American public that big corporations and the management thereof do not necessarily have the best interests of others as their number one priority. In fact, Enron taught us that the number one priority of some companies is profit at all costs. They taught us that these companies keep feeding their hunger for power and thus profit.

The livestock industry is not immune to stopping to questionable tactics to feed their power hunger either. On January 18, 2002, the USDA's Grain Inspection, Packer and Stockyards Administration released a report and audit revealing that meat packers had been under reporting their captive supply numbers. At that point, the new numbers showed that the four leading packers received 32.3 percent of their cattle from captive supply in 1999, not the 25.5 percent indicated in annual reports to GIPSA. That was more than 28 percent higher than what packers had reported.

Why do you suppose those packers had been under-reporting their captive supply? Could it be that they knew all along that captive supplies allowed packers a tremendous amount of control over the market and that they could actually control the prices by using their captive supply?

I have the rest written for you and I thank you again for allowing us to talk today.

[The prepared statement of Ms. Potthoff appears at the conclusion of the hearing.]

Mr. HAYES. Thank you, ma'am.

Second, Robert, you are ready to go.

STATEMENT OF ROBERT W. JEARY

Mr. JEARY. I am Robert Jeary from Seward, Nebraska, Master of the Nebraska State Grange, the oldest farm organization, and we have survived many ups and downs.

The Grange is the family sized operation; therefore, we are greatly concerned about the change in livestock marketing. We realize in order to progress, changes need to be made. The thing that bothers or organization is trend toward monopoly.

So often the immediate thought is not good for the future of our great Nation. Competition has made this country and we feel this needs to continue. When investigating happenings in foreign communities, big has not always proven to be better. I hope we do not make the same mistake others have, but just use their experience as a guide.

Thank you.

Mr. HAYES. Thank you very much.

And if I could take just a moment while we are waiting for Wayne Frost to come up, I want to recognize State Senator Ray Aguilar. We appreciate you being here, glad to meet you last night and appreciate your interest in this.

You may proceed.

STATEMENT OF F. WAYNE FROST

Mr. FROST. My name is Wayne Frost, I am a rancher from Wolbach, NE, I am representing myself and also Mid-Nebraska Pride, which is an organization to promote and try to encourage the small family farm concept rather than the large mega-sized operation.

We are against packer ownership of livestock. We want to make that position. I think there is very solid reasons for having a regulation against livestock ownership by the packers. And the majority of the consensus of the people that are involved in that, think that by having that ownership, they definitely affect the price that is received by the local producers.

The other thing, it not only trickles down, since I am a rancher, it trickles down to the cow/calf producer. I have a cow/calf operation. And during different times of the year, when they are involved in the market, they go to the local sale barn where I deal and they may buy two-thirds of the cattle there on one particular occasion or maybe for a couple of weeks and send the cattle out for their own use. Then when they are not in the market, it really affects the market. That man from down in your country that has the sale barn, he says he has three buyers. What if one of them does not show up to buy anything that particular day? He is in very difficult circumstances. And I think that is the case as far as we are concerned here too.

You have a fairly sizeable audience. I would like to have had a whole lot more people here today, which I am sure there would have been if it had not been so busy out on the farm. But, I look at this group and I know a lot of these people. I do not know if it would be against the rules for me to ask a show of hands out here of the people that are against packer ownership. Could I do that?

Mr. HAYES. As long as the light is green, that is fine.

Mr. FROST. OK, if we could have a show of hands of the people in this audience that are against packer ownership.

[Show of hands.]

Mr. FROST. Thank you, that is all I have to say.

Mr. HAYES. Thank you. And let me tell you, the first three speakers have done a great job. It is important to tell us what side of what issue you are on. My wife read a letter to me the other day over the phone, somebody had written in and she read the letter to me and she said I cannot tell whether they are for you or against you. So you all are doing a great job. I could not tell either.

Next, let me see, No. four is John Nansen.

STATEMENT OF JOHN K. NANSEN

Mr. NANSEN. Mr. Chairman, some of us folks who write letters in, we pick up on this business of straddling the fence too. I just want to tell you that as a letter writer and as a speaker, I am absolutely in support of a ban on packer feeding.

I am the president of Nebraska's Farmers Union, we are the second largest general farm organization in the State and I want to tell you that we are the State that has the strongest anti-corporate farming ban in the country. We have had the most effective ban on packer feeding in the country for 20 years and it is interesting to note that all four general farm organizations in the State of Nebraska support a ban on packer feeding, as do most of the commodity organizations in the State.

If we want to develop a food production system that is truly responsive to what it is a lot of folks say consumers want—and a lot of what goes on today is supposedly consumer driven—but if we want the kind of food production system that is consistent with what it is that consumers actually want when they respond to surveys, we are going to look for ways to more effectively regulate the marketplace so that we can make sure that the traditional system of independent family farmer, owner/operator agriculture that built America, that caused America to happen, that is the kind of production system that is the most efficient producer, that has the most economic benefits, that has the most social benefits, that is the most in keeping with our democratic values as a nation are going to survive, we are going to have to get some enlightened regulation in the marketplace which is not in fact competitive or fair and in fact looks like, acts like and prices like a system of shared monopolies. I liken it to the dance of the elephants. They do not need to conspire, put together a plan and implement it and meet the technical standards of anti-trust regulation. The elephants have a mutual interest. When the music starts up, they know the tune, they all dance together on the floor and they move relative to each other with their finely tuned intelligence system to gather information and read signals.

And those of us who are out there trying to sell into that system of shared monopolies—and myself as a long time producer who has been fundamentally right on the supply side of the equation selling into a market, and been absolutely wrong because the market moved against all the fundamental systems.

Thank you, Mr. Chairman. And by the way, I would point out that Bob Kramer, Senator Bob Kramer, the chairman of the Nebraska's Agriculture Legislative Agriculture Committee, is also present.

Mr. HAYES. Bob, be recognized. Thank you. Anybody else we have missed?

OK, the next five folks, the first will be Jon Bailey. Jon, come on up. Let me get these others. Gary Doerr—I know that guy—Dave Wright, Richard Mauch and Max Waldo, No. 10 is Steve Cady.

STATEMENT OF JON BAILEY

Mr. BAILEY. Thank you, Mr. Chairman. My name is Jon Bailey, I am from the Center for Rural Affairs in Walthill, Nebraska, population 950. We were talking about size of towns earlier. The Center for Rural Affairs is a non-profit organization that engages in advocacy, research and services to benefit family farmers and ranchers in rural communities.

I would first like to thank all of you for coming and welcome you to Nebraska. I would especially like to thank Representative Osborne for his work in getting this hearing and on behalf of rural Nebraska.

We support a ban on packer ownership of livestock, as does nearly every producer organization and agricultural organization in Nebraska.

As you may know, the Packers and Stockyards Act and its regulations currently prohibit stockyards from vertically integrating. Specifically, stockyards may not own or control buying stations, packing plants or livestock feeding operations. The rationale is that such ownership or control creates conflicts of interest, access problems for other producers and opportunities for self-dealing which distort the market. Because packers are similarly situated to stockyards as market creator and a market forum, we believe the same rules should apply to them.

But ultimately, this discussion should be about producer income and how that affects rural communities, as Representative Janklow has pointed out all morning.

Packer ownership and lack of competition for livestock means lower prices through decreased market opportunities. We sincerely believe that and we think the evidence shows that. Lower prices result in lower farm and ranch incomes and eventually result in farmers and ranchers leaving agriculture. Fewer farmers and ranchers in rural communities mean fewer customers for main street businesses in small towns, fewer children in rural schools, fewer people in church pews and fewer people in rural counties to support rural institutions. All of those are harmful effects to rural communities and we should do everything and you should do everything possible to save our rural communities.

Thank you.

Mr. HAYES. Thank you. We have had the great privilege to be here and meet some wonderful folks and spend time with them last night, and here is one of them, Gary Doerr.

STATEMENT OF GARY L. DOERR

Mr. DOERR. Thank you, Congressman, for allowing us the opportunity. I have nothing written down, so it is kind of like I say when I run a meeting at home, I shoot from the hip.

One comment I am going to make, if we impose a ban on packer ownership and we force Smithfield Foods to sell 700,000 sows, who is going to buy them, who is going to put them in production? What is that going to do to my market? I think on the forefront, it would probably drive it down because now you have got all that tonnage hitting the market. For the short term, you may drive it up until the packers decide what markets to close down and where to close them.

I guess a comment I made last night to the committee, I was invited to a small meeting with them, was my wife Liz and I and our four children run an independent farrow to finish hog operation in Knox County, Nebraska and we are not contracted. There is not a week go by—we sell between 50 to 150 hogs a week and we work with primarily two packers. And they both know—and one of them is sitting here, it is Smithfield—they both know when I call that the first time I talk to them, they are not going to buy those hogs, I am going to work them and I am going to work them both. And I have worked them both enough sometimes to move that market between the starting bid and where I will pull the trigger at $2. That is a big difference.

I will make one comment back to 1998, I do not refer to that too often because I forgot it, when the hog market was glutted, more hogs in shackle space, Smithfield Foods was the easiest market to get a hog into on an open market. I am not contracted, I sell on the open. But we do use futures contracts, we use forward price contracts with futures on everything like that.

I guess if people have questions, do not like my comments, that is why I just shoot from the hip. So thank you for your time.

Mr. HAYES. Thank you, Gary. Dave Wright. Next will be Richard Mauch.

STATEMENT OF DAVE J. WRIGHT

Mr. WRIGHT. I would like to thank you, chairman, for this opportunity to address the committee and I would like to thank you for coming to Nebraska—thank you very much.

The reason I signed up was because you had said you were looking for an answer to a question. The answer I came up with was if I am a packer, I want more under contract, more producers. If I have to deal with the cash market, I want less.

So anyway, for the past few years, I have been following this concentration in this packer ownership issue, and I found out that there is a lot of knowledge out there and very little wisdom, and a lot of information but very little truth. I think I found some truth the other day and I heard Scott Hahn talking about the fall of Jerusalem, the destruction of it. And he points out, from Josephus and Cassius, who were historians at the time, that in 67 A.D., Rome came to destroy Jerusalem but they failed, the Jews defeated them and chased them back to the sea. Between 67 A.D. and 70 A.D., Jerusalem experienced record crop production, stored it all within the city. Titus comes back in 70 A.D. lays siege to the city and in his own memoirs, he says "I cannot take that city unless their God delivers it to me." It is a city on a hill with its own water source and state of the art defenses. Titus laid siege to the city and it falls. Cassius records that three groups had gotten control of the food supply within that city, and those three groups started fighting amongst themselves to see who would control the city. Therefore, Rome just walked in and destroyed it.

Now a year or so ago, we were talking about packers owning livestock, and the key word there was control, and the Senate was arguing back and forth about the word control. And what I would like to point out is, who decides when the cattle go to the feedyard? If it happens to be packer owners, they decide when they go in. And if the packer owns them, they decide when they leave. So I think control is a fine word, because who is controlling the cattle.

Thank you.

Mr. HAYES. Thank you. Richard Mauch.

STATEMENT OF RICHARD L. MAUCH

Mr. MAUCH. Richard Mauch from Bassett, Nebraska, I am a cow/calf producer, rancher and I have fed cattle since 1966. We also have a little irrigated farm operation.

We got into keeping some cattle in the feedyard—this report I am giving you here is just a history of the cattle we have fed in the last 10 years at Bassett Feeding, and the ups and downs in the market. As you will note kind of scanning through it, they have gone in at different times of the year and we have had a couple of pretty good hits and we have had some pretty good losses and some really big losses, like 1998.

The one that probably got us involved a little more, because we were also involved in the registered Solare seed stock business and I wanted to feed cattle back in the 1980's and through to get carcass data for our bulls and some of the other cattle that we were producing. We had a pretty good year, the second one on the list, when we put some cattle in that gained $4.06 per day after a 4 percent shrink, but they made a little over $100 a head. I guess that encouraged me. And then we got into about three or four years of really big losses.

We have got cattle on feed right now that are losing money because if I am looking at the August and July futures, my cost of break-evens and the bottom line down there will show you where we are. I would really like to see an end to the futures in the Chicago Mercantile Exchange as far as cattle are concerned. We do not use them, they only hurt us. I think that it is very wrong for anybody to be able to sell something they do not own.

This happened in the 1970's, some of you may be as old as I am and can remember when the potato futures went crashing because they oversold the potato futures way more than there were potatoes to deliver and the Federal Government had to come in and bail it out and we taxpayers suffered from it. I remember it.

I do not believe the packers should own cattle. I do not believe we should have a Chicago Mercantile Exchange.

Now as far as the hog business is concerned, I have a place out northwest of Ainsworth and when I bought that place 20 some years ago, every one of my neighbors were small farmers raising hogs. Today, there is not a hog farmer out there, not a one. And there are four less farmers and places in the area than there were when I went out there. That is how we are shrinking. There are only 18 students graduating from our county high school in Bassett this year. There were 44 in my class in 1944. I was an implement dealer and a lumber dealer and a hay broker following my father's business in 1944 as well.

We raised some corn and we put it in the feedyard and fed it to our own cattle and that is where some of this is going on through here.

I am not going to take any more of your time, I appreciate the opportunity to testify and thank you and especially you, Congressman Osborne, for helping to bring this here.

I will answer any questions you have.

Mr. HAYES. Thank you very much. Max Waldo.

STATEMENT OF MAX WALDO

Mr. WALDO. Thank you, Congressmen. I will do as much as I can here in the time allotted.

I am from a family farm operation, sell breeding stock. I used to sell breeding stock I am sure to Dunning and those areas, now we have to search the world for customers. We sell to China, the Philippines and other foreign countries like North Carolina. [Laughter.]

Mr. WALDO. But it is a little bit amazing what has happened in our livestock business. There was talk about we need to have integration in order to have numbers of livestock. In the 1940's, Oklahoma, which has been the fastest growing State in the United States in recent years in hog numbers, in 1940 raised as many hogs as they do today. Gary, you talk about the Japanese markets, we had some Japanese people to our place yesterday. I will guarantee you, if they decide what they want and tell IBP and you tell me or my customers, we can take care of it. Quality is not an issue, it can be taken care of. That is kind of a lame argument.

Just a little bit of written material here. Sustainable growth of the livestock industry should be built from producer profits created by demand. Tax incentives, tax credits, all these other things through time have had some possibly detrimental effects in bringing people into the business that have cash to spend, that then sends undue signals to the supply and demand issue.

Captive supply and contracting removes or masks the market signals necessary to match supply and demand. This happened during the 1980's in the United States, you could say it is going to happen, let us take it away from the United States and play in Poland. Smithfield is in Poland. The Poles do not want the Smithfield people there, they have all the pork they can eat, but yet they go over there and they buy the best packing plants, close some of the others, Gary, and basically through strategies, they are trying to get into the markets.

But there are so many of these things, particularly with the captive supplies, there is no real signal as to how many pigs we really need.

Undue market power starting with the large retailers is driving consolidation. At the same time, they put the pressure on the packers, the packers then have to cut their margins that they offer to the producer. The producer with the least market power is the one that gets shorted.

There has been credit given——

Mr. HAYES. The red light is on, wrap it up if you can.

Mr. WALDO. OK, well there was comments about contracts being the way to go and it is going to be done in the future—a 20,000 sow guy, A+, in North Carolina, was contracting, lost $1 a head over the last two years. The packer came in and offered him a new contract for the next two years, only at a dollar less.

Arkansas people basically have no——

Mr. HAYES. We do have to move on, but please submit—you have got great information, we appreciate it. Anything—you have got 10 days or more if you need it to put it in, we would love to have it.

Mr. WALDO. I could tell stories on every one of these guys. Gary is one of the good ones.

Mr. HAYES. OK, thank you. Steve Cady.

STATEMENT OF STEVE W. CADY

Mr. CADY. Thank you, Chairman, Congressmen. I want to thank you for having this hearing here today and I want to also mention that you have asked some very good questions. I am very pleased with the questions you have asked.

I want to talk a little bit, Congressman Janklow, former IBP CEO Bob Peterson in 1996 in South Dakota, he said, "You produce, we process and they buy, the consumer. We take what it is we sell to our customers, meat, we subtract out what our credits are, add back what our expenses are and bid accordingly on fat cattle."

And I think about that in accordance with supply and demand. I thought that the way we priced fat cattle was supply and demand of fat cattle, not supply and demand of meat at the retail markets.

Bob Peterson, as you mentioned, in 1994 talked about packer-fed cattle and I will not go through that. He said, "On the way down, we kill our cattle first; on the way up, last." This is preferential treatment. And I think this is an important thing to consider in how prices are impacting producers and what happens there. The information that is available to the packer is very good information and the best current information available, the producer does not have any context of what that information is until after the fact. And it gives an unfair advantage.

I want to mention in that same breath that the retailers are also a problem in the concentration issue and that has been mentioned before.

Additionally, producers tell me that packers indicate the time a price should be reported in the pork industry, usually late in the day; contracts generally are priced in the middle of the day. So if we report good prices late in the day, they do not impact the input prices that the packers have to pay for the hogs during the contracting period.

Very much like the 1933 Securities and Exchange Act address, this is similar insider trading. And I am talking about how the preferential treatment happens and their information, particularly since the packers can influence price as well as influence price expectations. Additionally, it is preferential treatment, which in Section 202 of the P&S Act says "It shall be unlawful for any packer to make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect or subject any person or locality to undue or unreasonable prejudice or disadvantage in any respect." If they are using their cattle first on the way down, they are obviously getting the best price and that is preferential treatment.

Historically, 1992 to 1994 is significant. In 1994 is when IBP bought Lakeside Farms Industries in Canada, a combination packer/feeder/feed and farm operation. In 2000, the single plant slaughtered 1 million head.

In 1970, Grant County, Nebraska had the most millionaires per capita for the sixth year in a row—I will finish up very quickly—also for the sixth year in a row, Nebraska is home to some of the lowest income counties in the Nation. Those seven counties in Nebraska have agriculture and specifically cattle ranches as their main economic resource and rancher income is directly derives from cattle prices resulting from profit and loss.

Thank you.

Mr. HAYES. Thank you. Let's see, Dave Burrell and then Susan Frazier, Rob Robertson and Louise Korb. And Sue Jarrett is the last speaker.

STATEMENT OF DUFFY BURRELL

Mr. BURRELL. I am Duffy Burrell, I am a fourth generation farmer and rancher out of Chambers, Nebraska. I am going to give Mr. Janklow a little more ammunition here to fire.

Mr. HAYES. He will be glad to have it, but he does not need it. [Laughter.]

Mr. BURRELL. I am totally against the captive supply, but I am very familiar with the Monfort packing facility in Greeley. I used to pull fat cattle in there. Whenever the fat cattle market went up—Monfort had two chutes there, whenever the fat cattle market went up, they would shut one chute off and Monfort's trucks started rolling in to unload cattle. As soon as the market when down, they opened the chute back up and then we was allowed to use both chutes again. That happened time and time again, it is not just a one time deal.

I just feel that this captive supply deal has gone a little bit way too far. This was going on back in the 1980's, is how far back this has gone back to.

I hope you guys take this into consideration and take a good hard look at it.

Another comment I would like to make is when hogs went to 9 cents a pound, why was pork chops still over $3 a pound in the grocery store? That is something that has always bugged me and I never could figure that out.

When Mr. Sears was talking about cattle being a perishable commodity, you could ask these guys, the packers that own cattle, when carcasses get heavy the regular independent feedlot guy gets docked on his carcass, ask them if they dock their own carcass when they go through the packing house.

That is all I would have to say and you guys can sit there and take that information and absorb it any way you would like. Thank you much.

Mr. HAYES. Thank you, Duffy. I guarantee you we are listening and we will be talking to each other and listening to you all and I am sure the folks that need to be hearing this are hearing it as well.

Susan Frazier, right?

STATEMENT OF SUSAN C. FRAZIER

Ms. FRAZIER. That is me. I would like to thank you all for coming here to Nebraska so that we can speak to you about this particular issue which is very potentially to the agriculture sector in Nebraska. My name is Susan Frazier, we are livestock producers in Fillmore County, Nebraska.

For the sixth year in a row, 1996 to 2001, data from the U.S. Department of Commerce Bureau of Economic Analysis, the rural Great Plains can lay claim to being the lowest income level county. Of the 10 counties in the United States with the lowest income, Nebraska has the dubious distinction of having six, including first, second and third and another coming in on this discouraging list at No. 12. These are rural counties devoted to agricultural production and their economic wellbeing depended on agriculture, with the major commodity being livestock.

As our elected leadership searches for ways to alleviate this poverty, they cannot ignore the connection between the income derived from livestock production and the control over the livestock industry that the packing industry has. They cannot ignore the ever-increasing spread between the price the independent livestock producer and feeder receives and the prices paid by consumers.

The packing industry, which is controlled by a very few mega corporations, can, by using the livestock that they own or control, manipulate to their advantage the prices they pay to independent producers. This is not a competitive market, it is not a transparent market. It is a controlled market and this factor has to be looked at as a major contributor to the poverty in our rural counties. We must have competitive markets, we must have transparent markets. And to this end, we must have a packer ban on ownership of livestock.

Thank you very much.

Mr. HAYES. Thank you. Rob Robertson.

STATEMENT OF ROB J. ROBERTSON

Mr. ROBERTSON. Good morning, committee, thank you for coming to Nebraska.

Mr. HAYES. And thanks for dinner last night, too.

Mr. ROBERTSON. I am Rob Robertson, vice president of government relations for Nebraska Farm Bureau, the State's largest farm organization.

We too have thoroughly discussed this issue on livestock markets in the last couple of years and we do support a ban on packer ownership. We think it is one problem, but we have to deal with a greater problem. The possibility does exist we think for packers to manipulate the market with the absolute ownership of livestock. But the larger issue we think is how we reform livestock markets. That is what is changing. And a lot of times, too much focus is given to the ban on packer ownership and we think more focus needs to be given to how we reform livestock contracts.

We are in a consumer-driven market, we have heard the packers say that, they are responding to consumers. There has to be more coordination between the producer and the packer and the retailer and that means there is probably going to be a lot more contracts. And so we are going to have to figure out ways to create standards, create different aspects of contracts that more reflect market conditions or economic conditions in the countryside. Right now, we have contracts that often are based on spot cash prices, the spot market is getting thinner and thinner every year. Maybe there are other standards, basing contracts off of full sell markets, retail prices—those signals that we keep thinking in agriculture as producers, that we have got to be getting from consumers, need to somehow be reflected back to the contracts.

And so if the committee can move forward on packer ownership or not, maybe the issue the committee should move forward on is looking at contracts and ways to improve the standards in that area.

Before I leave you, we did offer a letter to GIPSA, they are conducting a study by June 30, they are asking for comments on the scope of that study, and we have an eight-point suggestion in a letter that we think ought to be included in GIPSA's study and I would like to leave that for the committee as they review this issue as well.

So thank you very much for coming to Nebraska.

Mr. HAYES. Thank you, Rob.

Louise. And after Louise will be Marjorie—Sue.

STATEMENT OF LOUISE KORB

Ms. KORB. I am Louise Korb, I am from Kansas. I am sort of talking for the Kansas Cattlemen's Association. We have been ranchers for over 50 years and we support the ban on packers owning cattle more than 2 weeks. We also support the label of origin and we think that all ranchers will support that because we are keeping records already.

So thank you.

Mr. HAYES. Thank you, ma'am.

Marjorie Sue Jarrett

STATEMENT OF MARJORIE SUE JARRETT

Ms. JARRETT. Marjorie Sue Sheridan Jarrett.

Mr. HAYES. Are you any kin to Dale?

Ms. JARRETT. Pardon me?

Mr. HAYES. Are you any kin to Dale Jarrett?

Ms. JARRETT. I have no idea. [Laughter.]

I married that name, I married a guy from Boston, so I do not know his lineage, but mine is Sheridan and I am the rancher and I married a city guy and brought him home.

I traveled 4 hours to be here to speak for 3 minutes. I co-chaired USDA's Small Farm Advisory Committee, my name is Sue Sheridan Jarrett, I live in Yuma County, Colorado, about 10 miles on over the Nebraska border there.

I live in a county where now Swift & Company, was ConAgra and before that, Monfort, but that great big feedlot in my community. I became an activist about seven years ago when D&D Corporate Hog Farm located several sites out my backdoor about two miles from my ranch.

I will tell you this as an independent rancher and producer, I will gladly own feed and provide cattle into an open, competitive market if you will just make them pay to clean up their own waste that is contaminating the Ogalalla aquifer. And I say that because I just got targeted big time because I do stand up and speak out. And I did not used to. I was a rancher, I like being home, just being that little rancher out there raising good quality cattle for an open market that I no longer have.

We used to have four or five buyers that would come into my brother-in-law's feedlot every day to bid on cattle. Now when our cattle is ready, we get one bid, 1 day a week, 15 minutes, take it or leave it.

My father started a grazing association, one of the last independents that is still in operation. We try and maintain ownership of our cattle through. I will eat my steak any day of the week, I could care less if it gets sold to Japan. We export more in dollars than we import and we import more in pounds than we export. That right there should be a key—I do not care about global markets, I care about feeding people in my community, in my regional area. I can no longer do that because I cannot sell my meat, I have to sell cattle on the hoof. I cannot process my meat and sell packaged meat, because the rules and regulations that are passed put us out of business because I do not sit at the table to write them.

I help pass laws thinking my Government is going to enforce them. Like EPA will come out and make those people clean up their manure? I challenge you, when you pass a law, you make sure the rules and regulations get targeted to the people that need it.

I support a ban on packer ownership. Feedlots in my area are going out of business because we now have a big feedlot in my area. Transportation cost is no different whether Swift & Company is transporting their cattle or those independent producers were transporting their cattle. If they can have that feedlot in my community, those small feedlots should have been able to survive and exist, and they are going out of business. So what is the difference in them transporting their own or transporting and buying those independent on the open market.

I am here today to submit the small farm report we have just come out with called "Built on a Time Tack Campaign" which was the commission. I have a personal prepared statement that is "Consumer Quality versus Packer Quality" and I have a paper that tells you who I am and what I am about, and I would love an hour at that table with my comments answering every question you guys asked those guys and taking them on. I will do it any day.

Thank you. [Applause.]

[The material referred to appears at the conclusion of the hearing.]

Mr. HAYES. Thank you, Sue and thank you for taking the time to drive. A lot of people——

Ms. JARRETT. I have got 4 hours back, for 3 minutes.

Mr. HAYES. They have got some good food and good people around here. Do not tear out.

Ms. JARRETT. We have got some good food at home.

Mr. HAYES. Well, get to know some of these folks, do not be in too big a hurry to get back. [Applause.]

Ms. JARRETT. You come to my ranch and I will show you what real good food is, because we used to raise food, now we raise commodities. [Laughter.]

Mr. HAYES. Thank you, thank you very much.

What I am going to do now, first I want to compliment the witnesses, then the speakers, not necessarily in any order of priority, but our audience. You all have done a fabulous job today of making this hearing work. Your complying with the rules and regulations has been extremely, extremely helpful. We really appreciate you.

Let me call attention for just a minute to our professional staff who have gone to a lot of trouble and done a great job of putting all this together. Pam, stand up, and Pete, and Claire. I am going to get Coach Osborne to identify his staff folks that have been here. Andy Johnson. Am I missing anybody?

That was my brief closing statement. I am going to go around the table this way and give each of these fine folks a chance to have a closing statement and Coach, you are going to have the closing close. And again, thank you all, it has been a wonderful group of folks to work with. We will do everything we can to work together with you to help solve these problems.

VOICE. I have one question for the ones that did not testify. We have got 10 days to put a written statement in? I am from South Dakota and——

Mr. HAYES. We will give you chairman's immunity if you forget and you want to extend over. What did you say, Pam? Claire has got forms on how to get in touch with us. We want to continue the dialogue and it is very important. You all may want to think about some of the things you have seen and heard today and add to your comments or change them or whatever.

Now Steve.

Mr. KING. Thank you, Mr. Chairman. I would also like to express my appreciation to all the panelists and all the folks who came and spoke at the microphone. Those of you who have taken the time out of your busy schedule to be here today, 4 hours to and 4 hours back, that does mean a lot to me, only 3 minutes at the microphone, but I hear you.

I had a lot of things that flew through my mind as I listened to this testimony today. One of them I think I just want to say out loud is that we all know this intuitively here and they do not know it in Washington, DC and that is that all new wealth comes from the land. At Iowa State University, they say it either comes from the field or it comes from a mine. But from there on, you build everything in this economy, and that is why it is so essential.

Another piece to me is that I come from western Iowa and my heritage and my roots go deep there, like yours do here. I hear it in your voice. We are going through a transition in agriculture and we do not know what the future brings for us. I hear both sides of these arguments that are here today and both of them are credible arguments. In the end, the populations may be half in some of these schools of what it used to be. I look back, my middle son when he graduated from high school here a few years ago, he walked across that stage, 34 of the 37 kids that graduated from his class started their first day of kindergarten there together. Those roots mean a lot.

I think about how do you put some integrity into the market system, and I do not know if we can regulate a way that we can do that to the satisfaction of the producers. I saw the extreme example in Singapore a few years ago. I asked to go, we had about a 3-hour opening in the afternoon and I like to stay busy. I said I want to go to this auction. They auction hogs there in Singapore at that time, the full supply of pork that came into Singapore came over from Malaysia across the causeway, about a mile and a half bridge. And the make sure the Malaysians could not fix the price of pork, they run every critter across the stage, about like this, only a different kind of floor, and auction about like this, you could lay it out in here, they run every one of them across an electronic scale and sell them as an individual critter, and you put your thumb on the button on the arm of your chair if you want to bid and the last guy with the button off owns that hog. And there is another one going across the stage. They went through all that to avoid the fixing of price.

That is the fundamental of how you get to a free market but market transparency is a way to get there.

I just happen to think also—somebody mentioned that all we need to do to fix this problem is to eat about 10 more pounds of meat per year and we would solve it all. Well, I went down the river in a light pirogue, Lewis and Clark's boat, and in that book about it, he wrote in there they ate between 8 and 9 and in another place 8 and 10 pounds of meat a day. So maybe just one day, a pigout or a beefout, we could solve that.

Another thing that is part of this is that we are taking the risk out of these markets, we are taking them out of the top of the market, we are taking them out of the bottom of the market. That is a narrower market than it has been before, and when that happens, you are missing that opportunity to stick the fat hog, as I phrase it, and you are also avoiding some of that big loss that you have had in the past. Packers are taking some of that and you are taking some of it. When you take risk out, then you take that profit potential out at the same time. And that is a piece of this equation we need to be thinking about—you are sharing the risk. So you are giving up some of that market share. And part of that is our contracts, our packer ownership and our custom feeding, all those things are what are taking risk out of the market.

From my perspective, I want to see more cows and more sows in this country. The more of them we have, the more we value add to everything we do and from the part of the country where I come from, the bottom line is more dollars per acre. It is awful hard to do when it does not rain, it is hard to do when you do not have people to help produce that product.

That is I guess the things I am thinking about here and I see a transition in this way of life that we have and it is awfully hard to be a guy from the cornfields in western Iowa and go to Washington and try to make a decision on what can be the future of your industry, your life and your quality of life that you have here. I will do the best I can.

Thank you.

Mr. HAYES. We had better turn that 2-minute light on, Claire, just in case. [Laughter.]

Mr. NEUGEBAUER. Mr. Chairman, I promise I will not need the 2-minute light.

Well, listen, it has been a wonderful time here and this is what America is all about, this is a representative form of government and you have representatives of your government sitting before you here today and it has been good to hear from you.

I think fundamentally I would tell you that Randy Neugebauer is a small business guy. I built my own business like many of you built your own family farms or your hog operation or your cattle operation or even your cattle feeding operation. But one of the things that I know is that what is going on in America today is that we all have to work smarter, we have to work harder and we have to use the technology of the day to be able to survive in small business.

The things that I know about small business is generally capital is a major issue to being able to survive. Without access to capital, small businesses cannot thrive. And small businesses are the number one job creators in America. They are the number one job creators in your community. So being able to access capital is going to be a very important aspect of that.

Commodity volatility is a danger to small business, guys. And many of you that have been around for a number of years have seen your friends when the hog market or the cattle market, the bottom dropped out of it, you saw what happened to them. They are not still here.

So what is going on the marketplace has been some adaptation to that volatility, to try to take some of that volatility out. And yes, when you minimize the downside, you do minimize the upside.

But what I heard today was testimony that within that system, within that gap, that people have learned and developed a business plan around being able to make money within that gap. Is it a pure, efficient market when you have some cap on the upside and downside? No, but I will tell you, a very volatile market is a very dangerous market and it inhibits the ability of those small business people to be able to borrow money, because lenders are not going to be willing to take that volatility risk.

I am reluctant for the Federal Government to go in and start trying to tinker with a system that is evolving at this particular point in time. But I will tell you that we will listen to future dialogue on this issue and hopefully come up with something that is good for America and good for American family farms.

Mr. HAYES. Thank you.

Mr. JANKLOW. Thank you very much, Lewis and Clark were eating all that meat because they were not paying for it. [Laughter.]

One of the great parts about this new job I have is I go to school every day, I do not pay tuition and I do not get tested. I get to listen to witnesses just like the two different groups that appeared up here today. Candidly, sometimes uncomfortably but very candidly, straight-forward answering questions. And I appreciate that. People like me learn from it.

I would like to thank you Nebraskans for your hospitality. I am driving 1,100 miles this weekend. I drove down here yesterday afternoon and I have to be at Lake Okobojo this evening and I have to speak at the American Legion Convention in Spearfish on Sunday morning at 9 o'clock for the Legion and the VFW out in the Black Hills. And I got to meet two of the Nebraska Highway Patrolmen yesterday—very polite gentlemen who cut me a little bit of slack and so I appreciate that.

To you folks who testified here today, this is not an easy answer and I know that, I really know that. When I sit and listen to you folks who are packers, you are competitors with each other and you are big competitors with each other. You would all love to run the other ones out of business and I understand that.

I understand that bankers want these producers to be constrained far more than really a capitalistic system sometimes needs to go. You are getting into new areas, the branded—especially with the red meat, the branded meat, with cattle is a whole new dimension and you are all really competing with that. Retailers are giving you mammoth contracts unlike they used to be, nationwide in scope, as you deal with the Coscos and the Sams, the Super Wal-Marts. You have got world competitors, as you talk about.

You want to keep your plants running full tilt. I understand that, but the other side of it is—and I do not think Federal regulation is the answer. I am a person that believes we need to strengthen the antitrust laws of this country, the Sherman and the Clayton Antitrust Acts, and then let the marketplace dictate the vertical and the horizontal integration and monopoly that is going to be allowed—or I should say the oligopoly that is going to be allowed.

And as I close, I just—the one thing that continues to drive me, because I have spent my life living among livestock producers. You can see by a guy that weighs 240 pounds, I am not a producer, I am a consumer. But I can also tell you that the only way to sustain in the long run the independent operation out in agriculture with livestock is to have a price that is set by a competitive supply and demand system. It has to be supply and demand, it has to be competitive, it has to be capitalistic. And that is what we are all struggling to thrash out.

Mr. Chairman, you have been terribly gracious today; and Tom, one of the nice things about a job like this is you see legends, now you get to meet them and you get to work with them. Your Congressman Tom Osborne is one of those folks. Thank you.

Mr. HAYES. Thank you, Bill.

Tom Osborne got us here today, it has been a treat. It is great to work with these guys; one of the privileges of working for you in Congress. Tom Osborne got the hearing here, he got the drought money, he is making it rain today, he is our guy.

Mr. OSBORNE. Thank you. I will try to be very brief.

I really appreciate Congressman Hayes' willingness to do this because he had to say; if he had said no, we do not come. And all of these gentlemen gave up a weekend. Bill Janklow deserves a Purple Heart for doing what he is doing. I do a lot of driving, but I have never tried anything like that in less than 48 hours, so we really appreciate his coming.

I would like to introduce some staff members who have been fairly active here—Christina Muedeking is from my Washington office. I assume she is still behind me here. Barb Cooksley works for us here in Nebraska and of course Barb and her husband George are active cattle ranchers up near Anselmo. Bruce Rieker is my chief of staff in the back there somewhere, and John Hanson is a district director.

And also Senator Nelson's Dale Williamson is out here and Bob Bettger is on my staff as well. So we are appreciative of all that they have done.

And I guess the one thing that I would hope would come out of this hearing is that there is the perception by many in Washington that there really is not a problem; this is not an issue of any concern. And I think maybe the panelists here today, no matter what their previous predisposition might have been, may come away that there is something to be concerned about. Nobody probably has an exact fix right now, but I think that at least people will have an awareness and this will be spread to the Agriculture Committee and the House, that this is something we need to look at. It is not something that we can just simply ignore. So that has been the main purpose.

And the reason I got really interested in this is we lost 40 percent of our hogs over a 10-year period, which was 39 million bushels of corn and soybeans that would be consumed, so it affects the row crop people, it affects the ethanol industry and it affects rural communities. So it is a snowball effect. Rural America is in a little bit of a bind right now and it will take a lot of collective wisdom to try to get this thing straightened out.

So again, Mr. Chairman, I just appreciate your willingness to be here and have this hearing, and thank all of those who have come and participated.

Mr. HAYES. Thank you, sir. Thanks again to the audience and we are adjourned.

[Whereupon, at 12:03 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:

Statement by the Honorable Doug Bereuter
Before the House Subcommittee
On Livestock and Horticulture
Field Hearing on Packer Ownership of Livestock
Grand Island, Nebraska
June 21, 2003

Chairman Hayes: Thank you for scheduling this important field hearing in Nebraska to address the issue of packer ownership of livestock. I commend the Subcommittee for taking an active interest in this complex, but important matter. I regret that previously scheduled town hall listening sessions in my congressional district prevent me from attending in person, but I am pleased to have the opportunity to submit this statement.

There are clearly many challenges facing livestock producers these days. These include the continuing drought, rising costs, and trade impediments. Some of the most serious problems, though, result from growing market concentration and limited marketing opportunities for livestock producers. It is obvious that no one change will solve all of the existing problems. Quite simply, there is no simple panacea. However, that should not prevent us from fixing what we can and working to improve the current situation. I am pleased that your hearing will examine this issue and possible solutions.

Improving the situation for livestock producers is obviously of critical importance to the State of Nebraska. By virtually any measure, the Cornhusker State ranks near the top of the list for livestock production and slaughter. For instance, in 2002 Nebraska was number one in commercial red meat production and accounted for more than 16 percent of the U.S. total. Nebraska has the second most cattle on feed in the U.S. and the fifth most hogs and pigs.

The market trends in recent years have been leading to increased concentration in the livestock industry and fewer options for producers. This in turn, has an adverse affect on producers, rural communities, and the state in general. A greater effort must be made to reverse these trends. Unfortunately, with an increasing number of livestock producers facing difficulties, time is not on our side.

The changes in the livestock industry in recent years have been rapid and dramatic. According to the U.S. Department of Agriculture's Economic Research Service, between 1994 and 2001, the number of hog farms plummeted from more than 200,000 to about 80,000. However, the number of hogs remained relatively unchanged.

A recent Congressional Research Service report notes that the four largest packers slaughtered 57 percent of all hogs in 2001 compared to 40 percent in 1990. The report also indicated that these packers only purchase at most 25 percent of their hogs on the spot market, compared with almost 90 percent a decade earlier. On the beef side, the four largest packers accounted for 68 percent of all slaughter in 2001, up from 59 percent in 1990.

It is plain to see that larger operations and increased packer control lead to more restrictive markets and lower prices for producers. One of the most straightforward changes which I believe would have a timely and positive effect would be to ban packer ownership of livestock. I was very disappointed that such a provision was removed during the Farm Bill conference last year. I would like to take this opportunity to state that I am cosponsoring a bill introduced by Representative Leonard Boswell (D-IA) which would prohibit livestock packers from owning, controlling, or feeding livestock to the point that the producer no longer materially participates in the management of the operation. The bill includes exceptions for livestock held for no more than seven days before slaughter, certain cooperatives, and certain small producer-owned or producer-controlled packers.

Such a ban would move the market more toward the goal of greater price transparency and away from vertical integration. Importantly, it would remove a key means of packers to manipulate the market. In doing so, I believe that it would improve prices for livestock producers and improve their access to markets.

During listening sessions and other meetings with constituents, agricultural producers have made it clear that the consolidation and concentration of firms that sell supplies to farmers and among those which buy their crops and livestock is hurting family farm operations. This is an issue which I heard about from my constituent farmers on many occasions. This rapid and substantial concentration of agricultural firms has created a sense of both outrage and hopelessness among producers. The issue of monopolies and vertical integration for economic power in the marketplace is probably the single most important reason my constituent farmers are increasingly pessimistic about the future for family farmers.

Instituting a ban on packer ownership of livestock will not by itself solve these problems. However, it will be an important first step in giving more control to producers.

Again, Chairman Hayes, thank you for providing this opportunity to focus attention on the packer ownership of livestock.

Statement by Congressman Ed Case of Hawaii
for the Livestock and Horticulture Subcommittee
of the House Committee on Agriculture
Field Hearing to Review Packer Ownership of Livestock
Grand Island, Nebraska

June 21, 2003

Chairman Hayes, Ranking Member Ross, and Members of the Subcommittee,

Thank you for this opportunity to testify on the issue of packer ownership of livestock. This is an extremely important issue to the cattle industry in Hawaii.

Banning packer ownership of livestock would have a devastating effect on the Hawaii cattle industry. Given Hawaii's distance from markets and the costs and many difficulties of shipping between Hawaii and the U.S. mainland, many ranchers ship cattle after weaning across the Pacific for finishing on mainland pastures and feedlots. Shipping grain to Hawaii or mature cattle to the mainland are not economically feasible options. Therefore, many ranchers in Hawaii belong to marketing alliances that are made up of ranchers, feedlot operators, and beef packers.

Historically, the cattle business (meat business) has been segregated into different production segments: cow/calf producers, stocker operators, feedlot operators, packers, and retailers. The most efficient way of marketing one's product is through vertical integration of the industry. This can be done by the cow/calf producer if the rancher retains ownership of his product through each production segment allowing the cow/calf producer to share in the "value-added" process. Beef sold as a commodity is subject to supply and demand cycles. While there is major price fluctuation at the commodity level, there is very little at the retail level. In fact, retail prices seem to keep rising.

By becoming a member of a marketing alliance, cow/calf producers are able to participate in the value-added process and thereby provide some income stability for their ranching operations.

In Hawaii, three of our larger ranches—Parker Ranch, Kahua Ranch, and Ponoholo Ranch—belong to an alliance called the Ranchers Renaissance. This group is made up of ranchers from across the country and has several feedlot partners. Both Parker Ranch and Ponoholo Ranch have major ownership interests in two of the partnering feedlots. The packer partner, Excel Corporation, is technically the owner of an interest in the cattle while on feed.

Other Hawaii ranchers participate in marketing alliances or grids that follow a similar format. A disallowance of this format would cause a drop of cattle prices to producers and would severely hurt the Hawaii cattle industry.

I urge the Subcommittee members to resist efforts to prohibit the innovative and efficient partnerships developed by the cattle industry in Hawaii and elsewhere that allow these industries to succeed.

STATEMENT OF THE HONORABLE SENATOR TIM JOHNSON

HOUSE AGRICULTURE SUBCOMMITTEE ON LIVESTOCK AND HORTICULTURE

FIELD HEARING ON MEATPACKER OWNERSHIP OF LIVESTOCK AND PROPOSALS TO BAN PACKER OWNERSHIP OF LIVESTOCK

JUNE 21, 2003

Mr. Chairman, thank you for conducting today's hearing and for the opportunity to offer written testimony on my legislation to ban packer ownership of livestock.

Last year, Senators Harkin, Thomas, Grassley and I offered an amendment to the farm bill to ban the ownership of livestock by meatpackers for more than 14 days prior to slaughter. Called the "Johnson amendment," this provision was enacted by the Senate but removed from the final farm bill in conference negotiations.

This year, I joined Senator Grassley to sponsor near-identical legislation, S. 27. I am pleased that my South Dakota colleague, Rep. Bill Janklow, is a sponsor of companion legislation in the House of Representatives, HR 719.

The objective of legislation to ban packer ownership of livestock is to increase competitive bidding, choice, market access, and bargaining power to farmers and ranchers in livestock markets. I believe America's free enterprise system only works if we have more competition, not less.

Our legislation strengthens Section 202 of the Packers and Stockyards Act of 1921--an 80 year old law--by prohibiting meatpackers from owning, feeding, or controlling livestock for more than 7 days prior to slaughter. Currently, packers are already prohibited from owning sale barns and auction markets.

The majority of farm, ranch, and livestock organizations in the U.S. have called upon Congress to enact legislation prohibiting large meatpackers from owning livestock prior to slaughter. The Organization for Competitive Markets, the American Farm Bureau Federation, the National Farmers Union, RCALF-USA, the Center for Rural Affairs, and every single farm organization in South Dakota supports legislation to ban packer ownership of livestock.

Thanks to broad, bipartisan support, we were able to pass my legislation calling for a packer ownership ban twice during consideration of the farm bill in the Senate. Unfortunately, this provision was killed by House conferees while the farm bill was pending in conference committee earlier this year.

During the farm bill conference committee, Senators Harkin, Daschle, and Grassley helped to develop a number of compromise alternatives to the packer ban for the House to consider. First, we offered for discussion a proposal allowing packers up to four years to divest of their packer owned livestock (rather than 18 months). This offer was rejected by House farm bill conferees. Second, we discussed a creative approach to require packers to procure up to 25 percent of their daily slaughter needs from the cash market. When we asked the House if they would consider this approach, they flatly rejected it. Finally, we even suggested "grandfathering" existing packer ownership levels, and making our legislation prospective rather than retroactive. Like a broken record, the House negotiators rejected even this compromise.

If meaningful competition is not restored to cattle and hog markets, livestock producers in the U.S. will become low-wage employees on their own land, working for the packing firm, bearing all of the economic risk, but none of the potential gain.

The national food industry, comprised of packers and retailers aligned in order to leverage market power, continues to grow economically while independent livestock producers receive a smaller share of the consumer food dollar.

As a result, we have a meat-food industry which is doing well at the expense of our farmers and ranchers. It's evident that supply and demand signals are not in control of livestock markets, other forces are at play. Livestock markets are dysfunctional due to lack of competition and unfair trade practices. We need to strengthen the law, restore competition, and protect free enterprise, before farmers and ranchers become low-wage employees on their own land.

Economic and legal experts, who are independent and have not received any financial support from the major meatpacking firms, have conducted a thorough analysis that supports my packer ban legislation and clarifies the debate about this issue.

This team of four experts in agricultural economics and law (John Connor of Purdue, Peter Carstenson of the Wisconsin School of Law, Roger McEowen of Kansas State, and Neil Harl of Iowa State) co-authored a report earlier this year indicating that the Senate packer ownership amendment to the farm bill addressed real problems in the competitive environment of the livestock industry, and that the claimed harm arising from the amendment was misleading at best.

Their report indicated that as the farm-to-wholesale price spread for beef has increased from the 1993-2001 time period, packer profits have increased, and competition, access, and bargaining power for independent producers has been choked-off.

Moreover, the report indicates that hog and cattle markets have 3 buyers at best, and one at worst, in any given geographic area. If a packing plant shuts down or a packer pulls out of the market for other reasons, prices suffer.

In 2001, 83 percent of hogs were committed to packers due to ownership or contract arrangements. This scenario leaves only 17 percent of the hogs in the cash market. The

beef industry is also trending towards thinner open market volume. A report released by USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) in January revealed that 32.3 percent of the annual cattle slaughter was committed to packers through ownership or contract arrangements. Twenty-five percent of that captive supply number (8% of annual slaughter) was packer owned. Without a ban of packer ownership, these percentages will simply increase, while competition will disappear.

Importantly, the report notes that ownership of livestock by packers guarantees them enough supply that the packers can strategically move in-and-out of markets to affect price trends.

If we are to restore meaningful competition for ranchers and independent livestock producers, I believe it's essential that my legislation to ban packer ownership of livestock become law.

This issue goes to the very heart of what agriculture will look like in the future. Will it be controlled by a handful of powerful firms, where farmers and ranchers are low-wage employees bearing all of the risk but none of the gain in the market?

Or, will it be a future with a strong patchwork of independent family farmers and ranchers contributing to rural communities that are diverse and economically strong?

Thank you Mr. Chairman for your leadership and for holding this hearing.

Testimony of Ken Bull
Vice President – Cattle Procurement
Excel Corporation

Prohibition of Meat Packer Ownership of Livestock

Before the House Agriculture Committee
Subcommittee on Livestock, Dairy and Horticulture

Grand Island, NE
June 21, 2003

Mr. Chairman and committee members, thank you for the opportunity to speak before you today. I appreciate the leadership of this committee in holding hearings on this divisive issue. This is the kind of thoughtful discussion that could have prevented the disastrous implications embodied in the country of origin labeling law.

There are many variations on the packer ownership ban. Some focus on ownership – while others focus more on the issue of "control" of livestock. Most often mentioned are:

1. A ban on direct packer ownership of animals – which I understand to be the position of the Nebraska Cattlemen;
2. A mandate that packers buy at least 25 percent of their livestock in the open cash market;
3. A mandate that packers have no more than 25 percent of their livestock in what is known as "captive supplies."

Because it will come up frequently in this discussion – it is important to define "captive supplies." By USDA definition, these are animals committed to a packer more than 14 days prior to slaughter – whether through forward contracts, direct ownership, formula or grid arrangements, shared risk arrangements, or other means.

It is important to put the ownership ban into appropriate perspective. Consider the following:

1. Of the five largest beef packers, only three directly own any feedlots, and these feedlots were purchased prior to their purchase of a packing house;
2. None of the major beef packers own cows or produce calves all of their cattle are purchased from producers;
3. Direct packer ownership, as reported by GIPSA and AMS, amounts to around 5% to 7% of the beef packers cattle needs. The cattle produced by my company are focused directly towards supplying our proprietary branded beef programs with retailers. We cannot enter into these retail arrangements without the assurance we have a committed supply. Our company has increased our direct marketing

expenditures from $500,000 ten years ago to $20 million today. Our retail partners are also making significant investments in marketing of these new branded programs.

4. Legislating out of existence these three cattle companies will take out of the market bidders and buyers of top quality feeder cattle that the ranchers of this state and neighboring states are known for producing. Put simply, ranchers need to decide if they will be better off eliminating potential buyers of their livestock.
5. Finally, and most importantly, the answer to market prices can be found in economic studies of supply and demand. For example, look at September, 2002. The industry was producing 550 million pounds of beef per week and the market was $64/cwt. By January, 2003 the supply had dropped to 480 million pounds and the market had climbed to $81/cwt. A drop in production of 13% caused an increase in price of 27%...all on steady to higher captive supplies. This is exactly what we would expect in a competitive market.

One cannot logically consider the notion of banning ownership or control without first understanding why these kinds of arrangements have become popular and are necessary to the industry. You have probably heard most of the reasons – but I would like to highlight the most important ones.

1. The advent of brandied beef has required unprecedented packer/producer collaboration and coordination to ensure the retailer has the consistent, high quality supply a brand requires. These new branded programs are now being embraced by retailers and are critical to the survival of the beef industry;
2. Special production protocols are being required by retailers to meet specific brand requirements and producers must have the ability to ensure a home for these cattle prior to investing these additional dollars. Longer term supply agreements with retailers are enabling packers to help even out the highs and lows of the market for both packers and producers – but packers cannot meet terms of supply agreements without taking steps to lock in supplies further out.
3. Formula pricing structures enable producers to differentiate their animals – creating important tools for producers to increase their income and for processors to find a niche in the competitive market place.
4. Formula and grid pricing structures allow the producer to better respond in a more timely fashion to the desires of the consumer;
5. Direct ownership of a relatively small number of cattle is critical as an insurance policy to keep our plants running at full speed and efficiency. We have an average of more than 2000 people per plant coming to work every day – and we have to pay them the same whether the plant is running at peak, or struggling.

Supporters of these types of restrictions lose sight of an important point. We would not have the vast majority of captive supply arrangements if producers didn't want them. And producers would not want them it they didn't benefit from them.

According to a February 2002 analysis from Purdue University, beef packers directly own only 5 to 7 percent of their supply, and pork packers directly own only 20 to 25 percent of their supply. This figure is inconsequential, particularly in the beef industry – but it is quite consequential to the firms who have invested millions of dollars in creating businesses and in employing people.

It is important to understand that if a packer ban is passed there will be a forced divestiture by three feeding entities in the beef industry. The capital needed to replace this divestiture would be around $600 million. Currently attracting capital to agribusiness is difficult at best, and the result could very well be the loss of these feeding operations from the marketplace. This would severely impact cow-calf operators who depend on these feedlots as the marketplace for their cattle. These three firms represent 7-8 percent of the total fed supply. Using an industry-accepted formula, the loss of this capacity would likely result in a corresponding 10 percent loss in feeder calf prices.

The legislation would harm cattle feeders in regions served by fewer packing plants. According to the Purdue study, "in 'fringe' areas where livestock production is limited, packers may need to own a portion of their livestock production to maintain an economically feasible throughput in their plants. By eliminating ownership, these plants may have no alternative but to shut down or be sold at a loss." The report goes on to say, "it would appear that this bill might favor regions where [market livestock] production is most concentrated, at the expense of less concentrated areas of production." These areas would include Washington State, Oregon, Idaho, Montana, Wyoming, California, and northern Colorado.

Another important point to consider is that if a partial ban is implemented then some producers will be forced out of these arrangements. Who will make the decision on which producers get eliminated? The packers? GIPSA?

Some important questions this committee will want to ask before embracing this kind of legislation are:

1. Should people support a packer ban knowing without a doubt that it places readily identifiable packing plants at risk which would in turn cause harm to the producers in those regions?
2. Should we embrace policies that take some of the most competitive bidders for feeder cattle out of the marketplace?
3. Is this worth eliminating some of the most innovative marketing programs in the beef industry?
4. Will this harm programs that reward producers for creating additional value?
5. Will we create new laws that make agribusiness a less attractive place for capital investment

These are essential questions that we urge you to consider in the strongest terms.

Again – I appreciate the opportunity to speak before you today.

NEBRASKA CATTLEMEN

"Representing the state's largest ag industry"

WRITTEN TESTIMONY

by

Nebraska Cattlemen, Inc.

for the

Captive Supply Field Hearing

Hosted by the

House Agriculture Committee
Livestock and Horticulture Subcommittee

College Park
Grand Island, Nebraska

June 21, 2003

The Nebraska Cattlemen represents nearly 5,000 cattle producers and feeders from across the state of Nebraska through 46 locally-affiliated organizations. Cattle production is the largest segment of agriculture in Nebraska, directly contributing over $5 billion to the state's economy annually. The Nebraska Cattlemen represents the state's cattle producers regarding public policy matters at the state and federal levels, and has devoted a tremendous amount of time and energy to the topic of captive supplies over the past several years.

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The Nebraska Cattlemen (NC) submits the following written testimony in support of the oral statement provided by Mr. Jeff Rudolph of Cozad, Nebraska at the field hearing in Grand Island, Nebraska on June 21, 2003.

Background Information

Direct packer ownership of livestock has been a divisive issue facing the U.S. livestock industry for years. Direct packer ownership represents one element of the larger focus on "captive supplies," which has received more attention recently by producers and elected officials. Direct packer ownership represents a small element of captive supplies in the beef cattle industry, but a significant portion of swine captive supplies.

In the beef cattle industry, packer ownership represents 6-8% of annual fed cattle sales, while captive supplies are pegged at 40-70% of the same figure. While the House Agriculture Committee's Subcommittee on Livestock and Horticulture hearing is to focus on the more narrow issue of packer ownership, NC's written testimony will address the larger issue of captive supply as well.

Relevant NC Policy

A number of NC policy statements are reviewed throughout this document in order to demonstrate the Association's positions on the variety of issues that make up captive supplies as they relate to the beef cattle industry.

<u>Packer Feeding policy</u>
Feedlot ownership and feeding of cattle by packers is not desirable.

<u>Uniform Marketing Policy</u> (excerpt)
Delivery Date: Cattle are sold on a "custom of the trade" seven-day pickup. If cattle are not picked at up the end of the seven days, feedyards have the right to "weigh the cattle over" to the packer and the packer is responsible for all charges incurred from then until the cattle are delivered to the packer.
Non-negotiated selling: Non-negotiated selling, including basis contracting, grade and yield selling, current "formula" marketing agreements or any other arrangements in which price is not competitively negotiated prior to shipment, are strongly discouraged.
Alternative Marketing Mechanism: In lieu of current "formula" marketing arrangements, NC proposes the use of a negotiated "grid" pricing structure, with the base price and spreads determined by competitive bidding between buying interests prior to shipment.

<u>Fed Cattle Marketing Information</u> (excerpt)
An official change in the Packers and Stockyard Administration definition of "captive supplies" to include all cattle committed to a given packer via a marketing agreement, forward contract, packer ownership or packer feeding in excess of seven days prior to slaughter. Combined with complete and accurate price and volume reporting, this change would allow government-reported data to give producers a more accurate picture of the number of cattle major packers acquire outside the cash market.

House Ag Committee Field Hearing
June 21, 2003
Page Two

Industry Segment Profitability
The Nebraska Cattlemen supports the principle that all industry segments (i.e. cow/calf, feedlot, packer/processor and retail) must maintain profitability long-term in order to assure the viability of the industry. While not all segments will be profitable simultaneously, it is not in the best interests of the industry to allow one segment to profit long-term at the expense of others.

House Ag Committee questionnaire

The Nebraska Cattlemen was requested by then Chairman Combest to respond to 23 questions regarding livestock marketing, issued by the House Agriculture Committee in a letter dated August 9, 2002. NC did respond to that request, and our 8-page response is attached to this testimony.

A summary of NC comments can be found in the Association's response to the first question, with excerpts listed below:

1. Characterize the strengths and weaknesses that exist in the current marketing system for livestock. Please outline the nature and scope of the problems you observe. Finally, describe an appropriate governmental role in maintaining a viable livestock marketing system.

- *The U.S. beef industry represents the most efficient protein production system in the world based on price, safety and wholesomeness of our product. Changes to the live cattle marketing system must be cognizant of any potential to undermine this efficiency which could negatively affect domestically and internationally competitive positions for the industry.*
- *Challenges exist due to the concentration of packers, processors and retailers (relative to the number of producers or "sellers") in the livestock industry. In addition, imbalances exist in certain locations between available numbers of market livestock and the capacity required for processing.*
- *In the minds of many producers, a great challenge that exists is establishing what they deem as a fair price for their livestock. Captive supplies of cattle that are committed without the benefit of negotiating for a price has the potential to put a downward bias on price by reducing the appetite (demand) for fed cattle.*
- *Mandatory price reporting –NC was a strong advocate for this program, which was not intended to increase prices (more details later), but rather to increase flow of information. Unfortunately, a well-intentioned law was maligned in the process of being implemented to the point that it had an initially-negative effect on price.*

(NC response to House Agriculture Comm. Questionnaire cont'd)
Appropriate role for government

- *A consistent definition of captive supply that more closely reflects industry perceptions.*
- *A revision of anti-trust laws (P&S and Department of Justice) to require federal agencies to include a consideration for "seller-side" impacts (in addition to "buyer-side" impacts) during review of mergers and acquisitions.*
- *A limit regarding captive supply numbers is interesting, but could be tough to enforce (too much disparity exists between cattle and swine to utilize a single system for both industries).*
- *If a limit cannot be accomplished, one could consider separate pricing methods for cash or spot-market transactions and captive supply transactions.*

These comments help provide a sound basis for NC's position regarding captive supplies in the beef cattle industry, and should help place into context the numerous other actions that have been taken by the Association over the course of the last several years.

4-State Captive Supply Workgroup

Please find below excerpts from the 4-State Captive Supply Workgroup press release (full copy attached to testimony):

> *"Leverage has been lost in the fed cattle sector due to a lack of seller discipline, increased captive supplies, structural changes in the industry and basic supply and demand fundamentals. Top-of-the-week trades were singled out as being especially detrimental to the market.*
>
> *"Realizing the fed cattle trade has changed and likely won't revert back to the way business was done in the past, those serving on the Working Group believes the feeding sector can recapture leverage in the marketplace through new ways of organization. Consensus of the Working Group was that providing a sound marketing alternative, such as a group marketing endeavor, could attract cattle currently sold under various captive supply arrangements. Participants recognized substantial cattle numbers would be necessary to make a group marketing venture successful.*
>
> *"Many cattle feeders, including some of those involved in captive supply agreements, are dissatisfied with the current marketing environment. Working Group members believe companies and organizations marketing cattle through consumer-focused, branded beef programs are taking the industry in the right direction."*

Support for 4-state Working Group Conclusions
The Nebraska Cattlemen supports the conclusion of the Four State Working Group that leverage in fed cattle marketing has been lost due to a lack of seller discipline, increased captive supplies, structural changes in the industry, and basic supply and demand fundamentals. NC also believes that significantly reducing captive supplies on a per-plant, per-day basis through the voluntary cooperation of producers would help cattle feeders regain leverage in the marketplace. The Association will actively seek a significant reduction in captive supplies.

Following the completion of the 4-State effort, NC modified its policy statement regarding captive supply to as follows:

Captive Supply policy (excerpt)
The Nebraska Cattlemen supports legislative measures that would restrict a packing entity from having more than 25% of its slaughter mix come from captive supplies on a per plant per day basis. Producer-owned branded beef programs shall be exempt from this restriction.

NC Research effort

NC members requested that a study regarding industry segment profitability be commissioned by the Association, stipulated as follows:

Evaluation of Industry Segment Profitability policy
The Nebraska Cattlemen commission an independent study of the historical and current trends in industry segment profitability, which includes an analysis of the basis for recent changes in the allocation of profit.

NC contacted numerous research firms and professionals across the country, but in the end was not confident that the proposals received and reviewed were adequate to achieve the goals established by our members. Therefore, it is imperative and with NC's support that USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) conduct the broad study of marketing methods in the livestock and red meat industries as mandated by Congress.

GIPSA research effort

As stated earlier, NC appreciates efforts by Congress to establish funding for a comprehensive study of livestock and red meat marketing methods by GIPSA. The May 30, 2003 Federal Register notice outlining the scope and approach of the study includes a 30-day comment period, and NC intends to file formal comments per GIPSA's request.

In a cursory review, NC would suggest that the scope of the GIPSA study not focus too much attention on the narrow topic of packer ownership, but rather be sure that the larger "captive supply" challenges facing the beef cattle industry be addressed. In addition to direct packer ownership, captive supplies include non-negotiated sales, forward contracts (without a negotiated base price), or other "priced-later" arrangements. To focus strictly on direct packer ownership represents only 6-8% of annual fed cattle numbers in the US.

Recent Legislative efforts

A number of legislative efforts to address captive supply issues facing the livestock industry have been offered at both the state and federal levels over the past few years. Some, including Sen. Tim Johnson's amendment to the 2002 Farm Bill, have even garnered great amounts of attention and focus by legislators.

In the end, it has proven difficult to reach a consensus among industry participants regarding such an approach. NC suggests that prior to any additional legislative efforts (at the state or federal level), the GIPSA study should be completed and its findings reviewed in order to provide guidance to elected officials.

Conclusion

Given the challenging nature of captive supply activities facing the beef industry, the Nebraska Cattlemen suggests that concerted industry efforts be devoted to making the GIPSA study authorized by Congress as technically sound and unbiased as is possible. The comment period that remains open is the first opportunity for the industry to participate in the development of this study.

Thank you for the opportunity to provide this statement regarding captive supply issues facing the beef cattle industry, and please feel free to contact the Association with further questions or comments.

NEBRASKA CATTLEMEN

"Representing the state's largest ag industry"

September 20, 2002

House Committee on Agriculture
Attention: Claire Folbre
1301 Longworth House Office Building
Washington, D.C. 20515

marketquestionnaire@mail.house.gov
phone: (202) 225-0026
fax: (202) 225-0951

Dear House Ag Committee Members:

The Nebraska Cattlemen appreciates this opportunity to provide our views regarding livestock markets in the US. Cattle production is the largest segment of agriculture in Nebraska, directly contributing over $5 billion to the state's economy each year. The Nebraska Cattlemen (NC) represents the state's cattle producers regarding public policy matters at the state and federal levels, and has devoted a tremendous amount of time and energy to the topic of captive supplies over the past several years. Thank you for providing this forum to express our views.

House Agriculture Committee To Examine Livestock Markets
The House Agriculture Committee is asking state and national producer groups to answer specific questions that will lay the foundation for hearings on the current state of livestock markets. The Committee is requesting that respondents provide detailed responses to the questions that examine the structure, health and fairness of the nation's livestock markets.

QUESTIONNAIRE REGARDING LIVESTOCK MARKETING
HOUSE COMMITTEE ON AGRICULTURE - WASHINGTON, D.C.

1. Characterize the strengths and weaknesses that exist in the current marketing system for livestock. Please outline the nature and scope of the problems you observe. Finally, describe an appropriate governmental role in maintaining a viable livestock marketing system.

- *The U.S. beef industry represents the most efficient protein production system in the world based on price, safety and wholesomeness of our product. Changes to the live cattle marketing system must be cognizant of any potential to undermine this efficiency which could negatively affect domestically and internationally competitive positions for the industry.*
- *Challenges exist due to the concentration of packers, processors and retailers (relative to the number of producers or "sellers") in the livestock industry. In addition, imbalances exist in certain locations between available numbers of market livestock and the capacity required for processing.*
- *In the minds of many producers, a great challenge that exists is establishing what they deem as a fair price for their livestock. Captive supplies of cattle that are committed without the benefit of negotiating for a price has the potential to put a downward bias on price by reducing the appetite (demand) for fed cattle.*

- *Mandatory price reporting –NC was a strong advocate for this program, which was not intended to increase prices (more details later), but rather to increase flow of information. Unfortunately, a well-intentioned law was maligned in the process of being implemented to the point that it had an initially-negative effect on price.*

Appropriate role for government

- *A consistent definition of captive supply that more closely reflects industry perceptions (see question #2 for details).*
- *A revision of anti-trust laws (P&S and Department of Justice) to require federal agencies to include a consideration for "seller-side" impacts (in addition to "buyer-side" impacts) during review of mergers and acquisitions.*
- *A limit regarding captive supply numbers is interesting, but could be tough to enforce (too much disparity exists between cattle and swine industries to utilize a single system for both industries).*
- *If a limit cannot be accomplished, one could consider separate pricing methods for cash or spot-market transactions and captive supply transactions.*

2. The Grain Inspection, Packers & Stockyards Administration's (GIPSA) definition of "captive supply" differs from many in the livestock and meatpacking industry. Why? Given that GIPSA's definition differs from many in the regulated industries, should GIPSA modify its definition? As we have seen, different individuals have different notions about the term "captive supply", which often complicates discussions about livestock markets. Please define the term captive supply.

NC's policy seeks a definition of captive supply as follows: "Captive supply includes all cattle committed to a given packer via a marketing agreement, forward contract, packer ownership or packer feeding in excess of seven days prior to slaughter. Combined with complete and accurate reporting, this change would allow government reported data to give producers a more accurate picture of the number of cattle major packers acquire outside the cash market."

Additional concerns include the presence or absence of negotiation in determining price, whether all packers have access to view/purchase cattle (competition), or if the agreed-to price is conditioned off the sale price of other cattle. Captive supply cattle are scheduled for processing at the beginning of the week, allowing packers to meet a portion of their needs without entering the cash market. This could force producers to "dump" cattle late in the week at a lower price out of desperation. While the captive supply cattle may net back slightly more, they are usually priced off the cash market, which they have helped to depress.

3. Should captive supplies be reduced to 50%, 25%, 0%, or some other number? What criteria should a packer use to reduce captive supplies? Which current feeders will be eliminated from the captive supply chain? Who will make this decision? How will we measure the success of limiting or eliminating captive supplies?

NC's Board of Directors has established interim policy that supports a cap on captive supplies at 25 percent of a packer's capacity. This limitation would also be placed on *feedlots, who would be limited in the same fashion. Such limitations would have to be over a specified time frame, such as week, month or year.*

NC is not sure which particular feedlots might be affected by such limitations and we also feel it is inappropriate for us to list such firms if we were aware of them. Feedlots would not be forced to disperse, but rather could modify their pricing mechanisms.

Measure of success of limits to captive supply could be in several ways – actual reduction in reported numbers of captive supply, and increase in liquidity of underlying spot market are two examples. Furthermore, if the live cattle market became more responsive to changes in wholesale beef prices (and ultimately retail beef prices) would demonstrate substantial success.

4. Are you familiar with any empirical studies which have been conducted to determine what the current price of fed cattle would be if there were no captive supplies today? Will eliminating captive supplies put beef at a long term disadvantage to pork and poultry in the development of new branded convenience products?

Not sure of any empirical studies that could quantify the change, positively or negatively. The frequently-referred to Sparks study contains numerous flaws that discount its application to this question.

If one suggests that procuring supply is the most important factor in the success of ongoing and future branded beef programs, then the elimination of captive supplies could be detrimental. It may be more healthy to develop a model where competition for those types of cattle is encouraged and increased, allowing the new pricing system to benefit the producer and processor.

5. In lieu of current alliance systems, what type of production and marketing system will provide a quality and consistent product needed for branded meat products?

A system that encourages competition, which sends clear market signals from the consumer (demand) to the producer (supply), and rewards producers who most closely meet the program's identified targets (quality, yield, location, time frame, etc.).

6. Do contracts, alliances or other kinds of marketing agreements improve or harm marketing alternatives for all size producers? Since some lenders require price protection (hedges, forward contracts, etc) for cattle production loans, what alternatives will replace forward contracts?

Contracts, alliances, or other kinds of marketing agreements themselves do not improve or harm the marketplace for livestock. The presence or absence of competition and adequately negotiated prices determine the impact on producers. If these programs better target consumer demand through a system of competitive, openly-negotiated pricing, they provide the ultimate benefit to the beef industry in the future.

Hedges, forward contracts, and other forms of risk management are important to lenders and producers. These systems are not in jeopardy of being eliminated through the constraint of captive supplies if they are negotiated and based on widely-traded and liquid market indices (such as the Chicago Mercantile Exchange). Many forward contracts include a timeframe during which the producer sets the price, based on the CME contract price and a previously agreed to basis figure.

7. Should independent, producer-owned plants, feedlots, marketing cooperatives and other livestock businesses be subject to the same level and kinds of legal and regulatory restrictions as more traditional livestock operations are currently and in the future?

In order to restore competition to the marketplace, all industry participants should be subject to a similar (as appropriate) level of regulatory oversight.

8. What role do purchasing arrangements by major retailers have on packer pricing, captive supplies and other marketing and production arrangements? What is the current farm-to-retail price spread? How has this changed over time? What role have captive supplies had in altering the spread? Will a further regulation of captive supplies or other governmental intervention in livestock markets impact the spread? How?

We have not reviewed any retailer purchasing arrangements, but understand that many limit upside price risk by incorporating a "no higher than" pricing clause, which shifts price risk to the packers (and ultimately to producers). If that is the case, packers could choose to increase captive supply numbers to help address this price risk challenge.

Price spreads (farm to retail, etc.) are affected by numerous factors, some of which have a more direct impact than others. Packers will rightfully claim that the cost of regulations (i.e., HACCP, price reporting, etc.) have increased their cost and caused an increase in packer margins (and the price spread). In addition, packers have added more value to beef products and that incremental increase in risk has also affected the various price spreads.

A better measure may be to evaluate how the consumer dollar is distributed among segments of the industry. As value has been added to beef products, theory would hold that the value generated by that change would "trickle" through the entire beef industry production chain (from farm to retail). Unfortunately, that appears to many producers to be where our current marketing system breaks down -- failing to send clear market signals from the consumer to the producer.

9. Numerous policy proposals have been discussed in Congress recently. For instance, a ban on packer ownership was debated during the farm bill and a packer requirement to purchase 25% of their daily slaughter from the cash market is being discussed now. Please highlight the economic effects of each of these on all of the participants in the livestock production sector in both the near and long term.

If a limitation on captive supplies reduced feedlot capacity in the US (i.e., liquidations), then the short-term impact to feeder cattle prices would be negative (all other things equal). Given the excess feedlot capacity that exists in the US (10-20 percent), the feeding industry would limit the extent of this short-term decline in feeder prices.

If this limitation regarding captive supplies restores competition to the industry in the long-term, one could anticipate that prices for fed cattle and feeder cattle could ultimately be higher (once again, all other factors being equal).

10. Mandatory price reporting was advocated as necessary to improve market transparency and price discovery. Implicit in the arguments of individuals advocating mandatory price reporting was the idea that this improvement would lead to higher prices for producers. What has been the effect of mandatory price reporting on producer prices?

The Nebraska Cattlemen provided strong support for the adoption of mandatory price reporting, actively participating in the drafting of legislation language and throughout the regulatory process. The Association was careful to consistently tie mandatory price and volume reporting with an increase in market information, but not an increase in market prices.

Therefore, the only direct impact on price that could be attributed to mandatory price reporting is the negative price implication when the system was not administered properly at its inception. The Nebraska Cattlemen believe that benefits will be realized when MPR is fully implemented by USDA, including wider coverage of boxed beef sales and a much-improved retail price reporting series.

11. How does one reconcile the assertion that packers manipulate the market with the fact that prices move both up and down?

Only in a fully captive market could one assume that packers would fully control live cattle prices. The effect of a partially captive market is a negative bias, not full control. As stated several times, the cattle market is affected by numerous factors, including captive supplies.

12. What structural and/or economic transformations have occurred in the livestock, poultry, meat and retail industries in the past decade? To what extent have these transformations been caused or influenced by consumer demand or purchasing habits?

More vertical and horizontal coordination through alliances, contracts or other methods to help consistently procure necessary supplies of cattle. Consumer demand could claim no greater role in causing these structural changes than could efforts by packers to improve efficiency in purchasing or to assure consistent supplies of market-ready livestock.

Many producers feel that this very change – more coordinated processing and retail segments of the industry – have increased efficiency but not increased prices at the producer level.

13. Has the merger and acquisition activity in these sectors been greater than similar activities in other segments of the U.S. economy such as other food or consumer product manufacturers or retailers? What factors have motivated mergers and acquisitions within these sectors?

Beef processing appears to be the most concentrated segment of agriculture, with retail meat sales becoming more concentrated in recent years. Certainly other industries are more concentrated, but may not have the same ability to influence the price of input products that beef packers seem to have.

14. What factors have motivated vertical integration within these sectors? Are all vertical integration models the same? If not, describe various models and their benefits or detriments for consumers, retailers, manufacturers and producers.

The beef industry does not experience a high degree of true "vertical integration," but rather loose production agreements among various segment participants.

We are not familiar with various vertical integration models, and as such will not be providing comments on those questions.

15. During the past 10 years, which meat packers have increased packing capacity and/or built new packing facilities -- those who own or contract for some or all of their livestock, or those who do not?

The beef industry has seen few, if any, new packing facilities built in the past 10 years. Several existing facilities have expanded and/or upgraded their facilities to increase capacity. During the past 10 years, several packing facilities have closed in Iowa, Kansas, Colorado and Nebraska.

New "packers" have entered the industry in the past ten years (most refurbishing existing facilities). These new programs have, in many cases, included captive supplies or other forms of "contracting" for their livestock needs.

16. Does the business structure of the current U.S. retail; meat and poultry processing; and livestock production sectors optimize productivity, quality and profitability for each sector? Why or why not?

It would appear that the cyclical nature of the cattle industry demonstrates that optimization has not occurred, at least at the livestock production sector. The industry lacks a system of communication where clear market signals are sent from consumers (demand) through retailers, processors and packers, and received by producers who could adjust supply and eliminate wide price swings for live cattle.

17. Based on a competitive analysis of these sectors, which are better positioned for business success or failure? Why?

In some form, all segments will succeed to meet consumers' demand for beef in the US and abroad. Given the concentration that has occurred in the packing and processing sector, one might assume that the production sector could see similar changes. For many producers, this anticipated concentration represents one of their greatest fears – that they will not be able to be "big" enough to survive in the industry!

18. Would an analysis of farm, processing and retail margins for meat products over the past decade show that any one of these sectors has greater power or profitability than any other? Why?

The Nebraska Cattlemen believe that such a research project should be initiated. This project should evaluate the past decade, and make comparisons of this time frame to previous cattle cycles to see if similarities or differences exist.

19. How do these production/processing/retailing sectors compare with similar chains in other consumer product manufacturing industries, such as the automotive, dairy or pharmaceutical industries? What lessons can be learned?

In many ways, it is impossible to compare fresh food industries (such as beef) to other production industries where shelf-life and loss of quality are not an issue. In addition, beef production is diverse and geographically dispersed, which makes such comparisons challenging to say the least.

20. What are the drivers of and barriers to profitability in today's livestock production, meat and poultry processing, and retail industries?

DRIVERS (incomplete list-production only): demand relative to supply, consumer acceptance, product convenience, export demand.
BARRIERS (incomplete list-production only): supply relative to demand, consumer concerns, quantities of competing imported and domestic products, regulatory costs, cost of entry (land, cattle, feed, etc.).

21. What effect do vertical integration, contracting and other supply-management strategies in the meat and poultry production/processing/retailing chain have on consumers? Retailers? Processors? Producers?

In a perfect world, the consumer would enjoy a product more consistent in quality and price. Unfortunately, the consumer signals necessary to transmit that information to the production sector are not efficiently communicated (even with most branded beef programs) through the retail and processing segments. This information disparity has benefits to packers and processors, who can channel their efforts toward animals that more closely satisfy consumer demands. The producer would be better served by a new marketing system that delivered consumer demand information more efficiently.

22. Does the current Packers and Stockyards Act need to be modernized to respond to changing conditions in the livestock sector? If yes, please outline the specific changes and/or additions to current law and resources that would be necessary to accomplish this goal.

- *A consistent definition of captive supply that more closely reflects industry perceptions (see question #2 earlier for details).*
- *A revision of anti-trust laws (P&S and Department of Justice) to require federal agencies to include a consideration for "seller-side" impacts (in addition to "buyer-side" impacts) during review of mergers and acquisitions.*
- *A limit regarding captive supply numbers is interesting, but could be tough to enforce (too much disparity exists between cattle and swine industries to utilize a single system for both industries).*
- *If a limit cannot be accomplished, one could consider separate pricing methods for cash or spot-market transactions and captive supply transactions.*

23. Because the issue is so complex, it is impossible to cover the entire topic of livestock markets in one set of questions. This questionnaire, and the ongoing public policy debate, will inevitably require additional inquiry. Please take a moment to suggest additional questions you would like to see asked. These should not just be those you would like to answer but those you would like to see put to other actors in the livestock sector.

Frankly, as I complete this questionnaire, I am too exhausted to consider other questions that might be asked of industry participants.

Thank you for this opportunity to provide input on behalf of Nebraska's cattle producers. Please do not hesitate to contact me for further information or with questions.

Sincerely,

Greg Ruehle
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FOR IMMEDIATE RELEASE – September 11, 2002

WORKING GROUP DISCUSSES REGAINING LEVERAGE IN FED CATTLE MARKET

(GARDEN CITY) – Members of a special Four-State Working Group decided to pursue the concept of collective marketing for the fed cattle sector following a meeting in Garden City. The 21-member group came to these conclusions after hearing presentations by several leading cooperatives in the beef business and engaging in extensive discussion on ways to regain leverage in fed cattle marketing.

The Working Group based its deductions on the premise that government intervention is not the preferred solution. Members favor a voluntary, industry-driven approach to solving the challenges faced by cattle feeders.

Leverage has been lost in the fed cattle sector due to a lack of seller discipline, increased captive supplies, structural changes in the industry and basic supply and demand fundamentals. Top-of-the-week trades were singled out as being especially detrimental to the market.

Realizing the fed cattle trade has changed and likely won't revert back to the way business was done in the past, those serving on the Working Group believe the feeding sector can recapture leverage in the marketplace through new ways of organization. Consensus of the Working Group was that providing a sound marketing alternative, such as a group marketing endeavor, could attract cattle currently sold under various captive supply arrangements. Participants recognized substantial cattle numbers would be necessary to make a group marketing venture successful.

Many cattle feeders, including some of those involved in captive supply agreements, are dissatisfied with the current marketing environment. Working Group members believe companies and organizations marketing cattle through consumer-focused, branded beef programs are taking the industry in the right direction.

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Four-State members want to work closely with the National Cattlemen's Beef Association Value Discovery Think Tank to identify a new pricing benchmark that relieves pressure on the cash market and moves away from using sales of cattle valued on averages.

The Four-State Working Group was created to address challenges and arrive at solutions that improve fed cattle marketing. Project assignments were made for a subcommittee to develop the details of group marketing alternatives by September 30. The full group will meet in October to review the recommendations and determine the next steps. Members of the group represent the Kansas Livestock Association, Texas Cattle Feeders Association, Kansas Cattlemen's Association, Nebraska Cattlemen and Colorado Livestock Association.

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AGRICULTURE COMMITTEE HEARING

Livestock and Horticulture Subcommittee
Saturday, June 21, 2003
Grand Island, Nebraska

Presented By
Dave Hansen, Pork Producer
Hartington, Nebraska
President of The Nebraska Pork Producers Association

Thank you for the opportunity to visit with you this morning. My name is Dave Hansen, my family and I own and operate a family farming operation near Hartington, which includes a farrow to finish pork production operation. I am currently serving as president of the Nebraska Pork Producers Association.

The members of the Nebraska Pork Producers Association have continuously supported the state's constitution, which includes the provisions of our Initiative 300. In essence, Nebraskans has been living with a Packer Ban for the last 20 years.

During the 30 years that I have been involved in my operation, we have all seen the structure of agriculture change considerably. The pork industry in Nebraska is no exception. The most obvious change has been the reduction in number of producers, as we lost nearly 9000 producers in the last 10 years, with the current number dipping below 2900.

USDA Ag Statistics also reported our loss in pork production, with inventories dropping from 4.6 million to the current number of 2.9 million. Associated with this loss of producers and the loss of production, we have also seen a loss of many of the goods and services needed for our rural communities to survive.

Nebraska is fortunate to be the home of three major pork, processing facilities, and producers have access to several other major as well as smaller facilities. One of the concerns we have is the fact that a major percentage of the hogs processed in our state, are imported from other states, to supply the necessary numbers to keep these facilities operating. The loss of any one of these facilities would adversely affect the marketing ability of all Nebraska producers.

We are also concerned about economic viability within our industry. This includes the economic future of individual producers, as well as the economic stability of the many rural communities across our state.

Recognizing the needs of our producers and our communities, in 2001, the Nebraska Pork Producers Association carried a resolution to the National Pork Forum, requesting that "That the National Pork Producers Council (NPPC) ask USDA and or corresponding agencies, outside NPPC, with expertise in the swine industry, to conduct an immediate study, regarding the direct effects of packer ownership on the market place and independent producers. This resolution was also passed at the national level.

In requesting this study, we recognized that the issue of packer ownership of livestock, and the implication of what many refer to as "captive supply," is an extremely emotional and controversial issue among livestock producers.

We are pleased to note that The Grain Inspection Packers and Stockyards Administration (GIPSA) will spend $4.5 million of its Fiscal Year 2003 budget appropriation to conduct a comprehensive study analysis of the livestock and meat marketing industries as mandated by Congress.

There are two major issues involved in this discussion.

The first issue is the actual ownership of animals by packers. While packer ownership is prohibited in Nebraska, we recognize that what happens across the country has a direct impact on our producers. We have questions regarding these impacts. Are packers controlling the market through their ownership, and what impact does that have on the actual supply and demand that is supposed to direct our prices?

Next, we wonder what the effect will be if a ban on packer ownership were to be put in place. Will we loose packers and markets? With the packing industry we have access to in Nebraska, if we were to loose a packer, we are concerned what impact that could have on all producers and if further producer losses would take place.

Again, we feel we need to understand what the effect will be on all producers in Nebraska, before any legislative actions are taken.

The second issue involves the use of advance marketing arrangements.

In a pork industry like we have in Nebraska, most of our independent producers work closely with their financial partner. Many of these banking arrangements are dependent on the producer having an adequate risk management program in place, in order to obtain a financial commitment. For many producers, their risk management plan involves arrangements made with a packer in excess of 14 days prior to delivery of the animals.

As an independent producer, I have found a long-term packer relationship is a vital link in the overall success of my operation. In visiting with other producers across the state, I have identified this as a key factor in the success of many producers, of varying sizes and operating styles.

I also recognize that there are those who have very strong feelings on both sides of this issue. When discussing a situation that will have a major impact on an entire industry, we need to be sure to base any decisions on sound facts and not on emotional considerations.

For any enterprise to progress and be as efficient as possible, it needs to be using the most modern and up to date technology available. In pork production, as in any agricultural enterprise, maintaining a modern operation involves the investment of thousands of dollars.

As an example, investment in a modern farrowing facility will run in the area of $800-900 per sow, while finishing facilities are costing $160-200 per head. These investments are necessary to promote pork production that is socially, environmentally and economically acceptable. In order to encourage these types of investments, producers need to have options available to them to manage their risk.

As the trade association for the pork industry in our state, the NPPA has developed a mission to communicate opportunities within the pork industry that will encourage profitability and sustainability for Nebraska's producers of pork

We are currently encouraging producers to maintain a profitable and viable pork production industry in our state. To that end, we feel it is important for independent producers to have access to opportunities to develop their individual enterprise.

I again thank you for the opportunity to share my views with you, and will be open to answering any questions.

Testimony of

Marcus Harward

to the

House Agriculture Subcommittee on Livestock and Horticulture

The Honorable Robin Hayes, Chairman

Submitted on behalf of the

National Cattlemen's Beef Association

June 21, 2003

Grand Island, Nebraska

Chairman Hayes and members of this subcommittee:

It is a pleasure to be in Grand Island, Nebraska to discuss with you the issue of packer ownership of livestock and legislation that would ban this practice. My name is Marcus Harward. I am from a small town of 5000 people, Richfield, North Carolina, located in the part of the state called the Southern piedmont region. Our main agricultural crops are beef cattle, pork, chicken, turkey, corn, soybeans, cotton, and small grains. All my life, I have lived on the same farm that my father bought in 1961. We started out growing beef cows, hogs, and small grains. Now all we grow are beef cows along with hay. I also own and operate Stanly County Livestock Market, a local sale barn facility that sells approximately 600 head of cattle per week. I have a customer base of 1500 producers and our average customer sells 45 head per year. We also sell 43% of all the state graded feeder calves marketed in North Carolina through our feeder calf sale specials.

When I was asked to talk to you today about my thoughts on the issue of packer ownership of cattle, I tried to look at the whole picture of our beef industry. I have a perspective on asking our government for help that I would like to share. My father worked as a Federal Livestock inspector for the U.S.D.A for 27 years. During his time as an inspector, I saw first hand as a boy the paperwork and red tape involved in his job. I saw the lack of cooperation and coordination of the different USDA departments. I saw him perform tasks and fill out surveys that did nothing to add value or help in anyway, except help the bureaucracy. I respect the work that government officials do to help make our country the greatest nation on this planet. But I am against the government controlling my rights as a livestock owner. I am opposed to legislation seeking to ban packer ownership and would simply like to tell you why.

The market I run in North Carolina is not a big market, but it helps to pay our bills. We need the sale barn as well as our beef cattle operation, to get by and keep the family fed. I sell all my cattle through my market. If we let our government control who owns or feeds cattle, then where does it stop? Who is to say that one day, someone or some organization will say, that by me selling my own personal cattle, through my own market place, I am running the local farmers' cattle prices down. I could be accused of flooding my market. Who is to say that they will stop there? I know this might sound like I am out in left field behind the fence, but ranchers have to face something—Do you want government folks, who have never been on a ranch or farm dictating how you run your operation? I do not!

If you ask me what the solution is to this problem, I cannot give you a complete answer on that. All I can say is what I have seen in my market place. Supply and demand are two words that mean everything to any business—especially the cattle business. I know there are many efforts underway to help solve the long term problems with producer profitability and identify ways to improve price discovery, manage risk, and find news ways to add value. I also know that different parts of the country have different problems. But I don't want legislation to pass that benefits one class of producers, or one region of producers and hurts others. I am afraid this legislation will do that by hurting me and cattle farmers that sell cattle through my market.

I know there was a study done on this issue. The results show that I could lose 44 dollars on each calf that I sell. I do not want this to happen to my family business or to my customers. Sure there are other studies that may say something different. And that is the point. Not only is there no consensus among producers, there is nothing near consensus among those that do these studies. Included in my testimony is a document from leading agricultural economists asking themselves how agriculture economists can do a better job evaluating these policy issues. Not only do they disagree on the results of the studies, it has forced them address even more fundamental questions about the way they review and handle these tough issues.

To do something without solid consensus is an invitation for disaster. To help find some common ground, NCBA requested for Congress to provide money for a broad study on packer ownership, captive supply issues and the entire meat side of our business. USDA is in the process of putting this study together using the $4.5 million provided by Congress. Included in my testimony is a recent Federal Register notice asking for comments on areas for further study and suggestions for those that could do the study. This is the type of information we need to make the best decisions for our families and our businesses.

When the Canadian border shut down, we were first concerned, and then we saw that prices went up, meat started coming to market earlier, and calf prices went from $.85 to $.95 in just weeks. But I do not think we need to shut down our borders—we are all in a global market, whether we like it or not. We will always need help from them, just like they will need help from us. But what if instead we could raise the value of our beef? What if we could get the beef consumer to buy ten more pounds of beef in a year? What would that do to our profits?

We are in this beef family together. Instead of fighting each other, let's use that energy to get more of our beef into the hands of the consumer. We still need to support legislation and government programs that help us all, but I do not think the government needs to be in this issue. For every hour two of us spend fighting over issues like this, that's two hours we are not working on improving demand for our product.

I believe whatever direction we take things have a way of working out. But at what cost to my family? On issues that are such significance, I don't want to run along on blind faith and rely on woulda's, shoulda's, and coulda's for my livelihood. I don't want to tear down my house in the hopes that I might be able to build a mansion with the pieces.

I believe a ban on Packer Ownership will result in fewer profits for all of us in the long haul and especially hurt the cattle farmers in my area.

I would like to thank you for inviting me to this meeting. These are my own personal views on this issue, whether they are right or wrong, this is what I believe in. I'll be happy to take any questions from the panel.

Testimony of Robert Byrd Kornegay
Pork Producer
Before the
House Agriculture Subcommittee on Livestock and Horticulture
July 21, 2003

Thank you Chairman Hayes and members of the Subcommittee for the opportunity to speak here today.

My name is Robert Kornegay and I am a pork producer from Duplin County, North Carolina. Today I am speaking on behalf of the thousands of North Carolina farm families and their communities that would be negatively impacted by a ban on the ability of packers to own animals and contract with pork producers.

Let me start by telling you the importance of contract production to me and my family. I have been a pork producer since 1987. Contract pork production has afforded me and my family the opportunity to earn a reliable income and stable means of providing for my family and remaining a vital part of the economy of my community. Pork production and other farming endeavors have enabled Duplin County to grow and prosper over the last two decades. This would not have occurred without the ability of producers to partner with packers and integrators to raise animals and remain on the farm.

The importance of contract pork production is not limited to my family but is crucial to the economic vitality of rural North Carolina. Individual family farms dominate North Carolina's pork production business with over 80% of the approximately 2,400 hog farms in North Carolina under contract with one of the packers or integrators in North Carolina. Proposals that seek to dismantle the current practice of packer ownership would have enormous and devastating impact on the people and economy of North Carolina. Hogs are a leading source of gross farm income and production contributes nearly $8 billion to the North Carolina economy. In addition, producers generate more than $62 million in state and local income taxes, allowing many rural counties to experience enormous economic growth and development over the last decade.

Bankers and financial institutions in North Carolina recognize the inherent risks and losses that occur in the business of farming. Without the stable income and risk management opportunities provided by a contract to raise livestock, many farmers would be unable to obtain the necessary resources to remain on the farm.

Contract production also helps producers manage the changes that have occurred in pork production over the last 20 years. From global competition, increased regulatory oversight, new production and environmental technologies and specific demands from consumers around the world, producers are facing a constantly changing business and marketplace. Through the partnership that exists between packers and producers, pork producers are able to meet the changes in the way hogs are raised and the changes in demands of the market place. Today's pork producers provide a safe, healthy and affordable product to consumers around the world.

In closing, North Carolina's pork producers support the right of any size or type of production system the right to market access and we are opposed to anything that hinders market access. However, the proposed ban on packer ownership would only serve to ensure that I and my family and thousands of North Carolina citizens would not have the opportunity to continue in the pork business.

Thank you again for the opportunity to be here today.

Tyson

Testimony before the
U.S. House of Representatives
Committee on Agriculture, Subcommittee on Livestock and Horticulture

By
Gary Machan, Vice President, Hog Procurement
Tyson Fresh Meats, Inc.

June 21, 2003
Grand Island, Nebraska

Thank you, Congressman Hayes and your distinguished Agriculture Committee colleagues for inviting me to testify at your hearing today. My name is Gary Machan, and I am vice president of hog procurement for Tyson Fresh Meats, a subsidiary of Tyson Foods. It may interest some of you to know that I am one of five kids who grew up on a small farm in central Wisconsin. We had 35 dairy cows, 14 sows, some laying hens and even two Shetland ponies. Many of our executive and management employees come from similar backgrounds. We know what folks mean by the term small, independent producer. I've been with IBP – now Tyson Fresh Meats – since 1982. Today I oversee the procurement of some 350,000 to 400,000 hogs per week. We also procure more than 180,000 cattle weekly.

Tyson Foods is the world's largest processor and marketer of beef, chicken and pork. We produce a wide variety of brand name, processed food products and are the recognized market leader in almost every retail and foodservice market we serve. Tyson Foods has 110,000 team members and more than 300 facilities and offices in 29 states and 22 countries.

Tyson Fresh Meats depends upon independent livestock operations of all sizes to supply our plants with cattle and hogs. In other words, we rely on a successful livestock production industry in order to stay in business.

Our company has no interest in becoming a large player in the livestock feeding business and would probably be affected less by the legislation prohibiting packer feeding of livestock than most of our major competitors. However, depending upon how the legislation is written, such additional government regulation could produce unintended consequences and be detrimental to the livestock industry.

If a packer ban were implemented, it is our hope it would allow livestock producers to continue to seek out and develop innovative marketing relationships and risk-sharing arrangements with packers. We also believe that if packers are going to be prohibited from owning livestock, then livestock producers and livestock producer-owned cooperatives should be prohibited from owning packing plants. If the industry is best served by a separation of ownership between segments, then it should be applied equally to everyone in this business.

I would now like to provide an overview of Tyson's livestock buying practices, the changing structure of our industry, and explain what some of the potential consequences of additional governmental restriction would include.

Marketing Arrangements

Virtually all the cattle and hogs Tyson Fresh Meats buys are purchased on either a daily cash market basis or through marketing arrangements with livestock producers.

According to economists, livestock producers participating in marketing arrangements "believe they are better paid for the quality of their animals and see advantages from reduced price risk." These types of arrangements are not unusual. There are many raw material commodities traded on a contractual or formula basis, in addition to a spot or barter basis. The list includes such items as potatoes, petroleum, bananas and corn.

All of our cattle and hog marketing arrangements have been requested by producers. They came to us because they wanted a more efficient way of marketing their livestock. Rather than spending valuable time following the cash market, dealing with buyers every day, they wanted an ongoing fair pricing system based on current market conditions, which would also reward them for quality improvements and allow them to concentrate their efforts on reducing their own costs.

Since most of these transactions are grade and yield sales, it gives producers the incentive to raise higher quality livestock.

Another factor behind the development of marketing arrangements is the desire to reduce market risk. I have heard it said that in the livestock industry, and especially the pork business, market risk is trying to find a home. Lenders are encouraging livestock producers to shed market risk. In some cases, they are doing this through risk sharing arrangements with packers. In fact, many producers today are compelled to seek such agreements in order to obtain financing as a condition of their lender. Packers are also being asked to loan money to producers during periods of low markets. If a packer livestock feeding ban was to be put into effect, it may eliminate lending or risk sharing options for livestock producers.

Cattle Producers

Tyson's Real Time Market Value (RTMV) program was introduced in January 2000 as a way to provide greater rewards for livestock producers who raise superior quality cattle. The carcass merit buying system more accurately reflects value, since the premiums and discounts are frequently adjusted to reflect changing wholesale beef prices. The RTMV program uses a grid pricing system with the base price determined by the ongoing cattle market. Base prices for Choice Yield 3 carcasses are determined by the actual cost, adjusted for quality and grade, of the cattle we buy on the spot market.

A survey of economists at four universities found that marketing agreements between cattle feeders and packers are growing and will continue growing in use. They report the primary reasons feeders enter marketing agreements are to capture higher prices for high-quality, high-yielding cattle and to retrieve data on carcass performance.

Hog Producers

Over the past 15 years, Tyson Fresh Meats has had a variety of different types of marketing agreements with pork producers. Initially, producers asked for these arrangements to reduce the burden associated with day to day hog marketing. This trend has continued with producers seeking new ways to fashion long-term arrangements. Pressure from banks providing financing for producers has prompted our company to expand the variety of arrangements offered, including the introduction of longer term arrangements *(with more formalized contracts, necessary to satisfy banking requirements).*

Benefits to hog producers include a more orderly marketing of market-ready hogs, assured shackle space, and -- depending upon the type of contract – reduced price volatility, access to capital and a more stable cash flow. The benefit to Tyson is an assured supply of high quality hogs to our plants -- enhancing our efforts to operate them at optimal capacity and efficiency.

Our menu of contracts ranges in length from those which can be immediately terminated upon notice, to fixed terms of some hog contracts that go up to 10 years.

Opponents of marketing agreements, which they inappropriately refer to as "captive supply," claim that when packers don't like the live price they will pull in livestock purchased through marketing agreements, exit the cash market and lower the cash price for the week. This statement is completely untrue when it comes to Tyson. Under our marketing agreements the producer, not Tyson, chooses the week when his livestock are ready for processing. If you take a moment and think about this allegation, it doesn't make any sense. Most marketing agreements are based on grade and yield payments. A producer with a marketing agreement is not going to allow the packer to call livestock in before they are ready, since the grade and yield would be lower, thereby reducing the price he would receive.

According to a January 2002 report by eight university economists, "The livestock and meat industry is becoming increasingly sophisticated…Consumers demand more product choice, high quality and consistency…To meet these evolving demands, beef and pork producers and processors have found it necessary to make substantial investments and market changes in how they organize and coordinate their businesses…These long-term investments and changes in producer and packer linkages are beginning to show measurable benefits to the beef and pork industries…"

In addition to the other benefits of marketing agreements listed above, a marketing agreement allows the packer and producer to work together to produce products demanded by the packer's customers. By producing livestock that consistently produce the products the packer's customers demand, the producer and the packer both are able to benefit by receiving higher prices for meeting the quality standards. We like to refer to this system of the producer and packer working together to produce the product customers demand as "vertical coordination."

The eight university economists note "Success in global beef and pork markets…did not occur until the 1990s when contracts, vertical integration, alliances and other means of achieving product consistency and quality control came into use."

They also reported the traditional pricing system failed to accomplish such coordination. "Often initiated by producers, vertical alliances are the mechanisms used to improve coordination and quality control and ensure producers are compensated for the true value of their cattle or hogs," they wrote. The increase in linkages in the beef and pork industries is "attributable to the advantages to both parties, from contracts willingly signed by both parties. A recent survey of beef and pork packers identified the ability to secure high quality animals and a more consistent quality as the most important reason motivating the use of marketing contracts and/or livestock ownership," the economists reported.

Cattle feeders and pork producers link with packers to improve price risk management, access more financing options, guarantee a fair price and shackle space for the livestock, improve the opportunity for carcass quality premiums, obtain carcass information and reduce marketing costs.

"Prohibiting such linkages will result in reduced coordination, efficiency, and global competitiveness of the beef and pork sectors," according to agricultural economists at Purdue University. They also stated increasing vertical coordination, increases the "ability of information to flow quickly and unambiguously along the supply chain, thereby permitting quick responses to changes in consumer preferences through new requirements and specifications rather than through price incentives alone."

Livestock & Meat Industry Structure

Despite the changes in the number of producers selling livestock through marketing arrangements, there has been no significant change in packer profit margins. A Cattle Buyers Weekly analysis of Tyson Fresh Meats' – then IBP's -- results since it went public in 1987 shows the following: In the 14 years to 2000, its net margin averaged 1.05%. In the 10 years from 1987 to 1996, it averaged 0.88%. In the 10 years from 1991 to 2000, it averaged 1.23%. The worst margin was 0.01% in 1991. The best margin was 2.16% in 1999. IBP's net margin in 2000 was 1.3%.

Over the past 30 years the share of the consumer dollar received by the packer has remained relatively consistent, between approximately 9% and 13%. Those opposed to captive supplies and packer ownership of livestock claim the share of the consumer dollar the producer receives has gone down while the share the packer/retailer receives has gone up. They make this claim in an effort to make you think the packer is receiving more and that the increase is due to captive supply. While the percentage the retailer has received has gone up in recent years due to such factors as their investment in value-added products, the packers' share has remained relatively constant.

There has actually been a higher rate of consolidation in livestock feeding than in the meatpacking industry. For example, according to statistics compiled by Cattle Buyers Weekly, the nation's top 30 feedlots have increased their capacity by 21% over the past five years. Meanwhile, the total daily capacity of the nation's top 30 packers has declined by 3.4% over the past five years.

In the U.S. the top five supermarket chains are responsible for almost 50 percent of all grocery sales in the country. Food manufacturers are consolidating to match retailers' needs. Some are teaming with retailers to access markets and consumer data and are providing "just-in-time" service for products tailored to meet the retailers' needs.

Retailers want suppliers with expertise and resources to actually handle stores' inventory management. This changes the way we will do business. It is no longer only about producing a commodity and selling it at the best price possible. It is about producing what the customer wants. It is a high-value game versus a commodity game.

According to officials with Rabobank, one of the world's leading agribusiness and food banks, agriculture is moving producers and processors toward "virtual integration" in which they are forming production alliances and systems. This will be driven by processors who are getting tremendous pressure from the foodservice and retail sectors to produce the products consumers want.

This virtual integration is also being driven by the desire of industry participants to reduce market and supply volatility.

Unintended Consequences

Legislation restricting packer involvement in livestock production will undoubtedly contribute to more industry consolidation. Without some degree of packer participation with livestock production, some plants may be forced to close. In addition, such a measure may make large corporate farms even bigger, since they are the ones who would likely buy any livestock operations packers are forced to divest.

Such legislation also potentially jeopardizes forward contracts and other marketing alliances or agreements that benefit producers. This could endanger the future of some livestock producers, whose lenders restrict or refuse to provide financing unless the producer has some kind of marketing alliance or arrangement with a packer.

As this industry continues to evolve into a global business and as our livestock suppliers compete with producers around the world, legislation restricting packer involvement will stymie creativity in the development of producer-packer relationships of the future.

Another unintended consequence is the glut of livestock that will hit the market if packers are forced to divest their livestock operations. This sudden increase in supply would reduce livestock prices. It is also likely that packers would have to sell their livestock operations at a discount in order to meet the deadlines established in the new law. This would subsequently depress the value of non-packer-owned livestock operations.

In addition, if packers are forced to sell their production operations quickly, the sale of these large operations would probably be at a discount. This would decrease the appraised value of all livestock production operations and hurt the balance sheets of many producers. This could make it more difficult for the small producer to secure financing.

We respectfully encourage members of the Livestock Subcommittee and the full Agriculture Committee to support cooperative efforts by industry participants to find solutions to market-based issues, rather than implementing legislation that could potentially damage those it purports to help.

Testimony of Tim Schiefelbein
Swift & Company
Before the
House Agriculture Subcommittee on
Livestock and Horticulture

June 21, 2003

Thank you, Chairman Hayes, for inviting Swift & Company to testify here today.

Swift & Company is the third-largest processor of fresh beef and pork products in the United States, and employs more than 21,000 people worldwide. Swift & Company traces its heritage back nearly 150 years, and has long been a leader and innovator in the American meat industry.

I am here today to provide the perspective of Swift & Company on the issue of packer ownership, feeding and control of livestock.

The fact is that Swift & Company has six beef and three pork processing facilities in the United States, and for the most part, the packer ownership legislation would have very little impact on those facilities. But there are exceptions to that statement. The biggest exception is our beef processing plant in Greeley, Colorado, which was founded under the Monfort name more than 40 years ago and was built to process cattle from the extensive feedlot operations the company established throughout northern Colorado. Today, there are three feedlots in the region that were built by Monfort, Inc., each capable of holding roughly 100,000 cattle.

Those feedlots were developed to ensure that the Greeley processing plant has an adequate supply of cattle to support its operations. Each year, the Greeley plant alone processes approximately 1.6 million cattle. To accomplish that, the plant employs nearly 2,700 people. Several thousand families rely directly on that plant for their livelihood, and many more are indirectly affected. A recent Economic Impact study conducted by Colorado State University states that the Swift & Company operation is directly linked to more than 25 percent of the economic activity in Weld County, one of the 15 fastest-growing counties in the nation. Other estimates indicate that the trickle-down effect of the Greeley plant equals nearly one-half of the region's economic activity.

The company-owned feedlots supply approximately 50 percent of the cattle processed at Greeley. This highlights the importance of these feedlots, given that the northern plains of Colorado is a cattle-deficit area with more processing capability than the local ranchers and smaller feedlots can supply. If the company could no longer ensure that continued supply, the second shift of the two-shift operation automatically would be shut down. Unfortunately, the economics of operating a plant of this size mean that it would no longer be economically feasible to keep it running on a single shift. The plant would close if it could no longer draw on the feedlots for cattle.

The truth is that Swift & Company does NOT want to be in the business of owning and feeding cattle. Owning a feedlot ties up a significant amount of our capital that we could be using in other ways. Purchasing and maintaining up to 100,000 head of cattle at a single location is a very expensive proposition. For that reason, we do not have buyers standing in line to take over these feedlots. If we are not allowed to maintain ownership of these lots in Colorado, they likely will be developed into housing tracts or strip malls or left as empty fields. As for the ranchers and smaller feedlots that supply the Greeley plant and those feedlots, they'll go out of business as well. The price of grain in our region is too high and the transportation costs to another beef processing plant would be too prohibitive to enable those small, independent ranchers and feedlots to remain as competitive players in the beef market.

A somewhat similar situation exists at our beef plant in Hyrum, Utah, where our company-owned feedlot supplies 25 percent of our cattle. Having to close that feedlot may not instantly close down that processing plant, but it could start a spiral that would make it economically less advantageous to do business there.

With all that said, I would like to leave you with two key messages:

- First, while cattle ownership is not desirable to us, it is a necessary evil. Without it, we believe our Greeley plant will be mothballed, and our Hyrum plant, which processes more than 600,000 cattle annually and employs about 1,200 people, would be put at a severe competitive disadvantage.
- Perhaps most importantly, we do not believe it is either fair or right for the government to tell us that we cannot own cattle. History has shown that having a captive supply is neither a significant advantage or disadvantage. At some of our plants, we do not feed any cattle ourselves. However, denying us the right to own cattle will unfairly punish us in those cattle-deficit areas. And, in a touch of irony, in areas like northern Colorado, legislation banning packer ownership would put out of business those same small ranchers and feeders it is intended to protect.

Thank you for this opportunity to speak to your committee on this critical issue.

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ORAL TESTIMONY OF
KORLEY SEARS, AINSWORTH FEEDYARD
AINWORTH, NEBRASKA
presented to the
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON AGRICULTURE
LIVESTOCK AND HORTICULTURE SUBCOMMITTEE
FIELD HEARING

Grand Island, Nebraska
June 21, 2003

Hearing on Packer Ownership of Livestock

Thank you Chairman Hayes, Representative Osbourne, and members of the House Subcommittee on Livestock and Horticulture. My name is Korley Sears, co-owner of Ainsworth Feedyards in Ainsworth, Nebraska. Ainsworth Feedyards is a family owned custom feedyard selling approximately 60,000 head per year for our customers. I am also a member of the Organization for Competitive Markets and R-CALF United Stockgrowers of America. I am here to speak in favor of the prohibition of packer ownership of livestock as a first step towards addressing the break down of agricultural markets in our country.

Nebraska agriculture was built upon open and competitive markets. Competitive markets require access, transparency, fairness and competition. Captive supplies are destroying competitive markets and are destroying production livestock agriculture in Nebraska. Captive supplies of livestock are livestock supply inventories controlled by the dominant packing companies through contracts or packer ownership. Eliminating the packer owned cattle from the market would be a big step towards restoring competition. We need to let packers be packers. Producers can grow the livestock just fine.

My family has been in the feeding business for decades. We have never seen the markets as closed and non-competitive in the history of our business as they are today. Live cattle prices are no longer determined according to supply and demand. Rather they are increasingly determined by whether the packers have large volumes of cattle owned, or under contract, that they can schedule for slaughter if the supply and demand factors are pushing prices up.

In other words, if cattle prices are going up, packers can strategically schedule their own cattle, pull out of the market, crash the price, and jump back into the market after they have exerted "discipline" to us producers. This is market manipulation.

Captive supplies, including packer owned cattle, are making the markets thinner and more subject to manipulation. Though you in Washington may think that there is a cattle market every day, the reality is that this is no longer the case. Packers have a captive inventory every week that they use against producers to say that they do not need our cattle. We only have 15 to 30 minutes each week to sell our cattle. Bids during this time are offered on a take-it-or-leave-it basis. This facilitates panic selling and further depresses the cattle prices. This is not a market, it is market failure.

I keep hearing that packers need captive supplies to keep their plants full. That is not true. Packers kept their plants full in the many decades prior to the advent of captive supplies. Rather, packers want to avoid competitive bidding for livestock at all costs. Captive supplies allow them to do so.

I also hear that packers should have the ability to control quality so they can respond to consumers. But Nebraska's independent feedlots have the highest quality cattle in the country. We buy from the same sources as the packers. We sell according to quality specifications set by the packers. There is no evidence of a quality difference between packer owned cattle and those purchased from the open market. It is merely a price manipulation tool. If packers want higher quality, they can pay for it. That is the American way.

Lastly, I have heard the argument that it is a violation of packers' freedom of contract if the government restricts captive supplies. When ADM fixed the price of lysine and vitamins, that was a contract with its competitors. It just so happens that price fixing contracts are illegal because they harm the public interest in free market competition. Packer owned livestock should also be unlawful as a tool that facilitates their ability to restrict free market competition.

As a feedlot owner, I live and breathe the cattle markets every day as I try to sell my customers' cattle for the highest possible price. You can show me any study or report you want to produce. But I don't need a study to tell me it is raining outside any more than I need a study to tell me whether the cattle markets are broken due to captive supplies. Expensive lawyers and economists cannot obscure the fact that we need competition to return the livestock production industry to a chance at prosperity.

Please do all you can to reduce or eliminate captive supplies and packer ownership of livestock. To do otherwise is an economic death sentence to independent agriculture and Rural America. Thank you.

Testimony of Tim Seely
Before the House Agriculture Committee
Grand Island, Nebraska
June 21, 2003

Thank you Mr. Chairman for the opportunity to appear here today to share the view of Smithfield Foods about the best course for federal policy with regard to the structure of the meatpacking industry. I am Tim Seely, President of Smithfield Packing Company and Gwaltney of Smithfield, both part of Smithfield Foods. I have worked in the pork industry for _over 35_ years. Smithfield is part of the great American agricultural tradition of producing the highest quality food in abundance to feed our country and the world. So many of us at Smithfield come from families where the traditions of the farm and the land are deep, and we hope that you will keep that in mind as you make decisions about our company and our industry, and the farmers and ranchers who work with us every day

This hearing and much recent debate is about vertical integration and how much vertical integration should be permitted. Since the days of Teddy Roosevelt there has been consensus in our country that vertical integration should be permitted until it goes too far. When it goes too far, we have in place nearly a century's worth of laws that provide the means for our government to rein it in. Our company and our industry are already subject to the restrictions on anticompetitive practices contained in the Sherman Act, the Clayton Act, the Robinson-Patman Act and key provisions of the Uniform Commercial Code. We are happy to live by those rules, as others do, and even to comply with another law that applies only to us: the Packers and Stockyards Act. That law is designed to prohibit meat packers from engaging in business practices that are unfair to their livestock suppliers. We believe that is regulation enough, that there is ample capacity for enforcement of those laws and that there is no reason to place even more restrictions on our industry that are not applied to others who are competing in the global economy.

The Demand for Quality and Stability

Our business practices are driven by the demands of the increasingly global marketplace and the demands of our customers. Our customers want consistent meat quality, ready and predictable supplies, lean, safe and healthy meat products and a fair price. That demand for quality now comes from the largest corporate customers like McDonalds and from ordinary shoppers buying food for their families. They want their meat not just to be fresh and wholesome, but also to taste and look the same every time, and to be consistently lean every time they buy our products. Fast food retailers have responded to this demand by imposing strict requirements on packers. Grocers have also begun to demand not just high quality, but consistent and predictable meats for their customers. To meet these demands from our customers, consistent feed, feeding practices, animal husbandry and genetics are the hallmarks of the Smithfield system. A business model with some level of vertical integration is the best way to assure that these requirements are met, and therefore, the best way for us to succeed as a business.

The exacting requirements our customers place on us are also relevant to supply issues.
The slightest interruption in supply is unacceptable to our customers because they typically are retailers and restaurants that rely for their success upon consistent sales. So our meat supplies must be predictable. That means that forward contracting with hog producers must be balanced by company owned animals in order to assure consistent supplies in the volatile commodities market. A degree of vertical integration in our business model provides the

certainty of supply that customers expect, but it doesn't mean that we use only hogs that we have raised.

American consumers and our customers abroad have demanded leaner pork. Smithfield and other companies have given it to them. We have developed our *Lean Generation* line of pork because of that demand from the marketplace. This pork product offers dramatically reduced fat content. It has been certified by the American Heart Association as "heart healthy." It also has boosted demand for pork. We all agree that those are good things for Americans' health and for everyone who raises hogs. We are able consistently to provide this new leaner pork because we have been able to carefully control the way that hogs are raised. Without some level of integration among hog producers and meat packers, we will be out of the business of producing the consistently lean pork that has proved so popular both here and abroad.

Traceability, Food Safety and Security

There are other benefits to a system of production that allows us to trace the origin of any pork product. Special animal identification techniques are introduced at the farm and stay with the animal until final processing. We take every possible precaution to prevent product contamination, but if there is a problem, our traceability procedures allow for quick identification of contamination sources. Even at the early stages of a hog's life, our on-farm biosecurity procedures, and the data they produce, are completely within our control under the Smithfield system. Again, it is a reasonable level of vertical integration that allows us to ensure delivery of safe meat products.

If we break up that chain of control in an artificial way, it will become more difficult to prevent contamination and to trace it to its source. Contamination is a serious risk. As you make decisions about the structure of our industry, please remember that rules about the economics of our industry can have consequences that reach far beyond economics. We at Smithfield and others in our industry have always had a responsibility to protect American consumers and ensure food safety. We have done that by ensuring that the product is fresh, that the process is hygienic and our facilities clean. But there is another threat that has been made more real to us since September 11, 2001. We must guard against the possibility that our products will become the weapons of terrorists who could seek to taint the food supply and kill or harm a great number of people, while crippling our industry as well as the restaurant and retail grocery industry. The current level of integration in our system enables us to keep our products traceable and limits the number of people who have access to the products all along the chain of supply from the farm to the kitchen table. I want to ask you very seriously to consider this reality when you make decisions about the structure of our industry. It is not just a matter of economics; it is also a matter of food safety, of homeland security. We have always been happy to bear the responsibility to ensure the safety of the people who buy our products; in recent times that responsibility weighs a bit more heavily.

Managing Economic Risk

Just as our business model relates to security, it relates to risk management. It greatly reduces business risk for producers, packers and ultimately the consumer. Forward contracting allows farmers to plan for the future. Farmers who choose contracts or marketing agreements with Smithfield or other companies also may find that their credit options are much more varied and attractive.

Bankers and other lenders now routinely demand that farmers produce contracts before providing them with financing to operate their farms. In our system both company-owned farms and contract growers have the benefit of a predictable place to sell their animals regardless of any spikes or downturns in current market prices. Those farmers operating outside an integrated system cannot so reliably predict their future. They face a high level of economic risk that is bound to bring disaster during aberrant periods in the market. Those who operate within an integrated structure are protected from that unpredictability, and are better equipped to weather the challenges of a global market.

Family Farms

Of course, not everyone will choose the contracting route - people will decide whether to take advantage of that opportunity on the basis of their own practical judgments and values, as they should always be free to do. We understand that those decisions are made in the context of family tradition, by American farmers who value their independence and take so much pride in the land and in the work of feeding the world. They have had to make tough choices and to adapt to a changing marketplace as has every business that means to succeed in the global economy. The family farmers this hearing is most concerned with are our fellow hog producers, and they are also our suppliers. We respect them and value their work and their right to compete in the marketplace, but we don't agree that barring our company and others from raising hogs will improve the lot of independent hog producers in the marketplace. It plainly will harm the independent producers who contract with Smithfield and other companies.

Conclusion

Smithfield Foods is part of a highly competitive business. We have built our business model in response to the non-negotiable demands of the consumer and the marketplace. We have met those demands by adapting, with a flexibility that we have achieved through a reasonable level of vertical integration. That model has allowed us to succeed in business that relies on commodities yet maintain low and stable prices for consumers by owning and contracting for hogs. Our competitors in the poultry industry and in the hog industry in Canada and abroad long ago implemented far greater levels of vertical integration, often with subsidies and with specific relief from prevailing regulations. We ask for no such relief. We ask only that our company and our industry not be barred from owning or contracting for hogs as we strive to keep our company and our nation's meat industry competitive. We honor the family farm, as we enjoy mutually beneficial relationships with so many family farmers who raise hogs for Smithfield. We ask you to keep in mind that the integration of our system serves food security from contamination, both accidental and intentional. Finally we ask you to look at the economic data and consider what a ban on packer ownership would do to our industry and others. You are right to try to protect the interests of your constituents; we submit that you can do that best by resisting the call to impose a ban on packer ownership of livestock.

Thank you very much.

Testimony of J. Patrick Boyle
President & CEO, American Meat Institute
Before the
House Agriculture Subcommittee on
Livestock and Horticulture

June 21, 2003

Thank you, Chairman Hayes, for inviting the American Meat Institute to testify here today.

AMI represents the interests of packers and processors of beef, pork, lamb, veal and turkey products and their suppliers throughout North America. Together, AMI's members produce 95 percent of the beef, pork, lamb and veal products and 70 percent of the turkey products in the U.S.

AMI's member companies' business practices are governed nationally not only by the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Agricultural Marketing Act and the Uniform Commercial Code, but also by the Packers and Stockyards Act, a statute unique to our industry that clearly prohibits meat packers from engaging in unfair or deceptive business practices that disadvantage their livestock suppliers. To my knowledge, there is no other sector of the U.S. manufacturing or service economy in which the federal government plays such a watchdog role with respect to material suppliers.

And yet, ironically, as the meat and poultry industry operates with this additional, daily, government oversight of our business transactions with livestock producers, we are here today to discuss whether meat packers should receive additional scrutiny, enforcement or business restrictions in order to protect or benefit livestock producers.

Questions about the structure of the meat industry have been raised throughout AMI's 100-year existence. While some suggest our laws and enforcement of them are inadequate, I would suggest another theory: perhaps we haven't done a good job of pinpointing some of the real problems and coming up with constructive solutions that benefit everyone.

Let me try to characterize the environment in which my member companies operate today. AMI members include 250 of the nation's largest and smallest meat and poultry food manufacturers. Collectively, they produce 95 percent of the beef, pork, veal and lamb food products and 70 percent of the turkey food products in the U.S.

AMI's members have one common objective: to produce products consumers will buy. It is the consumer who determines the value of our products, which in turn determines the value of our raw materials. So we must start any discussion with the consumer. Market research tells us that U.S. consumers have diverse tastes and that 95 percent of them eat meat and poultry regularly, so there is room in the marketplace for many different meat and poultry products with many different attributes. We also know that there is a robust global appetite for U.S. meat and poultry products. We now export 9.3 percent of our beef products and 6.9 percent of our pork products, principally to Japan, Mexico and Canada. These exports have grown exponentially in the past decade, in large part because we produce what consumers abroad want to buy.

In fact, livestock producers have raised and spent hundreds of millions of dollars over the past decade through check off programs designed to build consumer demand for beef and pork. A large part of these efforts has been to send clear signals from the consuming public back to producers, so that producers can deliver the type of livestock that will yield the meat products most in demand. These efforts have had many benefits, including improved communications throughout the meat chain among retailers, packers and producers. This, too, has led to vertical integration.

In order to create the foods people want to buy, AMI's members have made many business modifications and investments. They have increased their coordination with livestock producers so that the raw materials they purchase produce the foods consumers want to buy. They have increased their coordination with their retail and foodservice customers, sometimes changing management or operations in order to meet their customers' needs. This increased coordination has led to increased vertical cooperation and/or integration, which has sometimes included complete or partial ownership of some of each packer's livestock supply. Some positive outcomes of this increased coordination may be familiar to you:

Leaner Value-added Beef and Pork Products for Consumers. Retailers, meat packers and livestock producers heard loud and clear in the 1980s that consumers wanted leaner meats. Working together, these three sectors accomplished an average 27 percent fat reduction in a serving of beef and a 31 percent fat reduction in a serving of pork. Among the actions taken were: packers and retailers trimming fresh meats to ¼-inch of external fat; hog producers and pork packers working together to develop leaner hogs; cattlemen and meat packers petitioning USDA to create a new "Select" grade for leaner beef; and meat processors developing vast new offerings of low-fat hot dogs, luncheon meats, ham, sausage and bacon products. Increased coordination among producers and packers has provided for greater information exchange, helped improve herd management, and aided producers to deliver livestock at the optimum time, which are all essential components that have assisted in producing a leaner, more competitive product.

Improved Risk Management Options for Producers. The volatility inherent to farming and ranching has been reduced for many livestock producers through the increased use of contracted sales with meat packers and many other creative risk management plans. The benefits to farmers were perhaps most vivid during the hog market crash of 1998, when spot market prices for an unanticipated over-supply of hogs dropped to as low as $9 per cwt. Those hog farmers with contracts had locked into much higher prices for their hogs – generally $35 and more per cwt. – and were protected from the low market prices. Packers with contracts, on the other hand, were obviously paying far over the market value for their hogs at the time. Both parties to the contract, however, benefited from the certainty provided by a steady, consistently priced, and contracted supply of hogs.

Market Access for Young Producers. During the past decades, the average age of livestock producers has been steadily increasing. This is of great concern to the packing community who are dependent on reliable supplies of quality inputs at affordable prices. Contracting options, marketing agreements, and other producer-packer arrangements provide a means for young producers to access the capital necessary to continue on or enter the livestock production business. Many young people have the educational background and herd management knowledge necessary for this business but lack the ability to enter because of the capital requirements. Arrangements between producers and packers assist in retaining the valuable herd management knowledge in production agriculture.

Economic Investment in Rural America. A majority of AMI's members operate their plants and facilities in towns with populations under 100,000. The economic value and employment generated from our member's operations are significant economic drivers in hundreds of small and mid size communities across America. An essential component to their ability to continue to employ hundreds of thousands of individuals in their facilities is the assurance of a reliable supply of inputs. Contractual relationships, marketing agreements and other arrangements provide a means to ensure that facilities can run at optimum levels and can make planning decisions for their daily, weekly and monthly operations. Ill conceived limitations on the procurement process place into jeopardy the ability for plants to reasonably anticipate workforce requirements on a daily, weekly and monthly basis. Producer-processor arrangements provide a means for processors to adequately plan workforce needs.

Before I leave this topic of the benefits of coordination and even integration between manufacturers and their suppliers in the meat industry, I would just note that this is a trend throughout the manufacturing and service economy. It is driven largely by consumer demand for consistent product quality at the lowest possible price. The demand for low prices has led to fewer and larger retail chains in fields as diverse as home improvement products (Home Depot), video rentals (Blockbuster), food and consumer products (Wal-Mart) and fast food (McDonalds). In fact, these companies not only owe their success to these qualities and business practices, they advertise them to consumers. The consolidation at the retail level has driven consolidation at the manufacturer level – for tools, appliances, consumer goods and food products, among others. The demand for consistent product quality has led many firms to exert greater control over their supply chain. Just ask anyone who supplies products to Wal-Mart or McDonalds what that means: it means you must meet their standards or you can't sell to them. It often means you must subject your products and plants to periodic customer audits. This is the way business is done today – and the meat industry is no exception.

Against this backdrop I have described of businesses trying to compete for the consumer's dollar, I hope you can understand why the American Meat Institute strongly opposes efforts that would make it illegal for meat manufacturers to do what the rest of the global business community is doing, which is to form relationships with suppliers of raw materials in order to produce consistent quality, low priced products that consumers want to buy. In our view, the proposed ban on packer ownership, control or feeding of livestock would do just that. Further, we will oppose any effort to restrict meat packers who comply with existing antitrust and fair business practice laws from sourcing their raw materials in any way. It is unfair to make it illegal for the meat industry to compete with the poultry industry or any other industry for the consumer's dollar. But let us not forget the ultimate consumer during this debate.

Over the last three decades, Americans have benefited from increasing meat industry efficiency that has made meat more affordable, abundant, convenient and varied. Each year, consumers spend less of their disposable income on meat and poultry. Today, that number stands at 1.9 percent, compared to 4.1 percent in 1970. This is a trend of which we are proud – and one that provides consumers a distinct benefit. We should not rush to undo the foundations of this success without understanding the ramifications for everyone involved.

AMI has long standing policy in opposition to legislation proposing to ban packer ownership, feeding or control of livestock. We believe the strength of the current livestock marketing system in the U.S. is the flexibility it provides to producers, packers/processors and retailers in responding to market signals, while maintaining a variety of choices for the producer through to the consumer. Producers have a multitude of options in marketing their livestock: spot market transactions, cooperatives, bargaining associations and other programs that allow them to align themselves with packers through contractual arrangements to manage risk.

We believe that the most appropriate government role in today's livestock marketing system is to enforce the existing laws and regulations that ensure fair and nondiscriminatory business practices among producers and packers, while allowing producers the freedom of choice on how best to market their livestock. The government should exercise its current and vast authority under the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Packers and Stockyards Act and other state codes.

If there is consensus that the livestock market is not working properly, then we advocate a thoughtful, reasoned, fact-based approach that will help all businesses – farms, ranches, processors and retailers -- pinpoint problems and develop targeted and effective solutions.

In fact, as you continue to contemplate possible policy changes to the current marketing system for livestock, we would like to remind you of an important provision included in the Omnibus Appropriations Bill for FY 2003, which provides $4.5 million to USDA to conduct a comprehensive study on this subject. The provision requires the Secretary of Agriculture to conduct a study of the issues surrounding a ban on packer ownership, particularly as to the economic impacts on the United States as a whole, and on individual states. The study shall include, but not be limited to, examination of alternative procurement and transfer methods for livestock in the farm to retail chain, including producers that participate with packers in vertically-integrated livestock or meat production; agricultural credit for livestock producers; livestock and grain prices and the quality and consistency of meat products and livestock under such a ban.

On May 30, 2003, GIPSA released a notice seeking comment on the parameters of the study. There will we a formal Request for Proposals for the study itself after USDA reviews the comments from this notice. The comment period closes on June 30.

Again, thank you for the opportunity to testify before your committee on this important issue.

FROM : CHAMBERS STATE BANK PHONE NO. : 402 482 5223 Jun. 26 2003 02:24PM P1

Attn: Pam Scott - Staff Director

June 25, 2003

DUFFY BURRELL
85033 481st AVE.
CHAMBERS , NE. 68725

Members of the Ag. and Livestock Committiee,

I attended the hearing in Grand Island NE. on June 21st 2003 represented by Mr. Tom Osborne and the other 4 representatives that were with him. The discussion pertained to whether or not packers should be banned from owning livestock for slaughter. I myself am against packers owning livestock for slaughter, it seems that when the prices move up the packers quit buying livestock from the private sector and start to process their own animals. When the price goes down or is in a depressed state then they will go out into the country and try to get some animals bought to fulfill their needs.
Case in point : Before moving to Nebraska to take over the farm / ranch (I am the 4th generation) I used to haul fat cattle into Monforts Packing plant in Greeley , CO. and am very familiar with how they ran there packing operation in the mid 1980's. They had 2 unloading facilities for us to unload at until we happen to have an upward trend in the price of fats , then all of a sudden they would come out and tell us that one chute was going to be shut down so Monforts trucks could start bringing cattle in.
Within an hour Monforts trucks would start rolling in and unload cattle. This is not just a 1 time case scenario but happened time and time again. There was no consistent pattern with there hauling of livestock into the plant, there would be days before more cattle would come in.
Another aspect of the packers having to much control of the livestock is that I have a friend that we do business with in eastern Colorado. He and his brother run a small feedlot and when they are ready to sell their cattle the order buyer for the packing house comes out , looks at the cattle an gives them a bid. They have 15 minutes to decide if they want to sell any cattle at the price offered and if they decide not to sell any; then they have to wait until next week before they will get another bid.
I hope that your committee can come up with a resonable solution to this problem that is fair for all of us who are involved in this part of the agricultural sector.

Sincerely,

DUFFY BURRELL

Testimony of
John S. Butler, President and CEO
Ranchers Renaissance Cooperative, Inc.
For the
Subcommittee on Livestock and Horticulture
Of the US House Committee on Agriculture
Field Hearing to Review Proposals to Ban Packer Ownership of Livestock
Grand Island, Nebraska
June 21, 2003

Chairman Hayes, Ranking Member Ross, and Members of the Subcommittee,

Thank you for the opportunity to provide comments on the very important issue of packer ownership of livestock. I am John Butler, President and CEO of Ranchers Renaissance. I represent beef producers who are involved in every segment of beef production, ranging from ranching to marketing branded beef. I have been involved in the cattle and/or beef industry my entire life, and am pleased to be given the opportunity to discuss with you an issue that is a top priority for us all.

It appears to me you are considering government intervention and/or regulation to resolve the beef industries marketing challenges. I appreciate your desire to help. However, I believe the laws of supply and demand must be allowed to prevail to ensure a long-term viable market for the beef industry. There are a number of situations in which the government attempted to intervene in market stressed situations which have resulted in the creation of warped economic signals and in some cases the creation of markets which no longer react to the fundamentals of supply and demand.

I would like to briefly explain an initiative that was created by producers six years ago to address many of the fundamental problems associated with the commodity beef marketing system. This is germane to your field hearing as many of the consequences associated with the elimination of packer feeding and/or ownership would destroy what many feel is an example of how the beef industry and its producers working together can regain precious market share and perhaps most importantly sustained long-term profitability.

Ranchers Renaissance Cooperative

In 1997, a meeting initiated by a group of beef industry leaders was held to address key marketing problems facing the ranching community. They agreed that it would be necessary to have a common focus to affectively address concerns related to the flawed commodity pricing and marketing system. They agreed the focus should be driven by the consumer, and that consumers would embrace a branded beef product that delivered on a promise. Such a commitment would require consistent processes to meet the quality and consistency elements essential to a successful brand. It was also agreed that this consistent process would require a steady supply of predictable cattle to fill the products of a branded line. In addition, being fairly rewarded for producing value based on consumer demand was a priority. From this initial meeting, it was obvious that developing partnerships that cross over from one segment to the other in the beef-producing value chain would be the solution to pursue. Ranchers Renaissance was conceived as a vertically integrated cattle marketing cooperative. Our mission is to be "A customer-focused, high-quality, integrated beef production system with profits derived from increased efficiency and consistent, value-added, finished products".

The Ranchers Renaissance membership consists of ranches, feed yards, and a packer/processor. Our cooperative was designed to accommodate ranches of varying sizes. Our ranch members own or manage 100 cows or more and are located in numerous states from Florida to Hawaii. Our feed yards are privately owned and range in size from 12,000 head to 45,000 head capacity. We utilize different genetics, based on environmental conditions and are able to use cattle from different regions with different calving seasons as we have committed to producing beef that will meet the agreed upon specifications 365 days a year. After five years of working with these producers, I can assure you they have at least two things in common. One, tremendous independence, and two, a passionate commitment to our vision.

The Structure

Essentially, we have created a systems approach to beef production. Rather than operating as individual segments within the system, the members of Ranchers Renaissance have aligned and have agreed to a number of quality standards for the entire value chain that were developed to ensure the production of consistent beef that will meet or exceed consumer expectations. The system we have implemented is not rocket science. It is, however, a series of validated production and best management practices that result in a higher quality, more consistent product. You might say "so what…you have a system that has the ability to produce higher quality, more consistent cattle. How does this help cattlemen? Good question…"

The next step in our process was to merchandise our efforts to an end user and to develop economic drivers to reward producers for creating value in a product the consumer demands. We have done so, and have now become a critical supplier to the brands "Cattlemen's Collection", "Rancher's Reserve", and "Harris Teeter Rancher" now being merchandised as the every-day beef product, and represents the entire fresh meat case in a number of significant retail outlets including Kroger, Safeway, and Harris Teeter. In less than a year, the consumer has changed her buying behavior in these markets and actually purchased more beef products. In addition, she has begun to gain brand recognition as well as loyalty. We are now in the process of expanding this program into additional regions of the country.

It is important for you to appreciate that the ultimate value in our branded product is the result of synergy between segments (rancher, feed yard, packer/processor). In other words, each of our members is responsible for a contribution to the promise we have made to the consumer. As an example, the rancher adds value by using the right genetics and best management practices to produce a healthy calf to be nominated to Ranchers Renaissance. The feed yard members add value by managing and feeding the cattle in a processes verified manner, and harvesting these animals to meet featuring needs of the end user. Our packer/processor member adds value by disassembling and fabricating the animals to ensure the timely delivery of product. In addition, their expertise in marketing and merchandising our beef to meet the brand criteria is a critical responsibility.

In total, we have twenty-four quality control points that build on the promise to our brand. Adhering to these specifications is not easy, nor is it cheap. We have added costs to our system, including better genetics, more intensive management, and electronic identification tags to name a few. Our members are convinced it is necessary to make these kinds of changes to develop a differentiated product for the consumer and create more value.

Shared Risk and Reward
Traditionally, if a rancher manages the animal from start to finish, he assumes virtually all the risk. In our system, we have created a financial model that shares risk between segments. This has allowed our ranch members much more flexibility as they now have a true partner who shares a portion of the risk of what can be a volatile business.

The beef industry and ultimately the American consumer have suffered because of the commodity cattle marketing system, a system that does not send clear economic signals relative to value. Traditionally, poorer cattle are unfairly rewarded as they have been accounted for in the "average". At the same time, higher-quality cattle have not been adequately rewarded for the same reason. This commodity system has resulted in a very inconsistent product for the consumer. In fact, research indicates one in four eating experiences of commodity beef is unacceptable by the consumer. Our system has been designed to recognize value, reward those responsible for the creation of this value, and provide the consumer an exceptional eating experience every time.

As I mentioned earlier, each segment, the rancher, the feed yard, and the packer/processor, is a part of the system and therefore receives a portion of the added value. Without revealing the proprietary elements of our pricing model, I hope you can understand the restrictions you are considering would essentially force us to dismantle.

Summary
There are volumes of consumer research indicating beef demand has halted its decline and in fact turned the corner and is on the way up. I would argue that a significant portion of this increase in demand has been the result of the successful implementation of a number of branded programs which are now bringing more beef value to the consumer. As I said earlier, our program is neither rocket science nor a silver bullet. We have a long way to go and I ask that you give careful consideration to restricting our freedom and ability to implement a business strategy that could result in strengthening the long-term viability of many of this nation's most progressive cattle producers.

I would also like to share with you that Ranchers Renaissance has been invited to participate in a coalition of cattle alliances. There are now 22 participants in the Cattlemen's Alliance Coalition. Though each of these alliances belonging to the coalition is structured differently, the vast majority would be in jeopardy should packer feeding and/or ownership be prohibited.

There may be solutions to the marketing problems our industry faces we have not yet considered. I would be happy to work with you and/or any of the members of this committee in identifying alternatives to regulations which may jeopardize the free enterprise principal our market is based upon.

Chairman Hayes, thank you for the opportunity to provide comments to this hearing.

WRITTEN TESTIMONY OF
STEVE CADY, EXECUTIVE DIRECTOR
THE ORGANIZATION FOR COMPETITIVE MARKETS
presented to the
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON AGRICULTURE
LIVESTOCK AND HORTICULTURE SUBCOMMITTEE
FIELD HEARING

Grand Island, Nebraska
June 21, 2003

Hearing on Packer Ownership of Livestock

Thank you Chairman Haynes, Representative Osborne and members of the House Subcommittee on Livestock and Horticulture for holding this hearing. My name is Steve Cady and I am Executive Director of the Organization for Competitive Markets based in Lincoln, Nebraska. OCM is a multidisciplinary nonprofit organization that focus exclusively on antitrust and competition problems and solutions in agriculture. Our members consist of farmers, ranchers, academics, policy makers and agricultural businessmen.

This testimony argues for the packer ownership prohibition, and explains why the Packers & Stockyards division of USDA is not and will not be effective.

The U.S. food industry grosses approximately $900 billion in annual sales. It is the biggest industry in the country and in the world. That money is distributed through the agricultural market infrastructure. Our family farms and ranches, as well as our rural communities, were built on that money. A perfectly competitive market would distribute that money properly. A noncompetitive market does not allow that money to flow to rural communities. Rather, dominant firms utilize their position to obstruct that monetary flow and enrich themselves far beyond the level that could otherwise be achieved without near-monopoly power. The result is an increasing rate of farm failure, increased consumer food prices, and harm to the public interest.

I. The Nature of Agricultural Markets and the Need for Market Facilitating Rules

The role of government in the marketplace is to create and maintain the infrastructure for the most people and companies to engage in commerce. The analogies are the internet and the U.S. interstate highway system. The internet is not commerce or communication. Rather, it is an infrastructure that facilitates cheap and effective commerce and communication. It is not proprietary. It is accessible by most everyone, and it is very easy to access.

Similarly, the U.S. interstate highway system is not commerce. It facilitates commerce. Everyone can use it. There are many on ramps and off ramps. General Electric uses the system and so does my mother. The government maintains it and applies a set of equitable rules to the infrastructure. The payback has been incredible.

It may be efficient for four companies to acquire exclusive use of 50% of the internet or 90% interstate highway system. But it is efficient only for the companies' profitability. It is not beneficial for the country because it denies the benefits of commerce and communication to the displaced users.

The livestock marketplace must be similarly open, accessible and fair to benefit the broadest number of people. We must have rules that maintain access by all through many on-ramps and off-ramps. We must maintain inexpensive use by all under equitable terms. If a company feels it would be more efficient to exclude others from the system, that desire must be recognized as in conflict with the public welfare. We must maintain the ability for the broadest participation in commerce possible for widespread rural economic health.

Federal policy applied to the stock markets has promoted fairness, access, transparency and competition in the stock markets. The result is that 80 million people own stock, a far larger percentage of the population than of any other country, and those people can make trades easily and cheaply. Federal policy applied to the livestock markets has promoted unfairness, market closure, secrecy, and monopolistic practices.

We need to rethink the emphasis on efficiency in macro-market policy. "Efficiency" is relevant to a firm producing more for less money, but it is far less relevant to proper market operation. Stated another way, if efficiency gains occur, a competitive market will distribute those efficiency gains to society. In a non-competitive market, the efficiency gains are not distributed.

The analysis relating to market facilitation and efficiency should be as follows: First, the focus should be on creating a market system that is fair, accessible, transparent and competitive. The internal logic here is separate from efficiency. Second, if efficiency is raised as a negative factor, the following four questions must be asked before balancing the efficiency argument with the anticipated market facilitation effects: (1) Are the claimed efficiency gains/harm real? (2) Are the efficiency gains directly related to the market practice at issue? (3) Is there no other way to achieve the claimed efficiency gains? (4) Are the efficiency gains likely to be passed on to consumers or farmers, or is market power likely to obstruct passing the gains on to others. If the efficiency gains are real, related to the practice at issue, achievable in no other way, and likely to be passed on to consumers/producers, then we can quantify what efficiency gains are relevant and weigh them against the positive effect of the market facilitating rules contemplated.

A. Captive Supplies: The Problems

Captive supplies of livestock are all livestock committed to packers through packer ownership and contracts more than seven days prior to slaughter.[1] The fundamental market problems of captive supplies are threefold: (1) market closure; (2) market unfairness; and (3) enabling packers to "game the system" just as Enron and Dynegy gamed the energy trading system.

[1] The industry, specifically most cattlemen's associations that have addressed the issue, uses the seven day rule. However, USDA-GIPSA uses a 14 day prior-to-slaughter rule. See, USDA GIPSA publication, "Captive Supply of Cattle and GIPSA's Reporting of Captive Supply," released January 18, 2002 (on the web at www.usda.gov/gipsa/pubs/captive_supply/captive.htm).

1. Market closure

Captive supplies have progressed to the point where hog farmers cannot get bids or access to markets, even in states with large packing capacity, such as Iowa, Nebraska and Minnesota. Pork packers own 20 percent to 25 percent of the hogs they slaughter. That is 77,000 packer owned hogs per day at 22%. That is over 20 million hogs per year that displace family farm produced hogs. This, at its core, dampens or excludes widespread rural commerce. If we like a diverse and decentralized production system, we are not promoting it.

But what of the remaining "open market" participants? We know that about 16% of each day's slaughter is claimed to be open market, using USDA daily market news reports.[2] No one disagrees that farmers and ranchers have difficulty accessing the market. But what is not widely known is that most farmers who seek bids on their hogs seldom receive bids, even in Iowa which has more pork slaughter capacity than any other state. Rather, they get "slots" or "shackle space" at some time in the next seven to fourteen days. The packer tells the farmer what the price is after the hogs are delivered. That price is reported to USDA Market News Service. No bids. No competition. That is our dysfunctional open market price discovery system. We are losing much decentralized economic activity in the form of broad family farm market participation.

2. Market unfairness

To the extent participation is allowed in the markets, participants are treated unequally. Large corporate producers receive preferential contracts. For example, the large feedyards owned by Sparks, called Cattle Co., appear to have contracts with packers which allow significant price advantages over other producers of cattle. It is undisputed that producers are treated disparately with regard to contract offerings, bids, and access. But it is disputed whether these practices are legitimate. If we apply basic and successful market principals to our evaluation of these activities, the answer is clear that disparate treatment is contrary to proper market operation and contrary to the public interest.

If a small farmer produces high quality hogs, he/she should get access to prices and shackle space according to quality, not quantity. If a large farmer producers high quality hogs, the same result. Size is not relevant to hog quality. Further, the transaction costs arising from purchasing from many producers, rather than a few large producers, is so small as to be insignificant. The primary goal should be fairness and access to facilitate widespread and decentralized rural commerce.

A properly functioning free market provides uniform rules for all participants on price, premiums, discounts and access. The stock market does so. Warren Buffet gets no better terms than Michael Stumo when buying stock at a particular time – even if he buys 500,000 shares of GE when I buy 50 shares. Buffet may analyze information and have better strategies to time his

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[2] This 16% contemporary figure is part of a declining trend in open market hog trading. If the current trend continues, the open market will disappear in 2004.

purchases and sales, but we have equal market access at the same price on any given time and date of trading. The same should be true in the livestock markets.

The Packers & Stockyards Act should be to "live-stock" what the Securities and Exchanges Acts are for "paper-stock." The law is written to enable this result, but USDA has failed. More on that later.

3. Manipulating or Gaming the System: The Incentive Structure

When constructing proper market rules, the proper approach is to counteract the incentives to manipulate the market or "game the system." Looking for proof of harm after-the-fact is not beneficial and this method has failed. Further, a focus on efficiency has not proven helpful and has failed.

Enron and Dynegy "gamed the system" with regard to California energy markets. They used strategies such as Death Star, Fat Boy and Get Shorty in creating fictional transactions, creating perceived shortages, and trading advantageously in the situation they created. They got wealthy, but Californians were thrown into crisis.

When undue importance is attached to a number, undue efforts are made to manipulate that number. On Wall Street, the *key number* is earnings. Shady accounting strategies are used to manipulate that number. Bernard Ebbers of WorldCom is the poster child for this scenario. But tremendous energy is expended by defenders to justify those strategies as legitimate. In the livestock markets, the *key number* is the open market price. Similarly, shady marketing strategies are used to manipulate that number. And tremendous energy is expended by defenders to justify those strategies as legitimate.

Captive supplies, such as contracted and packer owned livestock, are the raw material for market strategies equivalent to Death Star and Fat Boy. By strategically scheduling captive hogs to stay out of the market, drive the price down, and jump into the market to buy at low prices, packers make tremendous amounts of money. Farmers lose tremendous amounts of money. Yet valiant attempts are made to convince us that captive supplies are justifiable.

The fundamental principal here is that when the market is dominated by a few firms that are repeat players in a very thin market, the motive and opportunity to manipulate that thin market is so real as to be undeniable. Bob Peterson, former CEO of IBP, spoke to the Kansas Livestock Association in 1988. The following comes from the tape of his speech:

> "Our competitors are promoting contracts and seeking more. These forward contracts coupled with packer feeding could represent a significant percentage of fed cattle at certain times of the year. **Do you think this has any impact on the price of the cash market? You bet! We believe a significant impact.** Large volume forward contracting and its inevitable connection to the futures trading pit in Chicago will foster sever price distortions in the cash market. In the event that contracting becomes the wave of the future, and frankly I doubt that sharp feeders will allow that to happen, IBP will be forced to respond to the competitive pressures of the market place." (emphasis added)

Even Wayne Purcell of Virginia Tech, who opposed the packer ownership ban, understands the manipulative incentives in the current system.[3] In testimony before USDA in Denver in September, 2000, he wrote that "[w]hether buyers attempt to manipulate the cash market to which the contract price is tied is somewhat immaterial because the incentive to do so is present and is undeniable." It is this motive and opportunity, aka the "incentive structure," that should govern legislative judgment to prevent manipulation.

Past USDA studies have shown a high correlation between increased captive supplies and lower prices. The most detailed study of this relationship was published in 1999, using subpoenaed packer information with the support of USDA. That study, in the beef industry, found that "a robust empirical relationship [between captive supplies and low prices] was found in every case.[4] For folks who are confused, this means that when captive supplies are dumped on the market, prices drop. The economic incentive is thus shown. More captive supplies make more money for packers.

USDA explains this away saying that this correlation does not give them causation. But economists cannot achieve "causation." Rather, a major ADM-style price fixing case with testimony, hidden cameras, and the like is necessary to give causation to the extent needed by USDA. It is time for a legislative judgment to be made.

Let us quantify the economic incentive to game the system by using captive supplies to manipulate the price through an example. If packers can use captive supply to drive down the open market price by one dollar on a day, the procurement savings is $910,000 each day (assuming a daily hog slaughter of 350,000 head at 260 pounds per animal). That is $910,000 taken from farmers. On an annual basis, that is $237 million taken from farmers and transferred to packers as compared to a competitive market result. If captive supplies drive the price down by two dollars per day, we double the farmer loss and double the packer gain.

How can a dominant packer buyer game the system? The easiest way is for a packer to schedule blocks of captive supply livestock for slaughter over a period of time, pull out of the market during that time and watch the open market price fall. Then the packer can jump into the open market to buy cheaply. That cheap open market price not only saves money on the open market hogs directly, it also cheapens the tens of thousands of hogs per day that are contracted using a formula based on the open market price. If any packer buyer does not known how to do this, it is likely that any such packer buyer has moved on in his career.

Additionally, the futures market relies most heavily on the open market in determining price for the future. If the open market is broken, the damage is transferred to the futures markets. In other words, the captive supplies derivatively drive down the futures market because of futures traders' heavy reliance on open market price data.

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[3] Purcell, Wayne D., *Contracts And Captive Supplies In Livestock: Why We Are Here, Implications, And Policy Issues,* Testimony at the Denver Captive Supply Forum, dated September 21, 2000.
[4] John R. Schroeter and Azzedine Azzam, Econometric Analysis of Fed Cattle Procurement in the Texas Panhandle 46 (November 1999).

Lastly, because producers selling in the open market have few realistic bid choices, they engage in "panic selling" rather than negotiation. Certainly it is difficult to negotiate when there is only one willing buyer in the region and that buyer does not bid but merely doles out shackle space with the promise of an arbitrary "price" upon delivery. The cumulative result of panic selling is not a price arising from a competitive market. From what is that post-delivery price derived from, a market? Packer gratuity? Certainly not competitive bidding.

B. Captive Supplies: The Solutions

The only solution to captive supplies is structural, not a conduct remedy. By a "structural remedy," I mean limiting or eliminating the partial vertical integration known as captive supplies. A "conduct remedy" means that we do not limit captive supplies but merely pass or enforce a law to prevent unlawful conduct that captive supplies could enable. Structural remedies are preferred because they do not require significant policing due to the fact that the ability to manipulate markets is taken away from dominant firms. Conduct remedies are not preferred because they require constant policing by regulators in a very intrusive way to be effective. Such constant policing has historically not been undertaken or effective.

1. Packer Ownership Prohibition

The packer ownership prohibition is the first step in making the markets work properly and limiting the ability of packers to game the system. Representatives Janklow and Latham have co-sponsored a bill in the House (H.R. 719) which mirrors a Senate bill (S.27) co-sponsored by Senators Grassley, Johnson and others. This legislation would take a portion of the strategic scheduling ability away from the dominant packers and make the market more responsive to true supply and demand. It would also increase access to markets by more producers.

While some studies predicted crisis from banning packer ownership, those studies can be dismissed by one simple analysis – i.e. the historical record. The studies were not based upon the historical record, but upon wildly speculative economic projections. We know that the drastic financial losses in the industry will not occur because packer ownership prohibitions have been in effect for several years in Iowa and Nebraska. The predicted losses did not occur. Those states had, and continue to have, the largest packing capacity for hogs and cattle, respectively, in the nation. Those states have as many or more producers of hogs and cattle as any state. The strength or decline in production agriculture has not been affected in a manner more drastic than other states. Yet, the percentage of family farmers producing livestock is as high or higher than other states.[5]

2. Captive Supply Reform Act

Senator Enzi has proposed a bill (S. 1044) that would require all contracts to have a fixed base price at the time of the agreement and would also require open public bidding of these contracts. This bill would transform the contract market from a secret, preferential, market harming scenario into an open market in and of itself. A contract market would still allow quality

[5] See, Welch, et al., "On the effectiveness of state anti-corporate farming laws in the United States," Food Policy 26 (2001) 543-548.

specifications and risk management. But it would severely limit the ability of packers to use contracted supplies to manipulate price.

Importantly, the Enzi bill has basic requirements for the contracts similar to the futures markets. There is a relatively small volume requirement, 40 head per contract for cattle and 30 head for hogs, that allow small producers to bid on contracts while large producers bid on more contracts. However, that legislation could be improved by adding a 14 day delivery window for each contract to limit strategic scheduling by the packer to affect the spot market price.

3. Transparency for Independent Livestock Producers Act

The Transparence for Independent Livestock Producers Act would provide independent producers a guaranteed share of the market place by making improvements in the Mandatory Price Reporting System. Sponsored by Senators Grassley and Feingold, the bill would require meat packers to purchase at least 25% of their daily slaughter needs from the open market. This legislation will prevent the industry from being "chickenized", or fully vertically integrated so that there is no market.

II. The Regulatory and Enforcement Regime

The Packers & Stockyards Act (the Act) gives Secretary of Agriculture authority over the meat packing industry.[6] Unfortunately, past and present secretaries (or their designees) have stood before Congress stating that their authority is unclear or insufficient to encompass antitrust issues under the Packers & Stockyards Act. Those statements have been false. The Act provides the Secretary more authority over the packing industry than any other statute provides any other agency over any other industry. The Conference Report issued at the time of the Act stated that "Congress intends to exercise in the bill, the fullest control of the packers and stockyards which the Constitution permits."[7]

The Act prohibits unfairness, deception, price manipulation, and the creation of a monopoly, among other things.[8] The role of the secretary is, and has been, to undertake two categories of activities: (1) propound regulations refining the definitions of the prohibitions in the Act; and (2) enforce the Act and the regulations under the Act. Past secretaries have failed to perform these obligations. The current secretary shows no inclination to alter that trend.

A. Rulemaking

The most inexpensive way to facilitate proper market operation, to minimize industry efforts to "game the system," and to increase fairness, access, transparency and competition is to propound regulations under the Act.

It is helpful to look to the FTC Act of 1914 as an analogy because of its similarities to the P&S Act and because of its more effective caselaw and regulatory development. The FTC Act

[6] 7 U.S.C. §§181 et seq.
[7] Conference Report, H.R. Rep. No. 324, 67 Cong. 1st Sess., at 3 and 5-6 (1921).
[8] 7 U.S.C. §192.

prohibits "unfair and deceptive practices" as well as "unfair competition." The FTC has issued regulations and guidelines defining what these terms mean in the economy. The "unfair and deceptive practices" have given rise to the FTC's Consumer Protection Bureau while the "unfair competition" clause gave rise to the Competition Bureau. A similar dichotomy in the P&S Act in which the unfairness and deception clauses relate to "Producer Protection" while the price manipulation and monopoly creation prohibitions relate to competition or antitrust.

Unlike the FTC, the Secretary has failed to issue regulations or guidelines defining the key terms of the Act, including:

a. unfair practices under 7 U.S.C. 192(a);
b. deceptive practices under 7 U.S.C. 192(a);
c. unjustly discriminatory practices under 7 U.S.C. 192(a);
d. undue or unreasonable preference or advantage under 7 U.S.C. 192(b);
e. apportionment of supply that restrains commerce or creates a monopoly under 7 U.S.C. 192(c);
f. price manipulation, control of prices or creation of a monopoly under 7 U.S.C. 192(d);
g. conspiracies under 7 U.S.C. 192(f) and (g); and
h. apportionment of territory, apportionment of purchases or sales, or manipulation or control of prices under conspiracy under 7 U.S.C. 192(f).

Further, the Secretary has failed to issue regulations or guidelines for other duties under the Act, including:

a. defining unusual or suspicious marketing activity or pricing;
b. when and how to refer violations of the Packers & Stockyards Act to the Attorney General as set forth in 7 U.S.C. §404;

This failure to refine and define the Act through regulations is at the heart of the USDA's failure to minimize unfair and deceptive practices and maximize competition. Without internal policy guidance, the USDA is limited to an ineffective "I know it when I see it approach" which is gives no direction to employees investigating market activity.

Two reasons for these failures are USDA responsiveness to industry pressure and a pre-occupation with efficiency as a primary goal. USDA fails to recognize that: (a) efficiency is irrelevant to unfair or deceptive practices; (b) efficiency is irrelevant if lack of competition fails to pass efficiency gains on to producers or consumers; and (c) efficiency is a micro-concern within a firm and increasingly conflicts with competition principals.

B. Enforcement

Even if rules are clear, intelligent and effective, they are without value unless enforcement is effective. Enforcement of the Act can come from three sources: (1) USDA-GIPSA in an administrative proceeding; (2) the Department of Justice in federal district court; and (3) private litigation. Public enforcement by USDA has failed. Public enforcement by the Department of

Justice has not existed. Private enforcement has been hampered by the lack of an attorneys fees provision and a treble damages provision, both of which exist under the Sherman and Clayton Acts, to help farmers pursue remedies when they have been harmed.

What is the role of each means of enforcement? USDA and DOJ enforcement – in the best case scenario of political will, sufficient expertise, and sufficient funding – is limited to high profile cases that set precedent. Government enforcement cannot hope to be the primary means of stopping all unlawful practices. Rather, private litigation by farmers and ranchers who are actually harmed is the best way to guarantee effective and widespread enforcement of the run-of-the-mill violations.

1. USDA enforcement

USDA enforcement activities are at a historic low. Key Packers & Stockyards staff have retired or been fired without replacement. There are few experienced personnel remaining and personnel are few in number. In sum, GIPSA has neared self-imposed irrelevance to meat packer practices.

In the past, USDA has tried to use enforcement proceedings before administrative law judges as a substitute for rulemaking. Using their I-know-it-when-I-see-it approach, and without the guidance of regulations, USDA has sued major meatpackers for preferential pricing (In re Beef Marketing Group) and unlawful market retaliation (In re Farmland National Beef Co.), for example. While those cases were mid-to-late-1990's exceptions to the historic "lack of any enforcement rule" at USDA, they failed to succeed primarily due to the lack of regulations defining unlawful practices under the Act. The administrative law judges hearing these cases had no regulations to guide their decision making and were left to ad hoc decision making. Because of those enforcement failures in the recent past, USDA is even more reluctant to litigate and has not begun to propound necessary regulations.

Even if USDA was willing to, and able to (funding and expertise-wise), increase enforcement activities, only the most significant cases would be undertaken – those with precedent setting potential. This is the history of enforcement in other antitrust contexts at DOJ and FTC. While this approach would be laudable if undertaken, there is no prospect that USDA can address all unlawful activities in the countryside.

2. DOJ enforcement

There is a process by which DOJ may be called upon by the Secretary to bring an enforcement action under the Act in federal district court.[9] However, to OCM's knowledge, this process has never been utilized. Again, the best case scenario is that this mechanism of enforcement would be limited to precedent setting cases, rather than run-of-the-mill violations.

3. Private litigation

[9] See, 7 U.S.C. §224.

The Act allows producers to engage in private litigation in pursuit of damages caused by packer harm.[10] Private litigation historically holds the most promise for comprehensive enforcement. This is because the incentive is extremely strong for those actually harmed by unlawful activities to pursue a remedy. However, the number of private cases has been very small since private suits were allowed in 1976.

The reason that farmers and ranchers have been unable to prosecute private suits is that there are no attorneys fees provisions or treble damages provisions under the Act. The Sherman and Clayton Acts have such provisions and, thus, private enforcement has complimented public enforcement. Without these provisions, the cases are too expensive to undertake due to their complex nature and the vigorous defense of packers. The solution is to amend the Act to allow farmers who win a suit to receive attorneys fees and treble damages. This is not a sop to trial attorneys, it is a provision needed for farmers to gain effective legal representation.

C. Solutions within USDA

The Packers and Stockyards Programs section of USDA should be shut down and replaced by an undersecretary-level Office of Special Counsel for Competition. Rulemaking and enforcement of the Act must be given a higher priority at USDA. This high priority must be accompanied by more professionalism, focus and funding directed at competition and fairness issues. Currently, GIPSA is a small, underfunded corner of the vast USDA bureaucracy. Field investigator recommendations for enforcement activity must go through several layers of bureaucratic scrutiny before final approval – and final approval for significant action usually does not occur.

Again, an analogy to the FTC is helpful. In the late 1960's, the Federal Trade Commission was justly criticized for being ineffective and unprofessional. A Nader Report and an American Bar Association report criticized the FTC for: poor leadership, lack of direction, aimless enforcement, and squandered resources. The fundamental question was whether the agency should be abolished or reformed.[11] The FTC chose to implement the solutions recommended in the ABA report.

In a June 12, 2001 speech before the American Antitrust Institute, current FTC chairman Timothy J. Muris recalled those thirty-years-ago changes:

> *For consumer protection, the Report prescribed vigorous law enforcement and a national role in developing consumer protection policy. More specifically, it recommended that the agency:*
>
> - *Focus enforcement on serious consumer problems, especially fraud.*
>   - *Mount a more effective campaign against deceptive advertising.*
>   - *Strengthen its remedies and reduce delays.*
>   - *Provide industry guidance and incentives for compliance and self-regulation.*

[10] See, 7 U.S.C. §209.
[11] See, Muris, Timothy J., "Robert Pitofsky: Public Servant and Scholar," Speech to the American Antitrust Institute, June 12, 2001. (available at www.ftc.gov/speeches/muris/muris010612.htm).

- *Undertake studies, issue reports, and make legislative recommendations directed at pressing consumer issues.*

- *Work with state and local consumer protection agencies.*

- *Make consumer education part of the agency's mission.*

For competition, the Report prescribed that the Commission use its unique history and institutional advantages - those not available to the Department of Justice Antitrust Division - to advance competition policy and enforcement. More specifically, the Report recommended that the agency:

- *Use the "full panoply" of its institutional tools to make competition policy - doing research, publishing studies, bringing cases, and making use of the intersection of competition policy and consumer protection authority.*

- *Formulate national competition policy by using the administrative process to adjudicate cases.*

- *Make policy involving "unsettled" areas of the law.*[12]

Thus, the FTC became far more effective and respected.

GIPSA is in a similar position to the old, ineffective FTC. It currently suffers from poor leadership, lack of direction, aimless enforcement, and squandered resources. However, it can use the tools at its disposal to provide focus and effectiveness, including: rulemaking, studies, legislative recommendations and enforcement. It can take advantage of the confluence of its producer protection authority and competition authority to set national policy towards a more fair, accessible, transparent and competitive market infrastructure.

Congress can facilitate this process by creating an undersecretary level position at USDA with the following (or similar) title: Office of Special Counsel for Competition and Producer Protection. The position should be filled by an attorney experienced in such matters, appointed by the president with the advice and consent of the Senate. That office, under this scenario, would house all USDA authority and personnel relating to agricultural competition and fairness such as the Packers & Stockyards Act, the Agricultural Fair Practices Act, and the Mandatory Price Reporting Act. The office would have the authority to propound regulations, initiate enforcement proceedings, interact with the Department of Justice, conduct studies and recommend legislation.

The goal should be an FTC-style remake of USDA-GIPSA. USDA is the largest agency after the Department of Defense. It engages in a wide variety of activities other than antitrust-style enforcement. If Congress agrees with farmers and ranchers that competition and fairness policy is a priority, then the USDA structure should reflect that priority and be empowered with the resources and leadership. The creation of an Office of Special Counsel for Competition and

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[12] Id.

Producer Protection, professionally staffed with personnel experienced in investigations and competition enforcement, would greatly assist in accomplishing that goal.

III. Conclusion

There is no credible argument to be made that the livestock markets are working properly. There is no credible argument to be made that the regulatory and enforcement regime is equal to the task before it. Congress should dispense with the past fascination with efficiency as a dominant goal.

Rather, Congress should focus on creating and maintaining a livestock market infrastructure in which all producers, of whatever size, can participate on equal terms without displacement by captive supplies. Congress should focus on market facilitating rules based upon fairness, access, transparency and competition. The access and widespread participation on the internet, the U.S. highway system and the stock markets should be the governing metaphors or analogies.

The proper analysis when balancing market facilitating rules with claims of losses in efficiency is as follows: First, the focus should be on creating a market system that is fair, accessible, transparent and competitive. The internal logic here is separate from efficiency. Second, if efficiency is raised as a negative factor, the following four questions must be asked before balancing the efficiency argument with the anticipated market facilitation effects: (1) Are the claimed efficiency gains/harm real? (2) Are the efficiency gains directly related to the market practice at issue? (3) Is there no other way to achieve the claimed efficiency gains? (4) Are the efficiency gains likely to be passed on to consumers or farmers, or is market power likely to obstruct passing the gains on to others. If the efficiency gains are real, related to the practice at issue, achievable in no other way, and likely to be passed on to consumers/producers, then we can quantify what efficiency gains are relevant and weigh them against the positive effect of the market facilitating rules contemplated.

Legislation should take away the ability for dominant firms to game the system. Captive supplies are the primary mechanism for such manipulation. Rather than requiring proof of past harm, the regulatory approach should look to the incentives in the system. Stated another way, Congress should focus on preventing future harm that is likely to occur because of the incentive and ability to manipulate price or engage in other strategic conduct that would be profitable to a firm but contrary to the public interest.

Thus, the packer ownership ban should be passed. The Enzi captive supply bill should be passed. Any efficiency claims attached to captive supplies are both unproven and eclipsed by the market disruption caused by the practice.

An Office of Special Counsel for Competition and Producer Protection should be created at the undersecretary level within USDA. That office should take over all competition, producer protection, and price reporting functions. That office should also be infused with leadership that can remedy the problems of poor leadership, lack of direction, aimless enforcement, and squandered resources. In doing so, that office can make use of the tools at its disposal including: rulemaking, studies, legislative recommendations and enforcement.

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U.S. HOUSE OF RREPRESENTATIVES AGRICULTURE COMMITTEE
LIVESTOCK AND HORTICULTURE SUBCOMMITTEE FIELD HEARING
REVIEW OF PACKER OWNERSHIP OF LIVESTOCK

GRAND ISLAND, NEBRASKA
JUNE 21, 2003

It is critical for producers and consumers alike that fair and unfettered competition be the driving force in a free-market agricultural industry. This basic tenet of our economy is being overrun by increased concentration through packer ownership of livestock and captive supplies of livestock.

The rapid removal of options for producers to market their products is having an impact throughout all facets of American agriculture, and it is rendering the private producer incapable of accessing a traditional open market. Packer ownership and contracting have removed 80-85 percent of hogs sold from the open, price-revealing market. Discriminatory pricing is skewing markets in that products of equal quality receive differing but confidential pricing due to private volume premiums. And the Attorneys General of 16 states felt compelled to join forces to confront abusive practices prevalent in agricultural production and marketing contracts.

Packer ownership of livestock is a subset of captive supplies. The trend towards captive supplies and packer ownership has dramatically increased the market power of meat packers far beyond the control they previously had in the marketplace even ten years ago.

Packer ownership of livestock prior to slaughter results in less competition for all sellers in the market. Because packers have slaughter livestock supplies locked up, they do not have to bid competitively for all of their livestock needs. This depresses the market and restricts market access for other producers. It also increases the likelihood of price manipulation in the marketplace. When packers own livestock, they can push forward or hold back their own supplies to affect market prices.

We believe any functional market should contain the following fundamental principles:

- Fairness – Rules should exist and be applied equally to all participants in the market.
- Access – Markets should be structured so that all who wish to compete may do so.

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- Transparency – Markets should be structured so that all who participate in them have access to equivalent information and are able to gauge the costs and prices of the market.
- Competition – Success in the market should be based on merit and other aspects that can be objectively judged.

These principles should be articulated in public policy. Allowing packers to own and feed livestock violates these principles and reduces the livestock market to a nonfunctional, noncompetitive market.

The Packers & Stockyards Act, and regulations thereunder, currently prohibits stockyards from vertically integrating. Specifically, stockyards may not own or control buying stations, packing plants, or livestock feeding operations. The rationale is that such ownership or control creates conflicts of interest, access problems for other producers, and opportunities for self dealing which distort the market. Because packers are similarly situated to stockyards as a market creator and market forum, the same rules should apply to them.

The harmful effects of packer ownership include:

- Increasing packer market power by allowing them to stay out of the cash market for extended periods of time, thus reducing farm gate demand and driving down price.
- Increasing packer market power by allowing packers to bid more conservatively on the open, or cash, market for slaughter inventory, thus driving down price.
- Increasing packer market power by allowing packers to go to the cash market only during narrow "bid windows" or time periods each week rather than bidding all week, thus resulting in panic selling by producers.
- Distorting and/or thinning the public markets because captive supply livestock are not priced at the time of the commitment to deliver them, but rather they are priced after delivery. This means that they are not part of the publicly reported, daily cash market. Narrowing the volume in the market makes it more subject to manipulation. Less cash market volume also lessens price and producer income.
- Increasing the incentive and ability for packers to strategically use these supplies to drive the cash price down.
- Severely lessening, or even eliminating, the ability of small- and medium-sized producers to access the market by making them residual sellers, depressing price and further decreasing the farm and ranch share of the food system profit (now down below 8 percent by some estimates).
- Creating conflicts of interest and opportunities for self-dealing by packers at the expense of producers.

Packer ownership and other anti-competitive aspects of livestock markets also have harmful affects on rural communities. Packer ownership and lack of competition for livestock means lower prices through decreased market opportunities. Lower prices result in lower farmer and rancher incomes and eventually results in farmers and ranchers leaving agriculture. Fewer farmers and ranchers in rural communities means fewer customers for Main Street businesses in small towns, fewer children in rural schools, fewer people in church pews and fewer people in rural counties that support rural institutions. For example, the 2000 Iowa Farm and Rural Life poll conducted by Iowa State University showed that 70 to 80 percent of farmers do business at local feed stores, supermarkets and other businesses. If those farmers and ranchers no longer exist, those businesses and eventually those towns will no longer exist.

Further, rural sociological and anthropological studies that have examined the issue find that when a large number of smaller scale, closely held farms which provide labor, management and capital cease to exist, rural communities are significantly harmed economically and socially.

Enabling the people who produce the nation's food to own the operation and the fruits of their labor and gain control over their work and lives gives them a stake. The opportunity to be self-employed and assume ownership, control and responsibility over our own work generally provides for stronger communities. People who have a stake in society and their community are the source of more social and community-minded behavior than those who have little stake.

However, the packer ownership/captive supply system is tearing this system of rural society and economics. The stake people have in their community is lessened. The packer ownership/captive supply system replaces the independent farmers and ranchers that owned the livestock and reaped the profits from the sale of the livestock. The packer ownership/captive supply system is sapping this entrepreneurial and social fabric out of many rural communities as ownership, management, and labor become separated both economically and socially and as rural communities become economically dependent on outside forces and influences.

Nebraska's 21-year history with a prohibition on packer feeding and ownership also shows it can work and that livestock production can successfully continue. Initiative 300, the state's corporate farming ban, generally prohibits packer ownership and feeding of livestock. Packers still operate in the state and Nebraska continues to be one of the top livestock producing states in the nation.

For all these reasons we support a national prohibition on packer ownership and feeding of livestock. At a time when our nation is continuously extolling the virtues of free trade to others throughout the world, it is logical and imperative that the same principles must govern the domestic markets for those who feed us. It is time to bring the basic American principles of competition and fair and free markets home.

SUSAN FRAZIER
1512 ROAD D
FAIRMONT, NE 68354

My name is Susan Frazier. We are livestock producers in Fillmore County Nebraska.

For the sixth year in a row (1996 to 2001) data from the U.S. Department of Commerce, Bureau of Economic Analysis the rural Great Plains can lay claim to being the lowest income region in the nation. For the sixth year in a row Nebraska is home to some of the lowest county income levels. Of the 10 counties in the United States with the lowest income Nebraska has the dubious distinction of having 6, including first second and third and another coming in on this discouraging list at number 12. These are rural counties devoted to agricultural production and their economic wellbeing dependent on agriculture with the major commodity being livestock.

As our elected leadership searches for ways to alleviate this poverty they can not ignore the connection between the income derived from livestock production and the control over the livestock industry that the packing industry has. They can not ignore the ever increasing spread between the price the independent livestock producer and feeder receives and the prices paid by consumers.

The packing industry, which is control by a very few mega corporations can, by using the livestock that they own or control, manipulate to their advantage the prices they pay to independent producers. This is not a competitive market, it is not a transparent market, it is a controlled market and this factor has to be looked at as a major contributor to the poverty in our rural counties.

We must have competitive markets. We must have transparent markets. And to this end we must have a packer ban on ownership of livestock.

House Agriculture Subcommittee on Livestock and Horticulture

Testimony from John K. Hansen, President Nebraska Farmers Union
Grand Island, Nebraska Field Hearing
June 21, 2003

Good morning Mr. Chairman and Members of the Subcommittee:

On behalf of the 4,500 farm and ranch families of the Nebraska Farmers Union, I welcome the Subcommittee to Nebraska and appreciate your willingness to find the best way to approach market reform in the livestock sector.

From the perspective of our organization's livestock producers, our agricultural livestock markets are a painful and miserable failure. First, agricultural livestock markets are much too tightly concentrated and controlled. When four packers control 81% of beef slaughter, 59% of hog slaughter, 50% of broiler processing, and 45% of turkeys, that is obviously too much concentration and control.

Second, the economic stranglehold the largest processors have achieved through market concentration is accelerated by the direct and indirect control they have over livestock production. If the largest hog processor is also the largest hog producer, there is no fair competition, and no possibility for an independent hog producer to get a fair price. The total value of a hog that is produced by an independent producer is what the pork processor will pay. The total value of a hog produced by a hog processor is the value of the carcass and all of the by products going out the back door of the processing plant. That is not fair competition.

Third, despite legislative efforts to gain greater transparency in livestock markets, producers are sadly disappointed by the USDA's ineffective implementation of the law. But that is another important topic for another day.

Fourth, our domestic livestock markets are getting less accessible every day. Small and medium sized livestock producers struggle to find processors to take their hogs, and even their cattle. The number of cattle buyers to Nebraska feedlots has shrunk in many areas to one. There simply is no real competition left in the country, nor is there any real market access. I receive telephone calls from medium sized hog producers because they are unable to find a packer to bid on their hogs.

Fifth, there is a growing problem that comes with growing market control--intimidation on the part of packers. When my members who are medium to large-sized feedlot owners ask me to speak out on market reform issues because they are afraid to do so I ask them why. They tell me of fellow producers who publicly accused packers of price gouging or unfair marketing practices, only to find themselves without any buyer. One of my members said he was told point blank by a packer field representative: "If you continue to tell the world how unhappy you are with us, we will assume you don't want to be our customer anymore." He went on to describe how three different packer buyers used to visit his feedlot every week, and then two, and now one. He felt he could not afford to take any chances with the only buyer he had left.

Sixth, Nebraska's farm families overwhelmingly support the ban on packer feeding. In 2001, a scientific poll released by the Center for Applied Rural Innovation indicated that no less than 72% of our state's farm families support the ban, while a mere 12% oppose it. A chart from the poll is included at the end of this testimony.

It is appropriate that you have traveled to Nebraska today to examine a ban on packer feeding. In 1982, our state's voters approved by an overwhelming margin, the strongest ban on corporate farming in the nation. The language in our state Constitution, which bans non-family corporations from production agriculture, also serves as a highly effective ban on packer feeding. After 20 years, what has been the effect on Nebraska's livestock sector?

In 2002, Nebraska was ranked first in the nation in commercial livestock slaughter, first in red meat production, and first in commercial cattle slaughter. In 2002, Nebraska was also ranked second in all cattle on feed, third in all cattle and calves, fifth in commercial hog slaughter by live weight, and seventh in hog production. With cash receipts from farm marketings totaling $9,488,580,000, Nebraska ranked fourth in the nation in 2001, the last year for which information is available.

Nebraska is not an economic island. Like all other major livestock states, our producers lose value because of noncompetitive livestock markets and unfair trade policies. But because of our ban on packer feeding over the last twenty years, our livestock ownership structure is more healthy and diverse, and we tend to have more small and medium sized producers. As a result, we have fewer major environmental issues, and more rural economic benefits from a more traditional system of independent, owner-operator livestock production.

When Nebraska Farmers Union evaluates trends in livestock production, we do so based on how our members who are traditional, independent, family farmer and rancher owner-operator livestock producers are impacted. From that perspective, traditional livestock production in our nation is in crisis. For example, since 1982, Nebraska has increased its total pig crop from 5,731,000 to 6,095,000 hogs in 2002. Yet, when we measure hog producers, we went from 16,000 hog producers in Nebraska in 1982, down to 2,950 hog producers in 2002. Hog production is not in crisis, hog producers are.

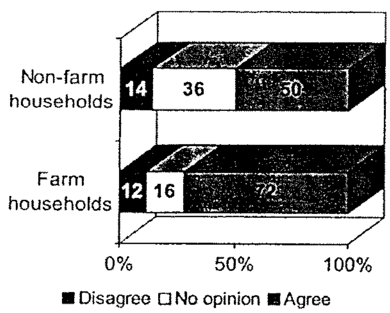
All of the domestic market problems we have are made worse by our nation's unfair trade policies. Our domestic meat processors are also global players. They want to use as much of the world's total livestock production as possible to drag down the price of livestock to the lowest possible price in each of the major meat producing countries. In short, the meatpackers' economic strategy for livestock is similar to the grain traders' economic strategy for grains. This stands to reason when you stop to consider that in several cases, the meatpackers are also the grain traders.

Last year, according to the February 25, 2003 USDA Livestock, Dairy, and Poultry Outlook, our nation imported 2,260,030 more head of cattle than we exported, and 5,535,079 more head of hogs than we imported. That amount of massive imports has a tremendous impact on domestic market prices. How much of the imported livestock is captive supply, we do not know, but we suspect a very substantial percentage is. Again, that is another important topic for another day.

Nebraska's livestock producers believe that our agricultural livestock markets look like, act like, and control prices like a system of shared monopolies. We are calling on your Subcommittee to bring badly needed and long overdue remedy to our badly warped and broken livestock markets. A ban on packer feeding and direct ownership of livestock would be a good starting point for what must be a comprehensive plan of action to overhaul agricultural markets.

Thank you for the opportunity to share our thoughts on this issue of paramount concern. We are glad to help assist you in any manner we can as you go forward with your agricultural market reform efforts.

Figure 6. Belief that Livestock Feeding by Meat-Packing Firms Should be Prohibited by Occupation



Source: Center for Applied Rural Innovation
"Restructuring the Farm Bill: Opinions of Rural Nebraskans"
2001 Nebraska Poll Results

Consumer Quality Versus Packer Quality

by Sue Jarrett

The farmers and ranchers of the United States need to get back to producing food for consumers and quit producing commodities for corporate-dominated markets that do not pay them a fair price for the commodities they produce. Farmers and ranchers need a guaranteed cost of production plus cost of living.

We often give up quality in taste for the quality that the packers and processors want. Take the beef industry for example. Back in the 1970's we were told by the land grant universities and the extension offices that we needed to implant our yearlings with an artificial implant that would make them grow faster and thus more pounds quicker met a larger profit sooner. So the ranchers did what they were told and started implanting their yearlings. Soon we were implanting the calves, then another implant in the fall when they were weaned and then again when they went into the feedlots. More pounds faster and more uniform animals is what we were told to produce. Well, guess what? We did all that for the packers, not the consumer. The "quality" we were told to produce was for the packers' slaughtering facilities, so they could spend up their chains and kill more animals faster in their plants. So to meet packer quality we gave up consumers' quality. And we as ranchers gave up a decent price for the best we could raise.

I heard at a convention that we haven't produced enough beef in the U.S. to meet consumer demand since the early 1950's. And yet when I attend the NCBA convention they are always telling me the export market is what we need to raise prices. I once asked the president to clarify the fact that we import more in pounds of beef than we export - BUT - we export more in dollars than we import. Thus common sense would tell us that we are exporting our quality beef to the higher markets and importing the cheaper beef to feed the American consumers who don't have any way of knowing what they are buying. Boy, did his face get red, and he wouldn't answer to my comment until several other producers followed up with the same question, and then he finally confirmed what I had said.

I know that farmers are producing massive amounts of commodities that consumers no longer have confidence in eating. Genetically modified organisms (GMO's) are the tip of the iceberg for scaring consumers and causing a massive shift in how consumers view the agricultural community.

We as farmers hear that we are overproducing and that is why markets are cheap, and then we hear that we have to have GMO's to feed the world. We also hear that we are losing massive amounts of farm land and that we have to produce more an acre to meet demand. Well which is it – are we over producing or do we need GMO's? GMO's are doing to the grain markets what

the implants did to the beef markets. GMO's help farmers to raise more in volume for the processors to have for processing and keeping their plants running with cheap commodities, not a better product for the consumer. Well, to all this I say if I am wrong then why do the corporate agribusinesses fight any type of labeling bill that would allow consumers to choose?

***Sue Jarrett** is and independent family rancher for the eastern plains of Colorado. She has been a notable activist since 1996 fighting corporate hog factories. Sue ran for the state senate in 1998 and was instrumental in helping pass amendment 14, a ballot initiative to regulate the large-scale hog facilities to protect the water and air. Sue was selected to participate on the EPA small business panel in regards to the effluent guidelines under review this past year. Sue was appointed to the USDA Advisory Committee on Small Farms by Secretary Glickman and was selected Co-chair at the first meeting in January 2000. Sue has attended numerous meetings and conventions and has been a panelist or presenter at some of them as follows: International Women in Agricultural Conference 1998 in Washington, D.C., Seattle WTO Meetings 1999, Public Interest Law Conference Eugene Oregon 2000, 3rd World Water Forum in Japan 2003.*

Kansas Cattlemen's Association

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June 20, 2003

The Honorable Robin Hayes
Chairman
Livestock and Horticulture Subcommittee
130 Cannon House Office Building
Washington, DC 20515

Dear Chairman Hayes,

The Kansas Cattlemen's Association supports a ban on packer ownership of livestock. Such a ban would help return profits back to rural communities and rebuild a competitive market as well as help establish a fair marketing system that would benefit all producers.

In 2002, the Kansas Cattlemen's Association along with the High Plains Journal contacted an independent research firm, RJW Associates of Dodge City, Kansas to conduct the Beef Industry Producer's Questionnaire. Twelve hundred and fifty questionnaires were sent to a target audience of those with an income from beef production of at least $100,000. The response rate was 40 percent (40%). Respondents were asked whether or not they believed meat packers should be allowed to own, feed and finance their own cattle for their own plants. Ninety two percent (92%) felt meat packers should not be in the business of owning, feeding or financing cattle for their own plants.

The Drake Journal of Agriculture Law, written by leading agricultural lawyers, Dr. Roger McEowen-Kansas State University, Dr. Peter Carstensen-University of Wisconsin and Dr. Neil Harl-University of Iowa, has also examined packer ownership. They found that there are several conditions in today's market that make this legislation possible: consolidation amongst firms in the meatpacking industry, implications of the diminished cash market for hogs and cattle in recent years due to packer–owned and contracted livestock and the inability or unwillingness of government enforcement agencies to address the problems. Currently Nebraska, Iowa, Minnesota and South Dakota already have similar legislation in place that bars meat packers from owning livestock. The "dire" consequences that were predicted when such laws were passed have never happened.

In addition, such legislation would not affect marketing contracts as this bill narrowly targets contracts where a base price is negotiated before slaughter. The purpose of this legislation is to prevent packers from using contracted livestock to manipulate the cash market. The need for a ban on packer ownership is magnified by the fact that the cash market is the primary price discovery point for formula contracts and marketing agreements. If the cash market declines, packers pay less for livestock whether procured through the cash market or contract. Packers should be kept from establishing a base price in the cash market in which they are active buyers or a base price that is tied to a plant average price paid for the week before delivery. The packer in these conditions can still manipulate the market.

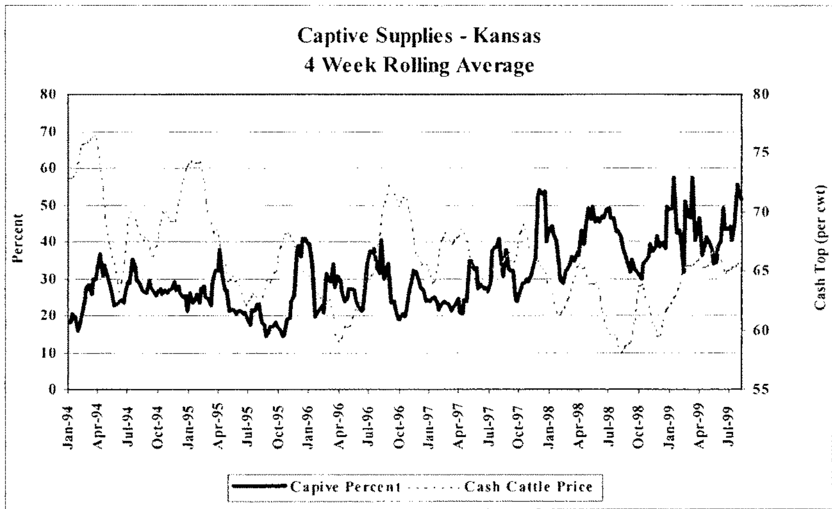
We ask that you consider the findings of the International Trade Commission (ITC) during the R-CALF trade investigation of 1998. During that investigation Commissioner Thelma J. Askey stated: "My review of the record indicates that the comparative difference between the levels of concentration in the beef packing industry and the feedlot operators leads to unequal bargaining positions between the two groups. This disparity in bargaining positions enables beef packers to influence price levels in the slaughter market to a significant degree. Accordingly, the feedlot industry is a price taker in the market, due to the level of concentration in the beef packing industry and the diffused nature of the cattle industry".

The cash cattle market is supply sensitive. When packers have captive supplies as has been proven, they force the cash market lower. (See the charts below) This is obviously a corrupt and abusive form of packer market control and reason enough for a ban on packer ownership of livestock.

We ask that you take a leadership role and ban packer ownership. It is time for legislators to put strict enforcement into the laws, return profit back to rural communities and rebuild a competitive market. A ban on packer ownership of livestock would do just that. We will not build a so-called wall around any state, but will restore a competitive and fair marketing system benefiting all producers. Please consider all of the information. We ask for your support on Banning Packers from owning, feeding, and financing or controlling livestock producers.

Sincerely,

Mike Schultz
Executive Director
Kansas Cattlemen's Association


Captive Supplies - Kansas
4 Week Rolling Average
Percent
Cash Top (per cwt)
Jan-94
Apr-94
Jul-94
Oct-94
Jan-95
Apr-95
Jul-95
Oct-95
Jan-96
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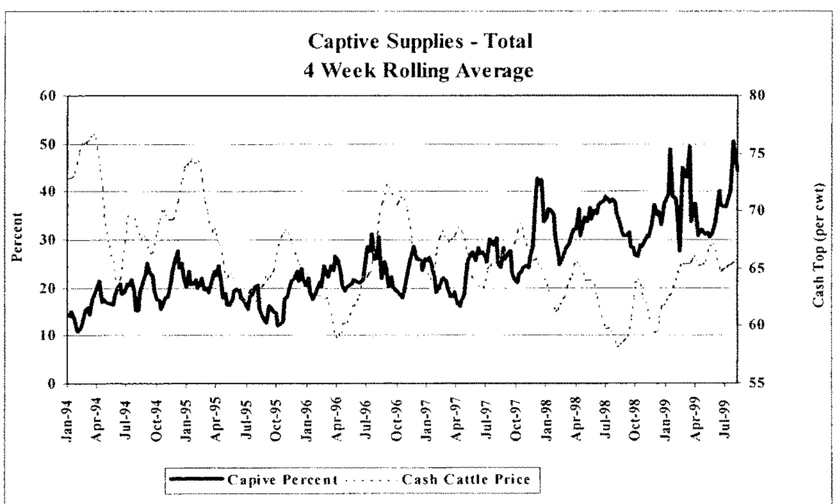
Capive Percent
Cash Cattle Price


Captive Supplies - Total
4 Week Rolling Average
Percent
Cash Top (per cwt)
Jan-94
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Capive Percent
Cash Cattle Price

House Agriculture Committee
Livestock and Horticulture Subcommittee Field Hearing
"Packer Ownership of Livestock"
Grand Island, Nebraska
June 21, 2003

Statement Of The
Livestock Marketing Association
And
Nebraska Livestock Marketing Association.

Mr. Chairman and Members of the House Livestock and Horticulture Subcommittee, the 800 members of the Livestock Marketing Association (LMA) and 40 members of the Nebraska Livestock Marketing Association (NLMA) appreciates the opportunity to express our views on the effect of meatpackers owning and feeding their own livestock. Our organizations represent livestock auction markets, dealers, order buyers and other related businesses.

Recent efforts to prohibit meatpackers from owning their own livestock was born out of increasing frustration by many producers, livestock market operators, dealers and feedlots with the steady decline in competition in the price and procurement of livestock. Packer concentration/integration and the packers' increasing use of non-competitive captive supply arrangements is increasingly putting a severe economic strain on small to mid-sized livestock producers which in turn threatens the socio-economic viability of thousands of towns throughout rural America.

It was the passage of the Packers and Stockyards Act of 1921 (the Act) that successfully stopped the monopolistic control of the "Big Five" meatpackers by divesting them of their interests in stockyards and rail lines. Nearly a century later, the "Big Five" are the "Big Three" and control of the major elements of the livestock industry is greater than it was in 1921. The Act unquestionably no longer adequately responds to a very changed livestock industry or the packers' current use of captive supply/livestock ownership arrangements to control the livestock market. Thus, we urge the Congress to update the Act to respond to a clear and present danger—packer ownership of livestock. Just as the Congress stopped the meatpackers' monopolistic practices in 1921 by divesting them of the sources of livestock transportation and marketing so must they today divest them from their captive supply/procurement arrangements.

If a few mega-companies are allowed to continue on their present course towards domination of the livestock industry through various captive arrangements, including livestock ownership, we can expect rural America to be profoundly changed. Cattle producers, not unlike many poultry and pork producers today, will become little more than low-wage hired hands on their own land. Independent feeders, who refuse to enter into captive arrangements with the packers, will be forced out of the marketplace leaving fewer marketing options available to producers. And, the last bastion of competition, the auction markets, could become nothing more than a way station for the packer's livestock. Such a scenario is unimaginable in a country that prides itself on competition and a free market.

The question is often asked how the livestock markets, as a torchbearer for free enterprise, could support restricting another business from doing business. First of all, support of a ban on packer ownership of livestock is hardly stopping packers from doing business. Their core business of slaughtering and processing animals remains fully intact. Secondly, restricting packers from owning livestock is simply an extension of Congress' efforts in the 1921 Act to maintain an open competitive free enterprise system in this country by taking away the means for any entity or packer to establish a monopoly or control over the marketplace.

The anti-trust concerns that caused the Congress to pass the 1921 Act are more valid today than they were nearly a century ago. That being so, we believe the Congress has an obligation to address the captive supply/packer ownership issue. If however by failing to address the packer ownership issue the Congress finds the Act's antitrust provisions are no longer valid, then better to repeal the Act then to continue to hold out it promise of protection to producers, livestock markets and feeders.

Contact: Nancy Robinson, Vice President
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Kansas City, MO
Telephone: 800-821-2048
Fax: 816-891-7926
E-mail: nrobinson@lmaweb.com

NEBRASKA STATE GRANGE

America's Family Communtity Fraternity 1874 280th Seward NE 68434

June 21, 2003

I am Robert Jeary, from Seward, present Master of the Nebraska State Grange. The Oldest Farm Organization, having survived many ups and downs in Agriculture since 1867.

An attempt was made to have some Livestock Producers from our organization speak at this hearing, but the wonderful rains have delayed field work, and they felt that is where they needed to be.

The Grange is for the family sized operations; therefore we are greatly concerned about the change in livestock marketing. We realize in order to have progress, changes need to be made. The thing that bothers our Organization is a trend toward monopoly. So often the immediate thought is not good for the future of our great nation. Competition has made this country, and we feel this needs to continue. When investigating happenings in foreign communities, big hasn't always proven to be better. I hope we don't make the same mistake others have, but just use their experience as a guide.

Robert Wm Jeary

Master Nebraska State Grange

Seward Nebraska 68434

LIVESTOCK AND HORTICULTURE COMMITTEE

ON JUNE 21ST, 2003 I ATTENDED THE CONGRESSIONAL HEARING ON PACKER OWNED CATTLE HEADED BY US REPRESENTATIVE BILL JANKLOW. SINCE MR. JANKLOW WAS GOVENOR OF MY HOME STATE SOUTH DAKOTA AND I STAND FIRM ON MY BELIEF THAT PACKERS SHOULD NOT OWN CATTLE I MADE IT A POINT TO ATTEND THIS MEETING AT GRAND ISLAND , NEBRASKA. I AM THIRD GENERATION FARMER AND CATTLE PRODUCER ON THIS FARM. TWO OF OUR SONS AND A SON-IN -LAW ARE FOURTH GENERATION PRODUCERS. WE RUN A 1000 HEAD COW CALF OPERATION BACKGROUNDING THEM AND FEED THEM OUT. WE ALSO USED TO RUN A FARROW TO FINISH OPERATION TILL NINE CENT HOGS DROVE US OUT OF THE BUSSINESS. IT IS CLEAR TO SEE NOW THAT PACKERS OWN THE PORK INDUSTRY. AND THAT MAKES IT VERY CLEAR WHERE THE CATTLE INDUSTRY IS HEADED. WE FEAR THAT WE ARE AT A PLATEAU THAT IT IS GOING TO HAPPEN IN THE CATTLE INDUSTRY TOO. IT IS NOT A VERY PROFITABLE INDUSTRY TO BE IN. THE COMMON FARMER/RANCER IS BEING DRIVEN OUT OF BUSSINESS. MEAT PACKERS SHOULD NOT OWN CATTLE AND ANY MEAT THAT IS NOT RAISED IN THE UNITED STATES SHOULD BE LABLED IMPORTED. IT WILL HELP SAVE THE UNITED STATES FARMER AND RANCHER. FROM A SOUTH DAKOTA NATIVE I TRULY TRUST MR. JANKLOW AND THE COMMITTEE MEMBERS WILL GET SOME ACTION ON THIS ISSUE. OUR FAMILY SUPPORTS AND APPRECIATES THE US REPRESENTATIVES STAND ON BANNING PACKERS OWNERSHIP OF CATTLE FOR MORE THAN FOURTEEN DAYS.

SINCERLY,

Virgil Novotny
31566 284th St.
Colome, S.D. 575

R-CALF USA

United States House of Representatives
Livestock and Horticulture Subcommittee of the House Agriculture Committee

Hearing on Packer Ownership of Livestock

June 18, 2003

Written Comments of the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA)

The Ranchers-Cattlemen Action Legal Fund – United Stockgrowers of America (R-CALF USA) is pleased to have the opportunity to submit comments to the United States House of Representatives Livestock and Horticulture Subcommittee of the House Agriculture Committee regarding the proposed ban on packer ownership of livestock (*See* S.27 and H.R. 719).

R-CALF USA is a non-profit association that represents thousands of U.S. cattle producers on issues concerning national and international trade and marketing. R-CALF USA is dedicated to ensuring the continued profitability and viability of the U.S. cattle industry. R-CALF USA's membership consists primarily of cow-calf operators, cattle backgrounders, and feedlot owners. Its members are located in 43 states, and the organization has over 45 local and state cattle association affiliates. Various main street businesses are associate members of R-CALF USA.

Cattle and beef production comprises the single largest sector of U.S. agriculture. Cattle are raised in all fifty states. Half of all U.S. farms have beef cattle as part of their operations.[1] Given its size, the cattle and beef industry is of paramount importance to the rural economy of the country.

U.S. cattle producers, and by extension America's rural communities, are experiencing a historically difficult period. While many sectors of our national economy enjoyed an extended period of expansion during the 90s, the cattle industry headed the other direction. The U.S. Department of Agriculture (USDA) forecasts that the U.S. cattle herd will undergo its seventh consecutive year of contraction in 2003.[2] USDA predicts that as of January 1, 2003, the U.S.

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[1] U.S. Department of Agriculture, *Where's the Beef? Small Farms Produce Majority of Cattle*, Agricultural Outlook, December 2002, at 21.

[2] U.S. Department of Agriculture, *World Beef Trade Overview*, October 17, 2002, *available at* http://www.fas.usda.gov/dlp/circular/2002/02-10LP/beefoverview.html, retrieved January 8, 2003.

cattle population fell to 95.6 million, its lowest number since 1959.[3] USDA estimates that this decline will continue in 2003.[4] The U.S. calf crop in 2003 is predicted to be the smallest since the mid-1950s.[5]

Alarmingly, the average returns to U.S. cow/calf producers during the 1992-2001 decade fell to *negative* $30.40 per bred cow per year.[6] Another sector of the cattle industry, cattle feeders, suffered markedly in 2002 with losses ranging from $50 to $75 per head and an estimated $2.5 billion loss in equity.[7] According to USDA, the weak state of the U.S. livestock sector has had "a dramatic impact on U.S. net farm income," which was forecast as $36.2 billion for 2002, a decrease of approximately $10 billion from 2001.[8] The USDA National Agriculture Statistics Service (NASS) reports that United States beef cow operations have declined by approximately 200,000 operations since 1987, with the steepest decline occurring from 1996 through 2001.[9] The total number of United States beef cow operations in 2001 was 814,400.[10] Approximately 27,000 United States cattle operations (beef and dairy) exited the industry in 2001.[11] In 2002 the number of beef cow operations fell to 805,100, indicating that 8,570 beef cow operations left the industry in 2002.[12]

The depressed state of the U.S. cattle sector can be attributed in large part to concentration in the U.S. beef packing industry. This industry is dominated by just four firms whose combined share of the market is 80 percent.[13]

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[3] *Id.*

[4] U.S. Department of Agriculture, *Meat Production in 2003 Essentially Unchanged*, Agricultural Outlook, June-July 2002, at 3.

[5] *Id.*

[6] U.S. Cow-Calf Production Cash Costs and Returns, 1990-95; 1996-99; 2000-2001, Economic Research Service/USDA, available at
http://www.ers.usda.gov/data/farmincome/CAR/DATA/Appendix/Cowcalf/US9095.xls;
http://www.ers.usda.gov/data/farmincome/CAR/DATA/History/CowCalf/US9699.xls; and
http://www.ers.usda.gov/data/CostsAndReturns/data/current/C-Cowc.xls, retrieved from the internet on October 18, 2002.

[7] *Feeders Find Ways to Reduce Losses*, Cattle Buyers Weekly, September 30, 2002.

[8] U.S. Department of Agriculture, *Farm Household Income Fares Better Than Farm Business*, Agricultural Outlook, December 2002, at 6.

[9] Number of All Cattle and Beef Cow Operations, United States, 1987-2001, National Agricultural Statistics Service - USDA, Cattle Graphics, available at
http://www.usda.gov/nass/aggraphs/acbc_ops.htm, obtained from the internet on October 17, 2002.

[10] *Id.*

[11] *Id.*

[12] Number of All Cattle and Beef Cow Operations, United States, 1987-2002, National Agricultural Statistics Service - USDA, Cattle Graphics, available at
http://www.usda.gov/nass/aggraphs/acbc_ops.htm, obtained from the internet on March 18, 2003.

[13] Richard J. Sexton, *Market consolidation poses challenges for food industry*, California Agriculture, Vol. 56, No. 5, September-October 2002, at 146.

The U.S. live cattle industry has a long, proud heritage of working to preserve our free enterprise system. Our industry has accomplished this by aggressively defending open and competitive markets. The question germane to this hearing on whether or not Congress should prohibit packers from owning and feeding livestock is as follows:

Are packers using packer owned cattle to control U.S. live cattle prices?

This is the relevant question today and, ironically, it embodies the same concern that Congress addressed over 80 years ago. At that time Congress passed the Packers and Stockyards Act of 1921, which served our industry well for many decades. The Packers and Stockyard Act of 1921 (Act) enumerates unlawful practices of meat packers. It specifically prohibits any actions on the part of packers that would have the effect of controlling prices. Relevant unlawful practices enumerated in the Act include:

1. "Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce;

2. Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; "

If the answer to today's question is yes, then Congress is compelled to act because the agency charged with enforcing the Act has not. The Packers and Stockyards Administration has obviously not found that packers are using packer owned cattle to control cattle prices. Otherwise the agency would have already initiated enforcement measures.

The Packers and Stockyards Administration cited numerous studies indicating a correlation between captive supply volumes, including packer-owned cattle, and cash cattle prices. According to the Packers and Stockyards Administration's 2002 report on captive supplies, economists Schroeder, Mintert, Barkley, and Jones found a negative statistical relationship between fed cattle prices and captive supplies in 1992; that same year economist Elam found a negative statistical relationship between captive supplies and monthly average fed cattle prices; GIPSA's 1992 study found that packers use captive supplies, including packer owned cattle, strategically; economists Parcell, Schroeder, and Dhuyvetter found that a one percent increase in captive supply shipments was associated with a reduction in basis in Colorado and Texas in 1997; GIPSA, in cooperation with economists Schroeter and Azzam, found a negative statistical relationship between weekly captive supply and the weekly average spot market price in 1999.[14]

[14] Captive Supply Report, GIPSA-USDA, January 18, 2002.

These studies, beginning in 1992, are uncontested with respect to showing a negative statistical relationship between levels of captive supply and spot market prices. The Packers and Stockyards Administration states in its report that it may not prohibit packers from using captive supplies without evidence that the use of captive supplies causes harm or is likely to result in the type of harm that the Act was intended to prevent. This statement implies that the Packers and Stockyards Administration has not concluded that captive supplies, including packer owned cattle, are causing harm to the industry. R-CALF USA believes the Packers and Stockyards Administration is applying the wrong standard. The Act does not appear to give the Packers and Stockyards Administration the discretion to act only when the agency finds that a practice of the packers results in harm. Instead, the Act compels the agency to act if a practice of the packers has the effect of controlling prices. Moreover, it is important to note that the USDA, including the Packers and Stockyards Administration, is without the analytical tools needed to accurately evaluate the effects of captive supplies, including packer owned cattle, on today's live cattle industry.

A March 2002 report completed by the General Accounting Office (GAO) reminds us that seven years ago, in 1996, the Packers and Stockyards Administration could not conclude that the U.S. cattle industry was competitive. The 2002 GAO report further reveals that USDA has not properly maintained and updated the economic models used by it and the ITC for evaluating the U.S. live cattle industry. Despite the radical structural changes that occurred within our market structure since the 80s, including the concentration of the packing sector and the use of new tools like packer-owned cattle, forward contracts and marketing agreements, USDA has not properly re-estimated, documented, or validated its models, and much of the data used in the original estimation was from the 1960s and 1970s.[15]

The GAO said in regard to a 1996 Economic Research Service (ERS) study of the causes and effects of consolidation and concentration in the meat packing industry, "While this analysis did not support conclusions about the exercise of market power by beef packers, even though no other manufacturing industry showed as large an increase in concentration since the U.S. Bureau of the Census began regularly publishing concentration data in 1947, it also concluded that the models need to be improved to more fully incorporate relevant determinants of company behavior."[16] But the models have yet to be improved. The live cattle industry is disappointed that USDA has for so long neglected the analytical infrastructure needed to accurately evaluate the competitiveness of the live cattle industry.

Given the Packers and Stockyards Administration's lack of the essential tools for which to evaluate the company behavior of packers, another source must be used to answer the question of whether packers are using their own cattle to control cattle prices.

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[15] U.S. General Accounting Office, *Economic Models of Cattle Prices: How USDA Can Act to Improve Models to Explain Cattle Prices*, GAO-02-246, March 2002.

[16] Id.

Fortunately, Congress is afforded first-hand information received directly from the concentrated packing industry regarding current industry behavior. In 1988, Bob Peterson, than Chairman of IBP (now Tyson) stated:

> "Procurement practices are changing and this concerns me. There is a quiet trend towards packer feeding and it is much, much bigger than you think it is. We cannot stand by if the competitive playing field is unlevel. Our competitors are promoting contracts and seeking more. These forward contracts coupled with packer feeding could represent a significant percent of fed cattle at certain times of the year. Do you think this has any impact on the price of the cash market? You bet! We believe a significant impact."[17]

In written testimony before the July 16, 2002, United States Senate Agriculture Committee hearing on packer ownership of livestock, the meatpacking industry's trade association, the American Meat Institute AMI, testified: "Demand for consistent quality product has led many firms to exert greater control over the supply chain." While AMI did not specifically state that firms were exerting control over livestock prices, a study commissioned by the National Cattlemen's Beef Association (NCBA) provides insightful documentation regarding the true nature of this industry control.

In its written testimony before the same July 16, 2002, Senate hearing, the NCBA testified that the Sparks Study it had commissioned was the only known "empirical evaluation of the proposed ban on packer ownership," and it attached the executive summery of the Sparks Study to its testimony. Specifically, the NCBA commissioned Sparks Study states the following:

> "Packers use ownership of livestock to help control unit costs in a variety of ways. If this management tool is restricted, unit costs can be expected to increase (without increasing the value of the final product)."[18]

Based on this Sparks Study finding, it is readily apparent that the "control" mentioned by AMI included control over the packers' unit costs. While the cost of live cattle is the single largest unit cost incurred by packers, this finding lacks specificity as to the exact nature of the "unit costs" that are being controlled by the packers. The Sparks Study, however, provides even greater clarity as to exactly what "unit costs" were being controlled by packers. The Sparks Study asserts that direct ownership of livestock limits the packers' market risk, arguing that that the futures market is insufficient for this purpose. Therefore, according to the Sparks Study, one of the few tools available to packers to offset the smaller margins associated with higher livestock prices is through direct ownership of raw production materials, i.e., livestock, which enables them to reduce their margin risk. The Sparks Study states:

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[17] Statement from Bob Peterson, former CEO of IBP delivered to the Kansas Livestock Association in 1988.

[18] *See* Sparks Companies Inc., "Potential Impacts of the Proposed Ban on Packer Ownership and Feeding of Livestock", A Special Study, (March 18, 2002) at 40.

"The pressure to reduce costs force the search for low-cost livestock supplies (often at the expense of producer returns)."[19]

Thus, it is readily apparent that among the "unit costs" the Sparks Study finding referenced as among the unit costs controlled by packers through packer ownership of livestock is the cost of livestock itself. The Sparks Study adds additional insight into the packing industry's rational for supporting packer ownership of livestock as well as other means that contribute to vertical integration of their industry. The Sparks Study acknowledges:

"For many meat packers, integration between the packing and feeding stages of livestock production is seen as an effective vehicle to reduce market risk exposure and loss of such a valuable tool increases their costs . . .,"[20] and,

"Vertical integration often attracts investors because of the negative correlation between profit margins at the packing stage and the feeding stage."[21]

Given the public acknowledgements and admissions offered directly by the packing industry regarding their use of packer owned cattle for purposes of controlling livestock prices, Congress need not rely upon the action or inaction of the Packers and Stockyards Administration before taking necessary steps to correct the anticompetitive behavior of the packers. Indeed, because the Packers and Stockyards Administration has failed to enforce the provisions of the Packers and Stockyards Act that prohibits any course of business or any act that has even the effect of controlling prices, the responsibility to act has now been passed to you, our Congress, and we urge you to take decisive action by prohibiting packer ownership of livestock. The deck is stacked against cattlemen when they are forced to compete against the same packer for feeder cattle that they later have to sell to when their fed cattle is ready for market.

Packers are using packer owned cattle to control live cattle prices and this practice must end. The proposed amendments to ban packer ownership of livestock are needed to update the Packers and Stockyards Act to better reflect today's business environment. We urge Congress to enact S.B. 27 and H.R. 719 as quickly as possible.

Thank you,

Leo McDonnell, Jr.

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[19] Id. at 22.

[20] Id. at 24.

[21] Id. at 24.

SHAMROCK LIVESTOCK MARKET
RICHARD SCHRUNK
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O'NEILL, NEBRASKA 68763
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TO: MEMBERS OF THE HOUSE AG COMMITTEE

MY NAME IS RICHARD SCHRUNK. MY ADDRESS IS BOX 45 EMMET, NEBRASKA. EMMET BRAGS THAT IT IS THE BIGGEST LITTLE HAY TOWN IN THE WORLD WITH A POPULATION OF 70 PEOPLE. WE NOT ONLY LIVE IN GOOD HAY COUNTRY, BUT, ALSO LIVE IN THE SANDHILLS, WHERE WE RAISE SOME OF THE BEST CATTLE, HERE IN GODS CATTLE COUNTRY.

NEBRASKA IS THE SECOND LARGEST COW-CALF PRODUCING STATE IN THE UNITED STATES. HOLT COUNTY IS THE SECOND LARGEST COW-CALF COUNTY IN NEBRASKA. CHERRY COUNTY IS THE LARGEST IN NEBRASKA, AND, ALSO THE LARGEST COW-CALF COUNTY IN THE UNITED STATES. SO, YOU SEE WHY THE CATTLE INDUSTRY IS SO IMPORTANT TO THE STATE OF NEBRASKA.

MY WIFE SUZANNE AND I ARE BOTH FROM FARM AND RANCH FAMILIES, AS WERE OUR GRANDPARENTS. THEY MADE THEIR LIVING RAISING CATTLE, HOGS, AND CORN. WE OPERATE SHAMROCK LIVESTOCK MARKET HERE IN O'NEILL, SELLING 35,000-40,000 THOUSAND HEAD OF CATTLE PER YEAR FOR OUR CUSTOMERS. WE NEED TO HELP OUR CUSTOMERS STAY BUSINESS. WITHOUT THEM WE WILL NOT BE ABLE TO STAY IN BUSINESS HERE AT SHAMROCK LIVESTOCK MARKET.

I WAS ABLE TO ATTEND THE MEETING IN GRAND ISLAND JUNE 21, FOR THE CONGRESSIONAL HEARING ON THE BAN OF PACKER OWNERSHIP. FIRST, I WOULD LIKE TO THANK YOU AS COMMITTEE MEMBERS FOR TAKING TIME FROM YOUR BUSY SCHEDULES TO COME TO NEBRASKA FOR THE HEARING. I WOULD ESPECIALLY LIKE TO THANK OUR NEBRASKA CONGRESSMAN, TOM OSBORNE, FOR ORGANIZING THE MEETING. THANKS, TOM.

FIRST OF ALL, I WAS SOMEWHAT DISAPPOINTED WITH THE PANEL OF PRODUCERS. MR. SEARS WAS THE ONLY ONE THAT TOLD JUST HOW THE PACKERS OWNING CATTLE DOES HURT HIS LIVELIHOOD. HE TOLD HOW WHEN THE MARKET IS ON ITS WAY UP THAT IT IS EASY FOR THE PACKERS TO GET OUT OF THE MARKET AND USE THEIR OWN LIVESTOCK TO KEEP THEIR PLANTS OPERATING. THERE IS LOTS OF INFORMATION THAT SHOW SINCE 1994 THAT EVERYTIME THE MARKET SPIKES, THAT IS NOT TO LONG THAT WE SEEM TO HAVE A GLUT OF CATTLE (PACKER CATTLE) THAT ALWAYS PUSHES THE MARKET BACK 2-3 DOLLARS OR MORE.

WE DO SELL FED CATTLE HERE IN O'NEILL, WHICH WE STARTED YEAR AND HALF AGO, AFTER SOME OF OUR PRODUCER ASKED TO HAVE A FED CATTLE AUCTION HERE. WE GET BUYERS FROM TYSON-IBP, SWIFT, AND A SMALL PLANT ELKHORN VALLEY PACK OUT OF KANSAS. THEY ARE ON THE SEATS EVERY WEEK TO BID ON OUR PRODUCERS CATTLE. THREE WEEKS AGO WE SOLD CATTLE 78.00-83.00 CWT--LAST WEEK 70.00-74.00, WHILE THE PACKER MAKES RECORD PROFITS. SOME SAY UP TO $106.00 DOLLARS PER HEAD PROFIT.

THEY, THE PACKERS, LET US ENJOY A FED CATTLE MARKET THAT IS SURE TEN DOLLARS HIGHER THAN A YEAR AGO. AT ONE TIME YOU COULD SAY EVEN FIFTEEN DOLLARS HIGHER. WHEN THE BSE WAS FOUND IN CANADA IN JANUARY AND NOT TESTED UNTIL MAY WHEN THE NEWS BROKE, IT MADE ME WONDER THAT IF THIS NEWS COULD HAVE BEEN HELD UP FOR SOME PERIOD OF TIME, IN HOPES THAT MAYBE IT COULD BE USED TO BREAK THE CATTLE MARKET. ANYTHING'S POSSIBLE. RIGHT?

MR. HANSEN USES CONTRACTS TO SELL HIS HOGS AND WOULD JUST AS SOON STAY THAT WAY. IT DIDNT SOUND LIKE THAT HE WOULD BE IN FAVOR OF BAN ON PACKER OWNERSHIP.

THE PACKER PANEL ALL ADMITTED THAT THEY ALL OWN & FEED LIVESTOCK-WHETHER IT IS CATTLE OR HOGS. MOST SAID THAT THEY NEED THIS TO KEEP THEIR PLANTS RUNNING AT TOP CAPACITY. THE PACKERS ARE VERY GOOD BUSINESSMEN, I WILL NOT TAKE THAT AWAY FROM THEM, BUT, THEY ARE RUINING OUR WAY OF LIFE. THERE IS NO SUCH THING AS "SUPPLY & DEMAND". WHEN WE LOST OUR TERMINAL MARKETS IN SIOUX CITY, OMAHA & CHICAGO, WE LOST OUR ABILITY TO MARKET OUR FED LIVESTOCK, AS THERE IS NO COMPETITION. IF WE SOLD OUR FEEDER CATTLE AS WE HAVE TO MARKET THE MOST OF OUR FED CATTLE, WE WOULD NOT HAVE THE COMPETION THAT WE STILL HAVE IN THE FEEDER MARKET WHERE THE PRICES ARE STILL DISCOVERED THROUGH THE AUCTION WAY OF MARKETING. MORE THAN ONE PERSON BIDS ON YOUR CATTLE. IT IS BETTER TO HAVE TWO BIDDERS THAN ONE. FOR THE MOST PART, YOU HAVE 15-30 MINUTES PER WEEK TO SELL CATTLE FOR THE WEEK. YOU EITHER HAVE TO GIVE THE BUYER AN ANSWER BEFORE THEY LEAVE YOUR PLACE, OR HANG UP THE PHONE BECAUSE WHEN YOU ARE FINISHED TALKING THE BID GOES WITH THEM--TAKE IT OR LEAVE IT. IS THERE COMPETION IN THIS FORM OF MARKETING? I DON'T THINK SO.

A YEAR AGO I TOOK A PACKER BUYER TO THE COUNTRY TO LOOK AT TWO LOADS OF FAT HEIFERS FOR A CUSTOMER OF MINE THAT WANTED CARCASS DATA. I ASKED THIS PACKER BUYER WHEN HE WAS GOING TO COME TO MY FED CATTLE AUCTION. HE SAID, " WHY WOULD I COME TO YOUR AUCTION TO BUY CATTLE WHEN I CAN BUY THEM CHEAPER IN THE COUNTRY?"

I AM FOR A BAN ON PACKER OWNERSHIP, BUT I DO THINK IT WILL BE VERY HARD TO REGULATE THIS BECAUSE OF THE FACT THAT IT WILL BE EASY FOR THEM TO PUT THOSE CATTLE IN OTHER PEOPLES NAMES AND HAVE THEM FEED FOR THEM(THE PACKER).

WE DO HAVE LAWS THAT WERE DESIGNED TO CONTROL THE PACKERS. THESE LAWS HAVE BEEN ON THE BOOKS SINCE 1921. THEY ARE DESIGNED TO CONTROL THE MONOPOLY THAT WE HAVE GOING ON WITH THE PACKERS. (G I P S A) SHOULD ENFORCE THESE LAWS AND BREAK UP THIS MONOPOLY.

WE BROKE THE TELEPHONE COMPANY UP---WHY NOT THE PACKERS?

IN CLOSING, I WOULD HOPE THAT YOU CAN SEE WHAT IS HAPPENING TO RURAL AMERICA. THE AVERAGE AGE OF THE PRODUCERS OUT HERE IS 55 YEARS OLD. THERE ARE NOT MANY YOUNG PEOPLE COMING BACK TO TAKE OVER THE FAMILY FARM OR RANCH. IF WE CONTINUE TO LOSE THE FAMILY FARMS, WE WILL HAVE FEWER FARMS AND RANCHES PRODUCING ALL THE FOOD, AND, IF THIS HAPPENS AND THE FOOD GETS IN THE HANDS OF A FEW PRODUCERS, OUR FOOD PRICES WILL GET COMPLETELY OUT OF HAND AS THEY WILL BE ABLE TO CHARGE, AS THE PACKERS ARE IN CHARGE OF THE MEAT PRODUCTS TODAY.

AS OUR FOREFATHERS LEFT ENGLAND TO GET AWAY FROM THE RULE OF THAT COUNTRIES RULER, THEY WERE SEARCHING FOR FREEDOM, SO THEY CAME TO AMERICA, TO A COUNTRY WHERE THEY WERE NOT CONTROLLED AND COULD OPERATE OR THINK ON THEIR OWN. WE ARE GETTING TO THE PLACE WHERE CORPORATIONS ARE TAKING OVER OUR WAY OF MAKING A LIVING. IT IS TIME THAT WE TAKE A STAND AND PUT AN STOP TO THE CONTROL THAT THE PACKERS HAVE ON THE LIVESTOCK INDUSTRY.

THE FARMERS & RANCHERS OF THE GREAT NATION WILL BE ABLE TO RAISE ALL THE MEAT THIS COUNTRY NEEDS, IF HE IS ABLE TO MAKE A LITTLE PROFIT---HE WILL PRODUCE.

I WOULD LIKE YOU TO SUBMIT THIS WRITTEN STATEMENT TO BE A PART OF THE OFFICAL RECORD FOR THE HEARING HELD ON JUNE 21 ON THE BAN OF PACKER OWNERSHIP

THANK YOU FOR YOUR TIME

Richard R. Schenk

July 1, 2003

TIMMERMAN & SONS FEEDING CO., INC.

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STATEMENT OF GERALD TIMMERMAN
DIRECTOR
NEBRASKA BEEF CO & OWNER
TIMMERMAN & SONS FEEDING CO.
SPRINGFIELD, NE
JUNE 21, 2003

My name is Gerald Timmerman. I am a Director of Nebraska Beef Co., the sixth largest beef slaughterer in the United States, located in Omaha, Nebraska. I am also the chief executive officer of Timmerman & Sons Feeding Co. I have spent my entire working life in the livestock industry. I am proud that my nephew is a senior manager in Nebraska Beef, and I am proud to be joined in our family-owned cattle-feeding business with my brothers, son and nephews who are working partners. I really appreciate that my Congressman Tom Osborne encouraged this field hearing. It's a privilege to have the opportunity to provide some summary information about our business activities and how they fit into the very important livestock production in not only Nebraska, but the greater mid-west.

Nebraska Beef buys its livestock, not unlike the other large packers here today, both on the open market and direct from feedlots. This flexibility is important, for both seasonal and availability reasons. Our family livestock business annually turns over, through three feedlots in Nebraska and four in Colorado, 250,000 steers and heifers annually. We also own 9,000 cows and calves on pasture in South Dakota, Nebraska, Colorado and Oklahoma. Both Nebraska Beef, a privately-held beef processor and Timmerman Feeding Co. believe in the free market system. We work very hard to be competitive with much larger entities in both the packing and the feeding business. Our feeding business is proud to be a supplier of livestock to Nebraska Beef which bids competitively for livestock. We also sell our livestock to the other packers here on your packer panel. We sell to the people who will give us the best price. That's how the free enterprise system is supposed to work!

A proposed packer ban to own livestock would, in our view, insert a serious restriction in the free market system that would inhibit the ability of the system to work effectively. We're in a business where there are good times and there are bad! It's a cyclical business, and people like me understand the ups and the downs. From my association with Nebraska Beef, I know that it is important for a large packer that processes thousands of animals a day to be assured of its supply in order to meet its contractual arrangements to supply beef in large quantities to the retail food service and export market and to maintain a stable payroll. Thus, packers need a range of options to accomplish this objective.

Quite frankly, a ban on packer livestock ownership could well hurt the very producer that it is suggested it would help, and the unintended consequences could cause disastrous ripple effects through a livestock industry that is already troubled about the events that we are seeing north of our borders.

WALDO FARMS Inc.
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OPEN, FAIR AND COMPETITIVE MARKETS
Without such markets, every participant in the system can be adversely affected.
June 21, 2003

1. Sustainable growth of the livestock industry should be built from producer profits created by demand. Tax credits, economic development funds, expansion promoted by people wanting to sell feed, buildings or large loans: all of these factors have served to distort matching input resource with consumer needs.

2. Captive supply and contracting remove or mask the market signals necessary to match supply with demand. Total instability results such as the pork market disasters of 1998 and 2002, when a competitive market is not operating.

3. Undue market power starting with the large retailers, is driving consolidation. They are able to profit from the exceedingly large and lucrative food industry, while pressuring the packer segment and limiting profit margins at the farm gate.

4. Packer ownership in itself, may not be as problematic as their inherent potential to manipulate the day to day markets. Vertically integrated systems create the opportunity to draw profits from more than one segment of the chain. This stabilizes revenue, but does not add to the long term profits.

5. Packers have gone to great length to avoid competitive buying and using a comprehensive system of carcass value measurement with premiums or discounts to signal needed product specifications.

6. Credit has been given to the large producers for greater efficiency through economics of scale, when their advantage is often gained through cheaper labor, greater purchasing power and market advantage. Examples:

   a. A 20,000+ sow farrowing operation lost about $1.00 per pig producing for a North Carolina integrator. It is reported that the integrator offered a new contract for another two years, but for even less payment per pig.

   b. During the midst of a 20 month "below cost" period in the pig business, a Midwest integrator allowed their production contracts to expire. A pork industry spokesman for the integrated packer commented that "producers were making too much money". The company will offer a lesser contract to their finishers who have few options for utilizing their dedicated finish buildings.

c. Another Midwest packer CEO told me they had difficulty reporting prices because they pay on over 42 different systems. Do you suspect that any of these might be preferential? Do you think all of these contract options are available to every qualified producer? The practice of bundling play into this company's contracts.

7. Preferential or discriminatory contracts have had the effect of choosing who can attract capital, receive profit margins and remain in business and dictating who must exit.

8. Discriminatory pricing and lack of market access are the reasons many of the 150 producers we talk to weekly give us for why independent producers exit the industry. This removes that value added opportunity from their family and community.

9. An emerging cooperatively organized packing plant intends to comply with possible packer ownership restrictions by purchasing 25% on the open market. They do, however, express their intent to buy those animals at a discount to their own. Everyone with market power attempts to gain unearned discriminatory advantage.

10. Many recognize that capitalism cannot function long without regulation. Activities forbidden by the Securities and Exchange Commission occur routinely in the livestock sector.

11. We need to determine how to create access to opportunity by the "rank and file" within livestock agriculture and the greater society. Economic opportunity supported by the market place with wealth distributed across rural America would benefit virtually everyone.

12. Section 202 of the Packers and Stockyard Act, Antitrust laws and the Illinois Brick decision along with other protective laws exist today. If enforced, many problems could be remedied. Every segment of the meat chain would benefit.

Respectfully submitted

Max Waldo

Max Waldo
WALDO FARMS, INC.

STATEMENT OF MR. DENNIS WIESE
PRESIDENT, SOUTH DAKOTA FARMERS UNION

HOUSE SUBCOMMITTEE ON LIVESTOCK AND HORTICULTURE

FIELD HEARING ON REVIEW OF THE BAN ON PACKER OWNERSHIP OF LIVESTOCK

GRAND ISLAND, NEBRASKA

JUNE 21, 2003

Thank you Mr. Chairman for coming to Nebraska to hold this hearing on behalf of the House of Representatives Agriculture Subcommittee on Livestock and Horticulture. My name is Dennis Wiese of Flandreau, South Dakota. I have been the president of South Dakota Farmers Union for the past ten years. Throughout my tenure as president, I have worked closely with Senators Daschle, Johnson and Congressman Janklow to help curb the ongoing concentration in agriculture. Prior to becoming the president of South Dakota Farmers Union, I farmed and raised Angus cattle, hogs, and sheep north of Flandreau, South Dakota--hometown of Congressman Jankow. I appreciate the opportunity to submit my testimony on behalf of South Dakota's largest general farm organization.

When Senators Johnson and Grassley were successful in including the packer ban in the Senate version of the farm bill, many stood up and took notice. In fact, a number of producers believe there was an orchestrated effort by the packers to drive cattle prices down in order to eliminate the packer ban provision from the final farm bill. While I cannot provide hard figures of this effort, the circumstances strongly suggest that this was more than an isolated market event. While the packers may have accomplished their goal of eliminating the packer ban at the time, one of the outcomes of today's hearing must be the passage of the legislation.

Some here today may not be completely familiar with what the proposed packer ban legislation (S.27) aims to accomplish. First, it bans large meatpackers from owning slaughter cattle, hogs, and lambs for more than 7 days prior to the time in which these livestock are slaughtered. Second, it exempts producer-owned cooperatives engaged in slaughter and meatpacking. Third, it exempts small farmer-owned packing and processing facilities that handle less than two percent of the national annual slaughter. Therefore, many of the innovative, start-up projects operating and being formed to give producers greater bargaining power in the market will not be affected by the proposed legislation.

Packer ownership of livestock is a function of captive supplies. Captive supplies are livestock that are controlled by packers either through contractual arrangements with producers or outright ownership. In other words, captive supplies are all cattle, swine and lambs that are not negotiated and priced within seven days of slaughter. The trend towards captive supplies and packer ownership has dramatically increased the market power of meat packers far beyond the control they previously had in the marketplace even ten years ago. Banning major meatpackers from owning livestock prior to slaughter is not a radical idea; there is a basis for what this legislation aims at accomplishing. The Packers & Stockyards Act and its regulations, currently prohibit sale barns or auction markets from vertically integrating. Specifically, stockyards may not own or control buying stations, packing plants, or livestock feeding operations. The rationale is that such ownership or control creates conflicts of interest, market access problems for other producers, and opportunities for self-dealing which distort the market. Because meatpackers are similarly situated to stockyards as a market creator and market forum, the same rules should apply to them, but, unfortunately, the rules do not.

In 1999, the National Farmers Union commissioned a study authored by Drs. William Heffernan and Mary Henderickson entitled, "Consolidation in the Food and Agricultural System." The study identified that in the meat processing industry alone, the top four processing firms for beef, pork, and chicken control from 55 to 87 percent of the U.S. market. In February 2002, Heffernan and Hendrickson updated the concentration ratio numbers from the 1999 report. The results revealed that concentration continued to increase in almost every major agricultural processing industry.

Considering where the industry currently stands, with the world's largest poultry processor (Tyson) buying the world's largest beef packer (IBP), as well as a number of other proposed mergers in the recent past, I believe this legislation is critically important to halt what is an unfair move toward vertical integration and accumulation of excessive market power. A ban on packer ownership of livestock would not drive packers out of business because most of their earnings are generated from branded products and companies marketing directly to consumers. But conversely, livestock ownership by packers and further concentration in the livestock industry could drive independent livestock producers out of business because they are at the mercy of these large corporations. Our nation's farmers and ranchers want competition in the marketplace, but when a meatpacker owns livestock, that actually reduces competition. If allowed to grow unchecked, packer ownership of livestock will put a stranglehold on the nation's family farmers and ranchers and eventually will drive those operations out of business.

As I mentioned, this legislation exempts small, producer-owned packing and processing facilities handling less than two percent of the national annual slaughter are exempt. Additionally, all farmer-owned cooperatives packing facilities are exempt.

Therefore, if a farmer/rancher owned facility, cooperative or other that slaughters less than 1,960,000 hogs, 724,000 beef cattle, or 69,200 lambs; they are exempt from the ownership ban under this provision. For example, 'Harris Ranch' in California is a producer-owned beef packing plant (not formed as a cooperative) which handles less than 724,000 head of beef cattle per year. As a partnership of cattlemen who own a packing plant, this facility will be exempt according to Senator Johnson's legislation.

Here are a few cases in point where current law–written 80 some years ago, has failed to keep up with the modern innovation of the sector, that reduces its ability to promote competition in livestock markets. The poultry industry has been almost entirely vertically integrated for many years, and the pork industry is becoming more so. The hog industry especially has been consolidating rapidly in recent years. At the packer level, the four largest firms' share of hog slaughter reached 59% in 2002, compared with 44% in 1992. According to USDA's Economic Research Service, larger producers (5,000+ head)—most often aligned with large integrators and meatpackers-- currently account for nearly three-fourths of the hog production, compared with just over one-fourth in 1994. In the cattle sector, the four largest beef packers accounted for 81% of all steers and heifers (beef cattle) slaughtered in 2002, compared with 72% in 1990. These are the cold hard facts that frustrate every independent farmer and rancher in the U.S., including myself.

Not only must the 80 year-old law be strengthened, but we also call on USDA to do a better job of enforcing its provisions. Enforcement of the Packers and Stockyards Act has been dismal, no matter who is sitting at the Secretary of Agriculture's desk.

Ensuring free and fair markets is not a one-way street. The fault is not solely with USDA. Stronger laws must be passed. Therefore, while Congress has not been successful in getting the administration–regardless of party–to use existing authority to ensure market competition, I believe stronger laws must be enacted to prevent further erosion of competition in livestock markets. The packer ban would essentially update and strengthen the Packers and Stockyards Act, which is supposed to prevent any preference in packer procurement of livestock. The 80 year-old Act is also supposed to guarantee a well functioning marketplace and provide fair terms for all farmers and ranchers. Packer ownership of livestock is inherently preferential and anti-competitive.

Thank you Mr. Chairman for holding this hearing and for the opportunity to testify today. We look forward to working with Congress and the Administration to restore competition and transparency in the marketplace and improve enforcement in the livestock sector.

WIFE Women Involved in Farm Economics

Thank you for holding this hearing here in Nebraska. I am Pam Potthoff, a farmer from Trenton, Nebraska. I am representing Nebraska Women Involved in Farm Economics (WIFE). Nebraska WIFE supports the ban on packer ownership of cattle.

According to USDA data, four companies control 59% of U.S. hog slaughter and 81% of U. S. fed cattle slaughter. That is a lot of power in the hands of four companies. Time and time again we have seen that power is addictive. A little power makes one hungry for more power. The bigness of these four companies illustrates the extent of their power. So far, their need to feed their power hunger has led them to not be content with just slaughtering the cattle. Now they own them in the feedlots and they "buy" them under contract without even quoting a price.

Enron taught the American public that big corporations and the management thereof do not necessarily have the best interest of others as a high priority. In fact, Enron taught us that the number one priority of some companies is profit at all costs. They taught us that these companies are feeding their power hunger.

The livestock industry is not immune to stooping to questionable tactics to feed their power hunger, either. On January 18, 2002, the USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) released a report and audit revealing that meat packers had been under reporting their captive supply numbers. At that point the new numbers showed that the four leading packers (Cargill Inc., Farmland National, ConAgra and (IBP) Tyson Foods Inc.) received 32.3% of their cattle from captive supplies in 1999--not the 25.5% indicated in annual reports to GIPSA. That was more than 28% higher than what the packers had reported.

Why do you suppose the packers had been under reporting their captive supply? Could it be that they knew all along that captive supplies allow packers a tremendous amount of control over the markets and that they could actually control the prices by using their captive supplies?

Recently one of the big packers outlined the company's plan to achieve a profit. They concluded that controlling inputs was the way to attain a profit. Would not the number one input for packers be the livestock they slaughter? Being able to control the price for this big input would certainly be a positive step toward profitability.

In my area in SW Nebraska, it is often impossible to even get a bid on fat cattle. The reason? Captive supply. Bids are made only after the captive supply has been utilized. Feeders know that the window for getting a bid is small and another bid may not be forthcoming. They have no choice but to accept the bid. In this way, the packers are utilizing their power over the feeders.

Making it illegal for packers to own, feed or control livestock intended for slaughter for more than 14 days before slaughter except for producer-owned packers or packers who account for less than 2% of slaughter is the first step in putting the power back where it belongs--in the hands of the farmers, ranchers, and feeders that supply the best meat in the world.

Thank you for allowing Nebraska Women Involved in Farm Economics to express our support for the ban on packer ownership of cattle.

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