

Report for Congress

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Livestock: A Proposed Ban on Ownership and Control by Packers

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Livestock: A Proposed Ban on Ownership and Control by Packers

Summary

This report provides a discussion of the packer ownership ban that was proposed in the Senate farm bill (S. 1731), but dropped in the finally-enacted law (P.L. 107-171). The ban would prohibit packers from owning, feeding, or controlling livestock to such an extent that the producer is no longer materially participating in the production of livestock. Livestock producer-owned cooperatives and entities owned by such cooperatives, and producer-owned packers that slaughter less than 2% of U.S. totals were exempted from the ban.

Publicly available information indicates that three beef packers and nine pork packers who currently own livestock would have had to divest, if the ban had been adopted. Other packers that exceed the 2% threshold do not currently own livestock and would have been unaffected.

The ban was first proposed during markup of the farm bill in the Senate Agriculture Committee, where it was not adopted. In subsequent floor action, the ban was adopted as a floor amendment and withstood another amendment to have it removed. The ban was one of the more contentious issues during conference with the House farm bill (H.R. 2646), with House conferees generally opposed to it. The ban was dropped during Conference, with managers agreeing the issue warranted further investigation.

Supporters of the ban believe it will limit packers' ability to manipulate the market, and would improve farmers' prices and access to livestock markets. They are concerned about the pace of vertical integration in the livestock industry and believe the ban is a way to stop or slow down vertical integration. Opponents of the ban argued that the ban would reverse many of the production efficiency gains made by the livestock industry in recent years through closer packer-producer alliances. At the least, they contend, it would create turmoil in the industry because packers and producers would have to undo many relationships built over time.

Several economists and lawyers have written analyses of the proposed ban. Those studies have added to the discussion, but did not provide conclusive answers about the potential effects of the ban. Supporting papers argued the ban would provide more control to producers and raise livestock prices, while opposing papers argued that the ban would fail to raise livestock prices and would increase market uncertainty.

Since the farm bill, the proposed packer ban continued to generate legislative interest in the 107th Congress (H.R. 5247, S. 2021, S. 2867), with potential amendments to the Agricultural Appropriations bill discussed. The Senate Agriculture Committee held a hearing on this issue on July 16, 2002, and the Senate Judiciary Committee held a field hearing on August 23, in South Dakota.

This report will be updated as warranted.

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Background

Increasing vertical integration in several key agro-food sectors has prompted widespread concern about the effects on individual producers and the long-term impacts on the U.S. agricultural system. The livestock industry, and the hog sector particularly, has experienced an increasing trend toward consolidation and vertical integration in recent years.¹ This trend follows a path set by the poultry industry since the 1950s, when the broiler industry grew rapidly and became vertically integrated. Within the livestock industry, processors especially are consolidating and becoming more vertically integrated. Processors seek to vertically integrate in order to ensure a steady supply of consistent quality animals for their plants. To attain the necessary control to achieve such a supply, processors may raise their own livestock or contract with individual producers, rather than purchase livestock with varying characteristics off the spot market. Thus, producers who sell on the spot market may face lower demand and lower prices for their livestock.

Producers who face fewer marketing options and less competition for their livestock have expressed concern about captive supplies.² They believe packers are using captive supplies to manipulate market prices that are more favorable to packers, and less favorable to producers. That is, as packers buy fewer animals on the spot market, reported prices no longer accurately reflect prices paid for a majority of livestock. Many producers feel this reduction in price transparency works to their increasing disadvantage relative to packers. Contract prices typically are tied to spot market prices. Thus, a packer has financial incentive to buy or not buy on the spot market not only to reduce spot prices, but also because livestock bought on contract are priced indirectly through the spot market. Some producers have suggested that one remedy to captive supplies and the perceived market manipulation is to ban packer ownership and substantial control of livestock.

¹ In agriculture and other economic sectors, *consolidation* usually refers to the trend from numerous smaller-sized operations toward fewer and larger ones. *Vertical integration* refers to the integrating of successive stages of the production and marketing functions under the ownership or control of a single management organization. For example, much of the broiler industry is highly vertically integrated in that processing companies own or control the activities from production and hatching of eggs, through the growth and feeding of the chickens, to slaughter, processing, and wholesale marketing.

² There is no official definition for *captive supplies*, but the term generally refers to animals that are committed to or are owned by a packer more than 14 days prior to slaughter.

In response to calls from some producers, the Senate-passed farm bill (S. 1731; H.R. 2646 as amended; February 13, 2002) contained a provision (Section 1043; Johnson amendment) that would have added a new section to the Packers and Stockyards Act (**P&S Act**; 7 USC §181 *et seq.*) to ban packers from owning, feeding, or controlling livestock for more than 14 days prior to slaughter. An additional provision (Section 1072; Grassley amendment) aimed to clarify that the ban on “control” applies to the extent that the producer is no longer “materially participating” in the production of livestock. Cooperatives, or entities owned by them, would have been exempt from the ban if a majority of the ownership interest in the cooperative was held by active cooperative members who own, feed, or control livestock and provide them to the cooperative for slaughter. The ban also would have exempted producer-owned or controlled packers that slaughter less than two percent of national annual slaughter of each livestock. The Senate provision required that packers owning or controlling animals on the date of enactment had to be in compliance within: (1) 18 months in the case of hog packers, or (2) 180 days in the case of all other livestock (including cattle, sheep, horses, mules, and goats). The ban did not apply to the poultry industry.

Specific Packers Affected by or Exempt from the Ban

According to the U. S. Department of Agriculture’s (USDA) National Agricultural Statistics Service (NASS), there were 881 slaughtering plants under federal inspection on January 1, 2002. Of these, 723 slaughtered at least one head of cattle during 2001 with 15 slaughtering almost 57% of the total cattle killed. There were 699 plants that slaughtered hogs, with 12 accounting for 53% percent of the total. There were 538 plants that slaughtered sheep or lambs, with 5 accounting for 70% of the total head. (Plants may slaughter more than one type of livestock.)

According to NASS, total cattle slaughter in 2001, was 35,369,700 head; total hog slaughter was 97,961,900 head; and total sheep slaughter was 3,222,100 head. Thus, any producer-owned or controlled packer that slaughtered fewer than 2%, or 707,394 cattle, 1,959,238 hogs, or 64,442 sheep, would have been exempted from the ban if it had been in effect in 2001.

The USDA’s Grain Inspection, Packers and Stockyards Administration (GIPSA) collects data on packers’ business practices, but does not publish proprietary information. Thus, the following information is based on trade publications and conversations with producer groups and packing companies. This is not necessarily an exhaustive list. It is possible that there are additional packers not listed in this report that might have been affected by the ban or, exempt from it.

Cattle

In 2001, six packers slaughtered at least 2% of U.S. cattle: IBP (now owned by Tyson), Cargill (Excel), ConAgra, Farmland National Beef, Smithfield, and Rosen's.³ Of those six, three own cattle: Cargill (Excel), ConAgra, and Farmland National Beef. Those three packers would have had to divest the animals they own. Cargill and ConAgra also are two of the largest cattle feeders (ConAgra second and Cargill (Caprock) fourth). Combined, the two companies account for almost 35% of cattle slaughter and have feedlot capacity of more than 735,000 head. Under the packer ban, packers would have been required to divest of either the packing facilities or the feedlots within 180 days of enactment.

Producer-owned packers that slaughter less than 2% of U.S. total would have been exempt from the ban. In 2001, there were three packers meeting that criteria: Future Beef Operations, Brawley Beef, and Harris Ranch.⁴

U.S. Premium Beef (**USPB**) is a cattle producer-owned cooperative that buys cattle from its members and then sells the cattle for slaughter to Farmland National Beef under a contract agreement. USPB has 29% ownership in National Beef, while Farmland Industries, another cooperative, owns 71%. It is uncertain how USPB would have been affected by the packer ban since USPB is a cattle producer cooperative that also owns a share of a packer, but not a controlling share.

Hogs

In 2001, nine packers owned hogs and slaughtered at least 2% of U.S. hogs: Smithfield, Tyson (IBP), Cargill (Excel), Hormel, Farmland, Seaboard, Premium Standard, Hatfield, and Clougherty.⁵ These nine packers would have had to divest of packing facilities or animals within 18 months of the ban becoming law. There had been some talk in the hog industry that packers would divest their packing facilities rather than divest hog production facilities because companies might achieve higher profit margins by raising hogs than by processing hogs.

Pork America was a new, hog producer-owned cooperative that slaughtered hogs for a brief period, but since has shut down. Membership stock with full voting privileges was available only to producers and to groups representing producers. Thus, Pork America would have been exempt from the ban if it was operational under its then-existing charter.

³*Cattle Buyers Weekly*.

⁴Future Beef was placed in bankruptcy on March 4, 2002, and reportedly will cease operations in the near future. *Cattle Buyers Weekly*, August 5, 2002.

⁵*Pork Facts Book*. National Pork Board.

Legislative History

On November 13, 2001, Senator Wellstone first offered an amendment to restrict packer ownership during Committee markup of the Senate farm bill (S. 1628), where it was defeated 9-12. On December 13, Senator Johnson offered the measure as a floor amendment to the Committee-reported Senate farm bill (S. 1731), where it was accepted 51-46.

On December 19, Senator Craig, who had voted in support of the Johnson amendment, stated he was concerned that the ban would restrict certain types of contracts commonly used and that he would oppose the ban adopted on the floor. Much of the controversy surrounded the word “control,” which some had interpreted as applying to all animals purchased under contracts. Subsequently, on February 7, 2002, Senator Craig offered an amendment to replace the Johnson amendment with a USDA study (to be completed within 270 days of enactment of the farm bill) to determine the impact of a ban, including effects on:

- ! producers, rural communities and employees of feedlots;
- ! joint ventures in packing facilities;
- ! market prices for livestock;
- ! the livestock industry’s international competitiveness;
- ! future investments of packers and location of packing facilities.

To clarify that “control” was not intended to ban all contracts, Senator Grassley offered a second-degree amendment on February 8, that provided a complete substitute for the Craig amendment and kept the ban. The Grassley amendment banned packers from owning, feeding, or having “operational, managerial, or supervisory control over livestock, ... to such an extent that the producer is no longer materially participating.” The “*material participation*” language was intended to clarify that the ban would not prohibit forward contracting or other such marketing arrangements. On February 12, the Senate failed 46-53 to table the Grassley amendment and subsequently it and the Craig amendment (as amended) were adopted by voice vote.

The Johnson amendment was in Section 1043 of the Senate farm bill (H.R. 2646 as amended; passed February 13, 2002), and the Grassley amendment was in Section 1072. There were no comparable provisions in the House-passed version of the farm bill.

In Conference

The packer ban was one of the more contentious issues debated in the Conference Committee, with House conferees generally opposed. On April 18, 2002, House conferees offered a proposal to establish a Presidential commission, to study the issue of captive supply and market mechanisms, with a report to be completed by December 31, 2004. In a counter offer, Senate Democratic conferees proposed to extend the ban’s divestiture period to four years for all livestock. The packer ban ultimately was deleted in conference, but language in the managers’ report stated that “Managers recognize the importance of Congress holding hearings to address issues

affecting livestock producers, such as agribusiness consolidation, and livestock marketing issues.”

Supporters of the Ban

Supporters of the ban argued the ban would limit packers’ ability to manipulate the market, and would improve farmers’ access to livestock markets. Ban supporters argued packer ownership stifles competition because packers who own livestock can use their own animals to depress livestock market upturns. In their view, banning packer ownership and control would force packers to compete against each other in the open market and raise prices paid to producers. Supporters cautioned against using strict economic efficiency when evaluating effects of the policy and instead to focus more on market power of companies. They expressed concern about the pace of vertical integration and the loss of open markets and feared that the end result will be the loss of independent producers, with a market dominated by a few large companies.

The ban was supported by such groups as the American Farm Bureau Federation (**AFBF**), the National Farmers Union (**NFU**), the Livestock Marketing Association (**LMA**), and some state associations of the National Cattlemen’s Beef Association (**NCBA**) and the National Pork Producers Council (**NPPC**).⁶

Opponents of the Ban

Opponents of the ban argued that it would reverse many of the production efficiency gains that had come about through closer packer-producer alliances. Packers have pushed for consistent products to add value and meet consumer demands. In this view, packers contract with producers to ensure a supply to meet meat demands from retailers, who want forward pricing weeks and months before delivery in order to improve their business planning. Opponents of the ban argued that it would disrupt supply chains by making risk management and production contracts for livestock illegal. Developing a branded market would be hurt in their view, because genetics and management practices affect meat qualities, and packers would have no control over such factors. Moreover, they contend that the ban particularly may hurt the emerging “natural” or “organic” market for livestock because packers would be prohibited from specifying veterinary care (e.g., administering—or not—certain drugs), animal handling practices, etc., in contracts. Opponents of the ban further argued that producers legally could have no assured market for their livestock until the last two weeks before slaughter. Further, they believed the ban would hurt the livestock industry’s competitiveness domestically and internationally because it did not apply to the U.S. poultry industry, which is almost entirely vertically integrated, or to foreign livestock industries, which would

⁶AFBF and NFU are general agriculture groups, LMA represents livestock marketers and producers. The NCBA and NPPC are producer groups for beef and pork, respectively, and had mixed positions on this legislation.

be free to pursue economic efficiencies. Prohibiting various linkages between producers and packers would result in reduced coordination, efficiency, and global competitiveness of the U.S. beef and pork industries, they argue. Opponents also expressed concern about the ban's likelihood of forcing massive asset divestitures by companies, flooding the market with livestock and other assets as packers divested animals, feedlots, and other production facilities.

The ban was opposed by the American Meat Institute (**AMI**), the National Meat Association (**NMA**), and the national organizations for NCBA and NPPC, among others.⁷

Defining "Control"

Much disagreement stemmed from the definition/implication of "control" in the proposed ban. At issue was whether the ban on control would ban all types of contracts between packers and producers. Supporters of the Johnson amendment argued the ban would not prohibit forward contracting, but would prohibit packers from directing how livestock are raised.⁸ Operational control provides the packer the ability to dictate nearly every detail of production and marketing, such as the facilities, nutritional and veterinary decisions, as well as providing the packer 24-hour access to the livestock. Forward contracts do not give managerial and operational control to packers. Therefore, supporters argued, forward contracts would continue to be allowed.

Opponents of the Johnson amendment argued the ban may prohibit livestock producers from using forward or futures contracts and would prohibit producer-packer joint ventures if producers commit their livestock to the operation because it might constitute packer ownership or control. Opponents said the ban would create a legal question/uncertainty at the least, and this uncertainty would bring in doubt the future of such operations and negatively impact packer interest in such operations. If the ban became law, opponents argued, there would be lawsuits alleging that some arrangements give packers too much control, and that courts' interpretation might be different from legislators' intent. Language that proponents offered to clarify their intent regarding contracts included reference to "material participation," but that did not satisfy opponents.

⁷AMI and NMA are meat processor groups. AMI and NCBA both supported the study proposed by the Craig amendment. (See "**Legislative History**" above.) The national representatives of the NCBA and NPPC opposed the ban, while some of their state organizations supported it.

⁸Several different types of contracts exist in the livestock industry with differences in packer/producer control. Forward contracts are one type of contract and may allow a producer the most control over the production of livestock. Forward contracts specify that a producer will deliver to a packer a certain number of animals on a certain date.

Material Participation⁹

The packer provision used the term “material participation,” but did not include a definition in the legislation. In floor statements, Senators Grassley and Harkin contended that the use of the term “materially participating” was meant to be the same as used in the IRS code 1402(a), which refers to payment of self-employment taxes.

“Material participation” is a concept used often in the Federal tax laws, but not with a universal definition. For instance, material participation for Self-employment taxes (IRC § 1402(a)), for Estate taxes (IRC §2032A), for Social Security taxes (SSA § 211(a)) and the rules governing passive losses (IRC § 469), all utilize the term “material participation,” but have different definitions.

The most important factors in finding material participation for purposes of the Self-employment tax and the Social Security Act are assumption of economic risk, significant financial commitments to the capital requirements of the business, and final decision making authority. The Estate tax emphasizes regular consultation and substantial participation in final management decisions, a pattern of on-site inspection, and financial contributions. The most restrictive definition is used for determining passive losses and sets out very specific hourly and yearly requirements that must be met to be found to be materially participating. The least restrictive is the definition used in the Social Security Act. The different uses of this term suggest that it might be prudent for authors of any future proposal of a packer ban to incorporate a definition of the term or at least specifically refer to what other definition is intended.

Studies

Several analyses were done on the packer ban. Four studies in particular received considerable attention in the press and from lawmakers during farm bill debate. These four studies are summarized below and are listed in the order they were released. A fifth study, performed by Sparks Companies—a private agricultural policy firm—was a more in-depth analysis that attempted to place a dollar value on the effects of the ban. This study also is summarized below.

1. *Comments on Economic Impacts of Proposed Legislation to Prohibit Beef and Pork Packer Ownership, Feeding, or Control of Livestock.*¹⁰ Eight agricultural economists from seven universities interpreted the Johnson amendment as “prohibiting pork and beef packers from feeding, and from making any arrangement with livestock producers to acquire their livestock more than two weeks prior to slaughter (including contracting, marketing agreements, and any promise of delivery).” These economists concluded that livestock prices would

⁹CRS contact: John Luckey 7-7897, in the American Law Division.

¹⁰ D. Feuz, G. Grimes, M.L. Hayenga, S.R. Koontz, J.D. Lawrence, W.D. Purcell, T.C. Schroeder, and C.E. Ward. January 14, 2002.

not increase with the ban because there is almost no scientific research concluding that packer ownership or control hurts producers. They speculated that the ban would block producer access to new branded product lines that offer producers a larger share of the consumer dollar. Other benefits of contracting, in their view, include reduced price risk, enable producers to obtain (more favorable terms on) financing, ensure a timely market outlet, and reduce costs of price discovery.

2. Proposed Legislative Ban on Packer Ownership of Livestock Mischaracterized by Economists.¹¹ Responding to the first paper, three agricultural economists and lawyers argued that the Johnson amendment would not ban all agreements between packers and producers so long as the packer did not exercise control over the manner in which livestock are produced. In their view, packers still would be able specify in contracts the characteristics they want in the livestock they buy. Forward contracts and pricing agreements typically do not give the integrator managerial or operational control of the farming operation, or control of the production-to-marketing cycle, according to their analysis. Instead, such contracts commonly provide the packer with only a contractual right to receive delivery of livestock in the future.

3. Implications of Banning Packer Ownership of Livestock.¹² A paper written by three agricultural economists at Purdue University, argued that vertical coordination in the livestock industries is driven by changes in consumer demand, and producers' desire to improve the risk/reward sharing between themselves and packers. The authors contended that the ban could increase packers' market power since it likely would lead to an increase in contracting, and the new market would be one for contracts rather than for live animals. With more producers seeking those contracts, the potential for packers to extract price discriminating rents from the producers is not likely to decrease, according to this assessment. The Purdue economists predicted that a ban is likely to make only marginal changes in the structure of the pork and beef industries, with a few large producers creating tighter coordination linkages with packers and a few limited geographical production areas being eliminated.

4. The Ban on Packer Ownership and Feeding of Livestock: Legal and Economic Implications.¹³ Four agricultural economists and lawyers wrote a more extensive paper debating the economic and legal implications of the packer prohibition. According to their analysis, consolidation has led to an imbalance of power between meatpackers and independent producers. Similar concerns in the late 1800s and early 1900s, led to passage of the Sherman and Clayton Antitrust Acts and the 1921 P&S Act. The authors argued that Congress was in an analogous position during the farm bill debate due to the structure and conduct of the contemporary meat industry. The authors expressed concern that, as industry structure consolidates

¹¹ R.A. McEowen, P.C. Carstensen, and N.E. Harl.

¹² A. Gray, K. Foster, and M. Boehlje. *Purdue Agricultural Economics Report*. March 2002.

¹³ J. Connor, P.C. Carstensen, R.A. McEowen, and N.E. Harl.

vertically and horizontally, efficiency gains are less likely to be passed on to either farmers or consumers. Concerns of market power, thus, rise in importance.

When packers have guaranteed supplies for which they need not bid, they have far less incentive to bid aggressively in the open market, according to the authors. More significantly, packers have an incentive to schedule the processing of packer owned and contracted livestock in order to negatively affect price trends. Since contract prices are tied to market prices, this provides an incentive for packers to manipulate the market to which their contracts are tied.

Packer-to-packer trades also can be a method of collusion, according to the paper. When packers own and raise livestock, they can sell that livestock to other packers thereby influencing the market price as well as communicating that price to each other. By limiting packer ownership, the authors contend that the ban would have removed the ability of packers to manipulate the market in such a manner.

The authors argued that there was no evidence that packer ownership of livestock is either the best or even a necessary method to achieve efficiency gains. Contractual arrangements and other kinds of alliances can contribute significantly to the development of efficient and competitive livestock production, in their view. Contracts that do not strip the producer of material participation still can provide all the benefits of coordination and end-product specification that are commonly identified as desirable elements of current arrangements.

The authors believed the divestiture periods in the ban would allow an orderly exit from the feeding business. Because cattle require a maximum of six months to feed from feeder cattle weight to slaughter weight, packers would merely consume their own product during the divestiture period while refraining from restocking. The same is true for hogs, which require five to six months from birth to slaughter.

With regard to competitiveness in the export market, the authors argued there is no credible evidence linking packer ownership to export successes. The dominant economic factors in exports are monetary policy (strong or weak dollar), subsidies, tariffs, and the quality of private company marketing staff, according to the authors.

5. Potential Impacts of the Proposed Ban on Packer Ownership and Feeding of Livestock.¹⁴ The “Sparks study” was commissioned by the NCBA and the NPPC, whose national organizations opposed the ban. According to their report, the findings were based on extensive reviews of economic studies and reports, and on interviews with meat packers, livestock feeders, livestock breeders, agricultural lenders, and others across the industry. The study included a review of vertical integration and structural changes in the livestock industry, and potential impacts of the ban on packers, producers, lenders, domestic demand, and exports.

According to Sparks, expected impacts of a ban across the sector likely would be large, would begin immediately upon implementing the ban, and could severely damage the sector’s competitive position in U.S. and overseas markets. Losses for

¹⁴ Sparks Companies, Inc. March 18, 2002.

hogs across categories, and including both temporary and continuing costs were estimated to range between \$1.6-7.4 billion. Losses for cattle across categories could be between \$2.7-3.5 billion.

The study concluded that primary competitive pressures among products are at the consumer level, driven by basic changes in society and domestic and international demands for quality, convenience, and services as lifestyles evolve. The ban would intervene at the processing and livestock production levels where product competition is mainly reflected, not where it originates, according to Sparks. It would impose unwarranted costs where they would benefit no one, without strengthening demand, efficiency, technology, or competition. In this analysis, the end results likely would be lower producer prices, higher costs, smaller markets, and diminished returns for the foreseeable future.

According to Sparks, impacts likely would include: A higher-cost, less efficient meat packing industry; reduced packer-processor investment would reduce competitiveness of red meat products in the U.S. market and in export markets; higher-cost, less efficient feeding and breeding industries; a smaller meat packing industry (as lower margins cause less-efficient packers to cease operations and reduce industry capacity); smaller breeding and feeding industries; increased vulnerability for producers in isolated production areas; and continuing advantage for poultry.

The Sparks analysis contended that during the transition period, effects of the ban would include divestitures of packer-owned livestock and packer-owned feeding facilities, curtailment of new marketing contracts by packers, curtailment of financing by lenders, revision of existing marketing contracts, corporate restructuring, and litigation.

A Sparks examination of the top 20 pork-packing companies as of 1994, according to their degree of direct ownership of livestock, indicates:

- ! Traditional packers (little or no direct ownership of production) declined in importance, from owning most of the sector's capacity to about one-third during the last two hog cycles.
- ! The "medium" direct ownership group grew until the late 1990s, but also has been declining the past two years.
- ! The top 20 companies in 1994 declined to 12 firms. The eight that disappeared, with one exception, did not own livestock. They have left the industry or been assimilated by one of the 12 remaining firms.

In nine of the ten rapid-growth states, there was a significant component of packer ownership of hogs while in the remaining state a strong contracting linkage was permitted between producers and packers. In the ten states that had sharp declines in hog production, none had extensive packer investment in herds, and only two of the ten had even a modest degree of packer investment. Thus, it appears that over the past decade, swine breeding growth in the U.S. has come only in areas where packer investment is encouraged while breeding herds in states with little or no packer investment in production have declined, according to the Sparks study.

Sparks reported the growth in poultry as an illustration of the benefits of vertical integration. Rapid growth in demand for broilers was fueled by the capacity of poultry to compete with beef and pork for consumers' dollars. A major factor was production efficiency and the capacity to offer better and better price values compared with other meats. The single most defining characteristic of the U.S. broiler industry is its high degree of vertical integration. Processors control the production process, either by owning or contracting each stage from breeding stock to market-ready products. While chicken producers have benefitted extensively from integration themselves, they also have benefitted indirectly from the lack of integration in the beef and pork industries in the past and, according to the Sparks analysis, a livestock ban would turn back progress made by the livestock industries.

Discussion

While these studies add to the debate, they do not provide conclusive answers about the potential effects of the ban because the authors have a variety of backgrounds, initial assumptions, and analytical perspectives. Thus, the studies arrive at varying and sometimes contradictory conclusions as to effects of a ban. This point, maybe more than any other, serves to illustrate the difficulty of saying with certainty whether livestock producers will be helped or harmed by the ban. Even if supporters and opponents of a ban could agree that concentration and market power are harming producers, they may be likely to disagree on the proper methods to address those issues. Additionally, it is uncertain how packers would react to a ban. In the hog sector there has been talk that packers may divest of processing facilities and remain as hog producers, since they generate more profits as producers than as packers. Even though the poultry industry would be unaffected directly by the ban, some in that industry are concerned about a ban's future implications for them. They are concerned that if a ban is placed in the livestock industry, the poultry industry may receive a ban in the future.

Current Legislative Activity

Senate Agriculture Committee

The Senate Agriculture Committee held a hearing on July 16, 2002, to review the proposed packer ban.¹⁵ Supporters urged action on a packer ban, arguing as they did in the past, that widespread consolidation and vertical integration had increased packers' market power to manipulate livestock and meat markets. In the past, structural changes were aimed to improving economic efficiencies, while, in their view, current changes serve only to increase companies' market and economic power. Supporters cautioned against single-minded pursuit of economic efficiency, and urged preservation of a way of life. Prohibiting packer ownership would reduce concentration and allow access to a competitive market place for independent producers, in this view. Additionally, supporters stated that many studies had been

¹⁵For a list of witnesses and testimony, please visit:
http://agriculture.senate.gov/Hearings/Hearings_2002/July_16__2002/july_16__2002.html

performed on the concentration issue and a further study on the proposed ban would only delay action and cause additional losses for producers.

Witnesses opposed to the proposed ban urged caution and suggested a federal study to report on potential effects of a ban. They argued that increased coordination and vertical integration have come about as the industry strives to meet consumer demands. Additionally, they contend that contracting allows consistent pricing and shared risks between segments (i.e., between packers and producers). Thus, banning packer ownership would force the livestock industry to dismantle what is a successful system. Additionally, ban opponents argued it would be unfair to single out the livestock industry from forming relationships with raw material suppliers, while the poultry industry and the rest of the global business community continue to do so.

Senate Judiciary Committee

The Senate Judiciary Committee held a field hearing on August 23, 2002, in Sioux Falls, SD, on “Ensuring Competitive and Open Agricultural Markets: Are Meat Packers Abusing Market Power?”¹⁶

Agricultural Appropriations

The House Agricultural Appropriations bill for FY2003 (H.R. 5263; H. Rept. 107-623), directs the Secretary to conduct a study of a packer ownership ban, particularly as to the economic impacts on the United States as a whole, and on individual states. The bill would provide \$4.5 million for the study, and would require a report to the House and Senate Appropriations Committees within two years. The study would be required to 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; and
- ! livestock and grain prices and the quality and consistency of meat products and livestock under a ban.

The Senate Agricultural Appropriations bill for FY2003 (S. 2801) contains no comparable provision. However, during subcommittee markup on July 23, 2002, Senator Craig offered an amendment to require a study to be completed within one year. Senator Johnson opposed the amendment because he believed a study is unnecessary and would only provide Congress an excuse not to act on the proposed ban. Subsequently, Senator Craig withdrew his amendment and stated he may offer it again at a later time.

A proposal under discussion for addition to the FY2003 Agricultural Appropriations bills would require packers to increase the percentage of livestock they buy on the spot market. Specifically, packers would have to purchase on the

¹⁶For a list of witnesses and testimony, please visit:
<http://judiciary.senate.gov/hearing.cfm?id=382>

spot market at least 5% of their slaughter needs by 2004, and at least 25% by 2008. (Please see discussion on H.R. 5247 and S. 2867 below.)

Related Legislation

S. 2021 (Enzi). Amends the Packers and Stockyards Act respecting livestock producer-packer forward contracts to: (1) require the inclusion of fixed dollar amount base pricing and public bidding; (2) prohibit formula pricing; (3) limit individual contract size; and (4) exclude from the definition of “formula price” futures-based prices and base adjustments resulting from factors outside packer control.

H.R. 5247 (Latham) and S. 2867 (Grassley). Would require packers that are required to report to USDA under the livestock mandatory price reporting (LMPR) law (beef packers that slaughter at least 125,000 head annually, hog processors that slaughter at least 100,000 annually, and lamb packers that slaughter at least 75,000 annually), to purchase a minimum of their daily slaughter needs on the spot market. Specifically, packers would have to purchase at least 5% of their daily slaughter needs on the spot market during 2004 and 2005, 15% during 2006 and 2007, and 25% during 2008 and after. Cooperatives’ purchases on the spot market must be at least 5%, 7.5%, and 12.5% during the respective time periods.

This legislation is intended to address diminishing sales on the spot market. Producers have complained that LMPR has failed to improve pricing information and in some cases has reduced marketing information due to confidentiality reasons. This legislation would ensure independent producers have a share in the market, and improve accuracy of LMPR data.