

October 15, 2007

The Honorable Amy Klobuchar
United States Senate
Washington, D.C.

Via Fax: 202-228-2186

Dear Senator Klobuchar:

As fellow Minnesotans, we urge you to actively support bipartisan efforts in Senate to pass pending livestock market and contract reform legislation in the Farm Bill that is currently under consideration by the Senate Agriculture Committee. In previous letters to the Senate Ag Committee, our Minnesota groups have joined over 200 other groups nationwide in supporting this livestock competition package in the 2007 Farm Bill.

A newly released analysis from the Organization for Competitive Markets (OCM) calculated that packer use of captive supplies cost producers over \$5.7 billion in 2006 because of the price depressing effects of packer market control.

A January 2006 report by USDA's own Office of Inspector General found that the Grain Inspection, Packers and Stockyards Administration (GIPSA)—the lead agency in charge of enforcing the Packers and Stockyards Act—has failed to implement recommendations from numerous independent reports going back a decade. Most troubling, the report found that agency management *blocked investigations* of anti-competitive practices from moving forward for at least five years.

A 2004 court decision in *Pickett v. IBP* documented just some of the price manipulation. After independent cattle feeders had challenged IBP (now owned by Tyson) abuses in court for over a half a decade, a jury found that IBP's manipulation of captive supplies had had an anti-competitive effect on the cash market for fed cattle, and awarded the plaintiffs \$1.28 billion based on the estimated economic damages. Astonishingly, the judge in the case took the extraordinary step of setting aside this jury verdict, ruling that the manipulation of captive supplies by IBP should be allowed because it was a normal business practice used by other packers. This unjust decision was upheld on appeal all the way to the US Supreme Court.

In 1921, Congress responded effectively to growing corporate concentration, control and manipulation of livestock markets by passing the Packers and Stockyards Act (PSA). Unfortunately, both the executive branch and the courts have failed for decades now to enforce the PSA, or otherwise check the alarming trend towards growing market concentration in the meatpacking industry that has continued to erode market transparency, to weaken legal protections for livestock producers, and to undermine the economic viability of our rural economy. Today, we now face even greater market power exercised by even fewer companies in the meatpacking industry. Our democratic institutions have so far failed to live up to the performance turned in by their predecessors during the Progressive Era. This devastating failure of two of our branches of government to enforce our antitrust laws, combined with the failure of the House of Representatives to include livestock market reforms in the House version of the Farm Bill, leaves the Senate as the last best hope for America's livestock and poultry growers to achieve fairness and justice in the market place, as well as to restore our faith in our democracy. We urgently need your leadership now in passing the crucial livestock market reforms currently pending in the Senate.

Clarify and Bolster PSA Enforcement Authority

When a packer manipulates livestock prices, courts should not force producers to prove both price manipulation, and that the packer had no "legitimate business reason" for doing so. The original version of Senator Harkin's S.622 clarified that "legitimate business justifications" are not allowable defenses in price manipulation cases, and therefore reverse the unacceptable court decision in *IBP v. Pickett*. Unfortunately, it is our understanding that this crucial clarification may not be included in Senator Harkin's latest draft of the Livestock Title that will be considered during the Farm Bill markup in the Senate Agriculture Committee. We urge you to work to ensure that this crucial provision is included in the Farm Bill.

The Livestock Title does include other important reforms to PSA enforcement authority to correct inconsistent court rulings and other important measures, such as clarifying the definition of "undue price preferences," and creating of an "Office of Special Counsel for Competition Matters" to bolster the agency's effectiveness in enforcing the law.

Provide Minimum Standards of Fairness for Contract Growers

The Livestock Title modernizes the PSA to make it more relevant to the current structures of agriculture by creating standards of fairness for contract livestock and poultry growers. One of these provisions requires that entering into arbitration over contract disputes be a voluntary choice for both parties to a contract, rather than being forced on farmers through take-it-or-leave-it contracts. In some cases, Minnesota state law already contains some of the same contract grower protections that are proposed in the Livestock Title, e.g., a three-day grace period to review and opt out of a contract; and protecting producers from prematurely terminated contracts if they have made a sizable capital investment. Passage of these overlapping provisions

would simply extend existing Minnesota protections to all growers in the U.S., and thereby put Minnesota on more level economic playing field with those states that do not provide such protections.

Captive Supply Reform Act

We urge you to support Senator Enzi's Captive Supply Reform Act (S. 1017), which would require formula forward contracts to include a fixed price, and to be offered in an open public manner so that other packers would have the opportunity to offer a higher bid for the same contract. These two requirements would represent a moderate, but essential, step towards reestablishing price discovery in today's dysfunctional markets in which the *Pickett* jury, OCM and others have found are costing livestock producers billions annually.

Ban on Packer Ownership of Livestock

The Captive Supply Reform Act only addresses one type of captive supply: forward formula contracts, which represent about half of all cattle, and 87% of hogs in the market. The other form of captive supply is packer-owned livestock, which represent about 10% of slaughter cattle, and about 25% of hogs. When packers are both buyers and sellers, packer-owned livestock have priority in getting processing plant space, thereby significantly restricting market access for high quality independent feeders. We therefore urge you to support Senator Grassley's Prohibition on Packer-Owned Livestock Act (S. 305), which precludes packers from owning livestock more than 14 days prior to slaughter.

Combined with the Captive Supply Reform Act, the Packer Ban would significantly level the playing field between producers and packers, help reestablish price discovery, reduce the opportunity for market manipulation, and make it easier to enforce antitrust laws already on the books by providing instantaneous price reporting.

Country of Origin Labeling

Finally, we support the *Country of Origin Labeling* compromise contained in the House version of the Farm Bill, and urge you to support this same compromise in the Senate version of the Farm Bill.

America's livestock producers have grown increasingly disillusioned with the failure of our democratic institutions to take effective action to reverse the growing corporate concentration and manipulation of livestock markets. As our representative in the U.S. Senate serving on the Senate Agriculture Committee, you represent our last best hope for passing this important legislation, which includes reasonable, well thought-out solutions to curtail the economic harm caused to producers by increasing corporate concentration and control of livestock markets. We ask that you do everything in your power to push this market reform package through the Senate. Not only will you be helping to restore competition in the marketplace, but you will also be helping to restore our faith in our democracy.

Thank you for your consideration.

Sincerely,

Jim Harkness, President
Institute for Agriculture & Trade Policy

Mark Schultz, Associate Director/Director of Policy
Land Stewardship Project

Doug Peterson, President
Minnesota Farmers Union

Jerry Swartz, Past Board Director for Minnesota & Region VII
Minnesota Members, R-CALF USA

Loni Kemp, Senior Policy Analyst
Minnesota Project

Don Pylkkanen, Executive Director
Minnesota COACT (Citizens Organized Acting Together)

Butch Schilling, President
Minnesota National Farmers Organization

Mary Jo Forbord, Executive Director
Sustainable Farming Association of Minnesota