Issue Briefing:
Johnson/Grassley/Wellstone/Harkin/Thomas/Dorgan/Feingold/Daschle Amendment (S. Amdt. 2534)
Prohibiting Packer Ownership, Feeding and Control of Livestock

The Issue

During consideration of the farm bill the U.S. Senate adopted an amendment that would prohibit meat packers from feeding, owning or controlling hogs or cattle more than 14 days prior to slaughter. The amendment exempts producer cooperatives in instances where are majority of the cooperative's members are livestock producers. Also exempted are packers with less than a 2 percent market share.

Effects

Virtually all risk management and production contracts for livestock could be made illegal.

> The key authors of the amendment, Senators Tim Johnson (D-SD) and Charles Grassley (R-IA), have stated it is not their intent to stop producers from being able to obtain risk management or production contracts. But the USDA Packers and Stockyards Administration has for years defined "control" to mean any livestock "obligated" more than 14 days prior to slaughter. This quite clearly includes livestock that are under contract or under any sort of marketing agreement, including pricing grids.
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> Regardless of what has been said about their intent, this language would be ultimately subject to the interpretation of a federal judge.

The bill's sponsors assert that the word "control" in their amendment doesn't really apply to marketing agreements or forward contracts for livestock.

> This is wrong. First, in the bill, "control" of livestock is given equal status to "ownership" and "feeding" - thus it is clearly a category of relationship that is intended to be as prohibited as ownership and feeding. "Control" does not mean -- nor does it modify -- ownership or feeding.
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> Second, the legal definition of "control" is important. Black's Law Dictionary defines the verb "control" as "to exercise restraining or directing influence over. To regulate; restrain; dominate; curb; to hold from action; overpower; counteract; govern." It appears, then, that "control" applies to packer contracts for livestock in which either the livestock or the growing conditions (i.e., environmental, quality, animal welfare, etc.) are articulated by the packer. Thus "controlling" some aspect of the livestock's production (e.g., administering (or not) certain veterinary drugs, providing specific cage sizes or other on-farm animal handling

practices, meeting certain "organic" or "natural" growing requirements) would be illegal contract elements.

So not only does the Johnson amendment render livestock contract growing specifications illegal, it undermines the efforts of some environmental, consumer and animal welfare interests.

The legislation would make it illegal for a packer to establish joint ventures with producers if the producers commit their livestock to the operation.

The authors of the amendment insist this is not the case. But again, a federal judge will have to make that decision. What is certain is that this legislation creates a large question over the legality of such operations, and would negatively impact packers' interest in creating these kinds of equity partnerships. Because of the legal uncertainty and the negative implications it would create for the production of quality cattle, the future of these kinds of ventures will certainly be in doubt.

The legislation will kill packer/producer alliances and harm high-value branded programs.

Again, the authors of the amendment insist this is not the case, and again, a federal judge will have to decide. What is certain is that when packers choose to own and feed cattle or hogs it is because they need to maintain a constant supply of animals that fit certain quality characteristics. Without a guaranteed supply, it is impossible to ensure delivery to retail and restaurant customers at all times.

This legislation will obstruct packers' ability to deliver "natural," "organic," "antibiotic-free," "free-range" and other specialty products which depend upon producers adhering to specific growing or management practices.

The legislation specifically prohibits packer "control" of livestock production practices more than 14 days in advance of slaughter. Various environmental, quality, animal welfare and other characteristics desired by some consumers will be impossible to source reliably without contracts that stipulate these livestock management specifications.

This represents a return to the commodity beef and pork business.

The prohibition on owning, feeding or controlling livestock for more than 14 days prior to slaughter makes it very likely that some of the most innovative, quality-based programs will fall by the wayside. It in effect returns these high quality animals to a livestock auction barn where a producer will be unable to differentiate top quality genetics and performance from the rest.

The legislation would force the divestiture of three of the four largest cattle feeding businesses.

Three of the four largest cattle feeding companies are owned by companies that also own beef processing plants. Under the law this would be illegal. Attracting capital to agribusiness can be difficult, 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. Importantly, these feedlots often produce for branded initiatives, using top quality livestock. The producers of top quality stockers would see his or her market suffer dramatically.

A loss of animal feeding operations yields a corresponding loss of markets for grain production.

About 45 percent of all grain produced in the U.S. is used for animal feed. Uncertainty over the future of these livestock operations can impact grain markets. The loss of feeding operations will have a ripple effect on grain producers. This will be especially true for grain farmers in the livestock production region, who see a far greater share of their grain going into animal feed.

The bill would legislate certain companies out of existence.

There are some pork companies that are totally vertically integrated. There are others that are heavily dependent on company-owned hogs to augment their supply from independent producers. This legislation will eliminate the capacity of the vertically integrated operations, and will threaten the viability of those that use company-owned hogs.

The bill will threaten the viability of plants and entire companies.

Companies have been built on well-defined business strategies. This legislation will cause extreme disruption to these firms and will almost certainly threaten the viability of these operations. The loss of plant capacity will have a ripple effect throughout the livestock production sector and cause even greater supply/demand imbalance.

The two-percent market share exemption isn't a solution.

In effect, the two-percent market share exemption simply locks a small firm into its small size. Growth beyond two percent would not be an option because they would then be subject to these onerous, anti-competitive provisions.

The legislation only increases the competitive advantage of foreign meats and poultry.

This legislation will make U.S. beef and pork less competitive in both the domestic and international marketplaces and will undermine the marketing programs that are successfully recruiting consumers back to beef.

Current market conditions are not a factor.

While it is true that cattle and calf prices have dropped from where they were a year ago, this is not a factor of captive supplies. This drop is directly related to three events: the economic recession and its impact on the hotel and restaurant trade, the additional drop-off in consumer demand attributable to the September 11 tragedy, and the BSE concerns in the important Japanese market.