

Congress of the United States
House of Representatives
Washington, DC 20515-1504

COMMITTEES:

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SUBCOMMITTEE ON THE
CONSTITUTION AND CIVIL JUSTICE

SMALL BUSINESS

April 13, 2020

The Honorable William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue,
NW Washington, DC 20530

The Honorable Sonny Perdue
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave. SW
Washington, DC 20250

Dear Attorney General Barr and Secretary Perdue:

I write to call on your departments to investigate concerns raised by America's farmers and ranchers about possible illegal practices in the cattle industry. Since February 4, 2020, live cattle prices are down 16 percent. This is happening while American consumers bought 77 percent more meat during the week of March 15 compared to 2019. The spike in the purchase of beef products at the grocery store has resulted in higher beef values for meat packers, yet farmers and ranchers have seen a net decrease in the value of their cattle.

Further, the four largest meat packing companies control approximately 80 percent of beef processing in the United States. With the shelf price of meat at record highs and with the high rate of concentration in the meat packing industry, there are concerns that the difference in these margins is the result of illegal practices. These conditions warrant investigations into potential market manipulation and unfair practices within the cattle market.

The Department of Justice and the Department of Agriculture should initiate investigations into potential market manipulation and unfair practices within the cattle market. I have received a large volume of calls and emails from Iowans and member organizations expressing concerns that the current discrepancy between high shelf price and decreased cattle price does not make sense. I share the concerns of these farmers and ranchers, and I take their claims seriously. As such, I request that you examine the current structure of the beef meat packing industry and investigate potential market and price manipulation, collusion, restrictions on competition and/or other unfair and deceptive practices under the United States antitrust laws and the Packers and Stockyards Act.

In particular, Title 7, United State Code, §192, of the Packers and Stockyards Act adopted in 1921, provides the following:

“Unlawful practices enumerated. It shall be unlawful for any packer or swine contractor with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to:

(a)Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device; or

. . .

(e)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; or...”

These subsections of the Packers and Stockyards Act have been the subject of considerable enforcement action and litigation in recent years. Although the bulk of that litigation has revolved around individual producers or a group of individual producers who have alleged they have been harmed by the practices of one or more packers, the current market situation does not involve packer conduct against one producer or a small group of producers. Rather, it involves alleged market manipulation that affects all cattle producers, in Iowa and nationwide.

In *Schumacher v. Tyson Fresh Meats, Cargill Meat Solutions, Swift Beef Company and National Beef Packing Company*, the court found proof of adverse effect on competition was not necessary for a claim under 7 U.S.C. §192(a) of the Packers and Stockyards Act (section 202(a) and (e) of the 1921 Act). This case involved allegations of a number of packers knowingly using inaccurate USDA boxed beef prices to negotiate purchase of slaughter cattle at substantially lower prices than economically justified. See *Schumacher v. Tyson Fresh Meats, Cargill Meat Solutions, Swift Beef Company and National Beef Packing Company*, 434 F.Supp. 2d 748 (U.S. District Court, South Dakota Northern Division 2006).

Further, I request that you also investigate for potential violations of section 2(d) of the Clayton Act (15 U.S.C. § 13(d)) and § 5 of the Federal Trade Commission Act (15 U.S.C. § 45) as those sections would apply to these potential violations of 7 U.S.C. § 192(a). See *Re ITT Continental Baking Co.*, 44 Agric. Dec. 748, 1985 WL 63151 (U.S.D.A. 1985). I understand that proof of violations of these federal statutory provisions may be difficult and require extensive investigation, but Iowa and the nation’s beef producers deserve a full-scale investigation. The difference in price between what they are receiving, and the retail price consumers are paying at this time of a national pandemic simply cannot be explained, much less justified, by legitimate supply and demand market forces.

Thank you for your prompt consideration of this important matter. I hope by May 1st to hear your decision on whether to move forward with this investigation.

Sincerely,



Congressman Steve King
Member of Congress