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REVIEW THE UNITED STATES DEPARTMENT OF AGRICULTURE'S MANAGEMENT AND OVERSIGHT OF THE PACKERS AND STOCKYARDS ACT

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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REVIEW THE U.S. DEPARTMENT OF AGRICULTURE'S MANAGEMENT AND OVERSIGHT OF THE PACKERS AND STOCKYARDS ACT

Thursday, March 9, 2006

U.S. SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY,
Washington, DC.

The committee met, pursuant to notice, at 10:36 a.m., in room SR–328A, Russell Senate Office Building, Hon. Saxby Chambliss, chairman of the committee, presiding.

Present or submitting a statement: Senators Chambliss, Lugar, Thomas, Harkin, Nelson, and Salazar.

STATEMENT OF HON. SAXBY CHAMBLISS, A U.S. SENATOR FROM GEORGIA, CHAIRMAN, COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

The CHAIRMAN. Good morning. I welcome you all this morning to this hearing to review the United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration's management and oversight of the Packers and Stockyards Act. I want to thank our witnesses for making the effort to attend this hearing to provide testimony on this issue of critical concern to the United States livestock industry. I also welcome those listening today on our web site.

In January of this year the USDA Office of the Inspector General released an audit report that detailed serious failures in GIPSA's management and oversight of the Packers and Stockyards Act of 1921. This act is a critical law that assures farmers and ranchers that business transactions are conducted under the principles of fair competition, open and honest trade practices, and prompt payments to producers.

The audit report from the Inspector General raises serious questions about the Department of Agriculture's competence in investigating anticompetitive behavior in order to ensure that all livestock industry participants are treated equitably. I am greatly concerned and disheartened with the message that the findings detailed in the report regarding GIPSA's actions sends to the American public, consumers, and participants in the livestock marketplace.

The report from the Inspector General States that some 50 investigations into potential anticompetitive behavior were awaiting approval from senior management and therefore were not being acted upon. Further, the report states that policy decisions were not

being made due to a lack of a competent internal managerial structure within the Packers and Stockyards Program Division of GIPSA, and that previous advice provided to GIPSA by the Office of Inspector General in 1997, and by the Government Accountability Office in 2000, was not implemented.

It is totally unacceptable for our government to conduct business in this way, and I fully expect the Department of Agriculture to swiftly and honestly respond to actions in the marketplace that might signal anticompetitive behavior. Not doing so calls into question the ability of the department to oversee the Packers and Stockyards Act generally, and greatly threatens the confidence livestock market participants extend to the government.

While it appears that the problems identified in the report are managerial in nature, I cannot emphasize enough my frustration and discomfort on behalf of America's farmers and ranchers. It is imperative that GIPSA correct the failings identified in this and previous reports in a timely fashion, to ensure that this vital sector of our agricultural economy continues to operate in a transparent, fair, and competitive manner.

I look forward to hearing from our witnesses, and I am hopeful their testimony will provide us with some confidence that steps are being taken to address this critical issue. Senator Harkin has told us that he will be a little late in getting here this morning. When he does arrive, we will certainly turn to him for any opening statement he might wish to make. At this time I will ask my two colleagues that are here, Senator Lugar, Senator Salazar, if you all have any opening comments you wish to make.

Senator LUGAR. No.

The CHAIRMAN. Senator Salazar?

STATEMENT OF HON. KEN SALAZAR, A U.S. SENATOR FROM COLORADO

Senator SALAZAR. Thank you very much, Chairman Chambliss. I want to thank you and all of my colleagues on this committee who requested the hearing, and I think it focuses on a very important issue. It is important for this committee to be involved in making sure that the provisions of GIPSA are enforced.

The Packers and Stockyards Act is an extremely important law, and when properly enforced, it should effectively ensure fair trade practices and competitive marketing conditions in our livestock, meat, and poultry markets. Ranchers across the country, including in my State of Colorado, are faced every day with the increased concentration in the industry.

For example, we all know today that four meat packers control over 80 percent of the market—four meat packers controlling over 80 percent of the market. Consider that in a multibillion dollar industry, four packers control, again, 80 percent of the market.

Mr. Chairman, I hope that this hearing today signals that this committee is committed to ensure that GIPSA is in fact carefully enforced, and that the Department of Agriculture is fulfilling its responsibility and mission with regard to the Packers and Stockyards Act. The issue is of paramount importance to many of the small, independent ranchers in Colorado, and I am pleased that the Office of the Inspector General completed a thorough and I must say

what I believe is an unbiased audit of GIPSA's management and oversight practices. I appreciate your work on that, Ms. Fong.

I am also heartened that GIPSA has already taken some steps to improve their deficient policies, and has signaled that they will actively work with OIG to remedy both their inadequate management structure and investigation protocol. I also hope, Mr. Chairman, that this hearing indicates our intention to ensure that there is fair enforcement of this important law, and that we will follow up on this matter in the next few months to check on the progress of GIPSA in implementing and enforcing the OIG recommendations.

The Packers and Stockyards Act was passed in order to prevent unfair, discriminatory, and deceptive acts and practices in the meat packing industry. Under the act, ranchers who are bound to the market are prevented from being taken advantage of by the huge producers. In addition, it rightly separated production and manufacturing arms of the meat and poultry industry. I am extremely supportive of the mission of this act, and believe that if properly implemented and enforced, that the act will serve everyone well, both big and small.

Many of these small, independent ranchers in Colorado and across the country have faced years of drought. That, combined with increased concentration of the markets, has resulted in declining farming and ranching populations, and indeed over the last several years a decline overall in terms of the income that is coming into rural America.

Unfortunately, this audit reveals that the agency tasked with protecting our ranchers by guarding against deceptive practices was found to itself have engaged in questionable reporting and oversight. I am deeply concerned about that, and look forward to your presentation here this morning.

U.S. cattlemen deserve to have protection from anticompetitive practices, and deserve to know that the proper checks and balances are in place so that they are protected against any type of discriminatory practice that may occur. I truly hope that GIPSA enacts the policy recommendations of the OIG with all diligence and all speed. And again I thank Chairman Chambliss and Ranking Member Harkin for agreeing to hold this hearing.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. The committee would like to welcome our panel today, which includes representatives from the Grain Inspection, Packers and Stockyards Administration of USDA; USDA's Office of Inspector General; and the Government Accountability Office.

James Link is the Administrator for USDA's Grain Inspection, Packers and Stockyards Administration. Mr. Link holds an MBA and a Certificate of Ranch Management from Texas Christian University, and has contributed to American agriculture in both academic and professional settings. Most recently he served as the Director of the Ranch Management Program at Texas Christian University in Fort Worth, Texas. Welcome, Mr. Link. We are pleased to have you with us.

Ms. Phyllis Fong is the Inspector General for the U.S. Department of Agriculture. Ms. Fong holds a JD degree from Vanderbilt

University School of Law and is a member of the Tennessee and District of Columbia bars. Ms. Fong has served our country through various government positions, most recently as the Inspector General for the U.S. Small Business Administration. Ms. Fong, we are glad to have you with us.

Mr. Daniel Bertoni is the Acting Director for Agriculture, Food Safety and Security issues in the U.S. Government Accountability Office's Natural Resources and Environment team. He holds a Master's degree in political science from the Rockefeller School of Public Affairs and Policy. Over the course of his career, Mr. Bertoni has focused on identifying and preventing waste, fraud, and abuse in Federal programs. Mr. Bertoni, we welcome you today.

We are pleased that you are all here. We look forward to your testimony, and Mr. Link, we will start with you, go to Ms. Fong, and then to Mr. Bertoni.

STATEMENT OF JAMES E. LINK, ADMINISTRATOR, GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION, U.S. DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY MARY HOBBIE, ASSISTANT GENERAL COUNSEL, TRADE PRACTICES DIVISION, OFFICE OF THE GENERAL COUNSEL, U.S. DEPARTMENT OF AGRICULTURE

Mr. LINK. Thank you. Good morning. First I would like to introduce Mary Hobbie with the Office of General Counsel, that works with us on a daily basis. I appreciate the opportunity to be here today to highlight for you a number of the changes underway in the Grain Inspection, Packers and Stockyards Administration to improve and strengthen the enforcement of the Packers and Stockyards Act.

On October 17, 2005, I became the Grain Inspection, Packers and Stockyards new Administrator, responsible for, among other things, the Packers and Stockyards Program. The Packers and Stockyards Program facilitates the marketing of livestock, poultry, and meat, and promotes fair and competitive trade practices for the overall benefit of consumers and American agriculture.

Under my leadership, the employees of the agency are making and will continue to make the needed changes to strengthen and enforce the Packers and Stockyards Act. We have already begun making the fundamental changes in the culture of the organization that are essential to empower our employees to enforce the act, and develop the internal processes and controls necessary to deliver improved results.

The Office of Inspector General report identified four major areas of weakness in the Packers and Stockyards Program: bad recordkeeping; poor investigation management; lack of policy vision and decision; and lack of follow-through on recommendations of early reviews. These are fundamental and serious weaknesses. No business can be successful with this report card.

The Inspector General offered 10 recommendations to improve our operation. We have accepted all 10 and established an aggressive schedule to implement them. The Inspector General has expressed satisfaction with all measures we are taking. Adopting an Inspector General's recommendation represents a good start, but is

only the beginning of the changes that we in the Grain Inspection, Packers and Stockyards Administration are going to take.

We have undertaken specific steps to meet the recommendations of the Office of Inspector General's report. For example, we have implemented four new policy directives to address recommendations one, three, five, and six in the Office of Inspector General's report, which deal respectively with defining investigations versus regulatory activities; revising the organizational structure to provide greater authority to the regional offices; enabling the legal specialists to freely contact and work more directly with the Office of General Counsel; and developing a structure for receiving, reviewing, and acting on policy issues and internal requests for guidance. We are also in the process of programming changes into existing software to accommodate the need to track investigations and identify regulatory versus investigative activity in the old Complaint and Investigation Log.

To accomplish this goal, we must begin by addressing the needs of our employees. I have opened my door to all employees by establishing a confidential employee-Administrator communication web site; by making onsite visits to the field offices; and, most recently, by initiating a full-scale organizational review and assessment of the program.

The review team, comprised of USDA officials outside our agency, will begin analyzing the organization of headquarters staff and continue about the organizational strength and weaknesses in a variety of areas. I will use the survey results to enhance our work environment and culture and to improve our organizational effectiveness.

The Packers and Stockyards Act and the Packers and Stockyards Program that enforces it play an important role in American agriculture. The Office of Inspector General report was a disturbing reflection of weaknesses that are impeding our agency from carrying out our mission. I am fully committed to establishing the policies and creating the organizational culture that we need to promote fair business practices and competitive environments to market livestock, meat and poultry. Only through these changes can we protect consumers and members of the livestock, meat and poultry industry.

Thank you for the opportunity to address the committee, and I am happy to respond to your questions.

[The prepared statement of Mr. Link can be found in the appendix on page 34.]

The CHAIRMAN. Thank you, Mr. Link. I should have made it very plain that the issue raised in the OIG report preceded your leadership in this position, and the criticism that may be directed by this committee toward the activities detailed in this report certainly are not a reflection on you. I should have made that very plain.

Ms. Fong, we welcome you and look forward to your testimony.

STATEMENT OF PHYLLIS K. FONG, INSPECTOR GENERAL, U.S. DEPARTMENT OF AGRICULTURE

Ms. FONG. Thank you, Mr. Chairman and members of this committee. We are very pleased to be here. It is a privilege to address you on this issue of great concern to all of us, and we certainly ap-

preciate your interest in the work that we have done. We are very committed to assisting the department to move forward in its efforts to improve and implement this program in an effective and efficient way, so we thank you for this opportunity.

Our written statement, which is provided for the record, provides a detailed overview of our work in this area, so this morning I just want to highlight for you the most important findings in our recent audit report. As you have noted, we have done work in this area over the last decade.

We issued a report in February 1997 that reported on the results of our assessment, and at that time, we recommended that GIPSA consider improving its monitoring of the market for anticompetitive behavior by taking actions such as redistributing agency resources among its national and regional offices, making greater use of its economic staff in investigations, and increasing its consultation with OGC and its attorneys. As you all have mentioned, GAO has also done a report in this area which I am sure my colleague will address, so I would like to move on and talk about our most recent audit report that was issued in January of this year.

That audit report was done in response to a request from Senator Harkin, who wrote to us last year expressing his concerns about the management and oversight of the Packers and Stockyards Program. Of particular concern to him was the number of investigations being conducted by GIPSA's Competition Division, as reported in GIPSA's annual reports. As you know, the number of actual investigations can be an indicator of the level of GIPSA's enforcement activity for a particular year.

So in response to this request, we initiated an audit to evaluate GIPSA's management and oversight of P&SP. We focused on GIPSA's actions to investigate and act against anti-competitive activities; to count and track its complaints; to improve program operations; and to improve its allocation of investigative resources.

To accomplish this audit work, we performed 6 months of field work, both in headquarters and the regions, and we interviewed over 50 GIPSA employees, which is a large number of people for us to interview during the course of an audit. We released our audit report in January to the committee, and we had four major findings.

First of all, regarding P&SP's investigative tracking system, we found that the system counted all P&SP activities as investigations, including administrative and routine activities, because there was no better policy-based definition established. We also found that records in the tracking system were not complete and there were no procedures for validating the accuracy and completeness of the information recorded. There were also variances among how the agency's three regional offices classified activities as investigations.

To address these issues, we made some recommendations to GIPSA: that it implement a policy that better defined what an investigation is and that it implement procedures for recording data in its tracking system. GIPSA has taken action to address this. They have issued a policy statement to accomplish this, and they have agreed to implement procedures for tracking and validating their investigative data.

Our second set of findings pertain to GIPSA's management control over competition and complex investigations. We found that during the period of our audit, P&SP's Senior Management Review Panel, which was created to plan and conduct these complex investigations, was in fact inhibiting the agency's ability to investigate anticompetitive activities. This was due, we found, to lack of an effective process for identifying the work to be performed, for approving work plans, for performing field work and analysis, and for reporting on results. As a result, complex investigations were not being completed.

We made recommendations to GIPSA that it implement a well-defined investigation system that would communicate management's expectations to its staff about the investigative process, and that the agency develop an organizational structure that better divided responsibility. Administrator Link has led GIPSA, in agreeing to these recommendations, and they have taken action to implement a revised structure in response.

Our third major finding pertains to our review of the agency's control structure for making policy decisions and regulatory changes. We found that while GIPSA had established a new policy group in June of 2005, P&SP had not established an effective internal control structure for this group to receive and act on policy questions that were raised by its own staff.

As a result, timely action was not being taken on issues that impact the day-to-day business practices and activities of producers. There were numerous policy issues covering all types of P&SP investigations that did not receive adequate attention and were awaiting decision. We made recommendations to GIPSA that it implement an approved structure to address policy issues and regulatory reform matters, and GIPSA has agreed to implement these actions promptly.

Finally, our audit assessed GIPSA's implementation of prior IG and GAO recommendations. What we found was that, in response to prior review recommendations, P&SP had taken positive action to reorganize its operations and enhance regional office expertise in livestock species. They also took action to hire staff with the right mix of skills: legal, economic, and statistical.

What our report found, however, was that the agency's actions in these areas could still be improved. The areas that could be improved involved integrating economists into the investigations; establishing effective legal consultations with OGC; hiring an experienced manager to lead P&SP investigations; and developing more of a teamwork approach for investigations, to involve economists and OGC attorneys.

We recommended that GIPSA take further action to empower its legal specialists to consult with OGC, and to develop a process to make substantive changes regarding P&SP operations and internal review functions. GIPSA again has accepted our recommendations and has taken action or pledged to take action in response to these recommendations.

In conclusion, I would like to recognize and thank Administrator Link for his willingness to work with us in addressing these issues, and for his resolution and ability to take prompt action. I would

also like to recognize Secretary Johanns' strong support for this program and his commitment to resolving these issues.

I want to thank the committee for your interest in these issues, and would be happy to respond to any questions.

[The prepared statement of Ms. Fong can be found in the appendix on page 41.]

The CHAIRMAN. Thank you.

Mr. Bertoni?

STATEMENT OF DANIEL BERTONI, ACTING DIRECTOR FOR AGRICULTURE, FOOD SAFETY AND SECURITY, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. BERTONI. Good morning, Mr. Chairman, members of the committee. I am pleased to be here today to discuss the Department of Agriculture's management and oversight of the Packers and Stockyards Act. Within USDA, the Grain Inspection, Packers and Stockyards Administration or GIPSA is responsible for investigating unfair and anticompetitive practices in the $90 billion livestock market.

Prior reports by USDA's Inspector General and our office over the last decade have identified substantial weaknesses in GIPSA's investigation and enforcement activities and recommended actions to address them. However, the most recent OIG report shows that GIPSA still has not taken sufficient steps to address those recommendations.

My testimony today is based on our prior work, and focuses on three specific areas: first, the factors that affected GIPSA's ability to investigate anticompetitive practices; GIPSA's actions to address our recommendations in areas where its efforts fell short; and, going forward, other issues GIPSA should consider as it moves to strengthen its oversight and investigative role.

In summary, several critical factors detracted from GIPSA's ability to investigate anticompetitive practices. First, its investigations were initiated and conducted primarily by economists, without formal involvement of USDA's General Counsel, and often lacked a legal perspective necessary to assess potential violations of the law. Second, its investigations were designed for trade practices and financial issues it had emphasized for years rather than the more complex, competition-related concerns it was now encountering. And, third, while not a critical issue, GIPSA's efforts to inform the Congress about certain industry activities that raised concerns under the Packers and Stockyards Act were lacking.

We recommended that USDA integrate OGC attorneys into the investigative process earlier; that they enhance the role of legal specialists; that they develop a teamwork approach to investigations similar to the Department of Justice and the Federal Trade Commission, where economists and attorneys work closely together throughout the investigative cycle; and, finally, to adopt a more systematic approach to case selection, planning, and conducting investigations.

USDA concurred with our recommendations and noted specific actions it planned to take. We later testified that we were encouraged by USDA's positive response. Unfortunately, the 2006 report

of the OIG identified substantial ongoing management weaknesses and noted that GIPSA's actions to implement our prior recommendations were insufficient, especially in regard to integrating OGC attorneys into the investigative process and developing a teamwork framework for its investigations.

It is troubling that these plans which appeared to be carefully laid out by USDA in late 2001 were never wholly or effectively implemented. Unfortunately, as the 2006 report makes clear, GIPSA's Senior Management Review Group became a log jam for the progress of investigations and contributed to delays in providing policy and investigative guidance, the end result being a deterioration in GIPSA's investigative capacity.

As noted this morning, GIPSA has stated its intent to address the new OIG findings as well as our prior recommendations. However, given its lack of progress in implementing report recommendations dating back nearly a decade, continued vigilance and monitoring by the OIG and other oversight entities will be essential.

Beyond increased monitoring, GIPSA's success will also require sustained management attention and commitment that has thus far been elusive. However, we believe that such a focus is necessary and will ultimately result in a more vigilant and skillful Federal presence.

Finally, as GIPSA moves forward, it should consider assigning lead roles to OGC attorneys for more complex anticompetitive investigations, a practice that we have recommended, and is also consistent with DOJ and FTC investigations. In going forward, it is also possible that GIPSA's efforts to periodically inform the Congress about new anticompetitive activities could be further leveraged.

For example, GIPSA has initiated a study on livestock marketing practices which will be issued later this year. While informative to the industry and policymakers, this analysis could also help GIPSA identify current and emerging areas of vulnerability and better target its investigative activities for the future.

Mr. Chairman, this concludes my formal statement, and I am pleased to answer any questions you or other members of the committee may have. Thank you.

[The prepared statement of Mr. Bertoni can be found in the appendix on page 52.]

The CHAIRMAN. Ms. Fong, Mr. Bertoni, thank you for your thorough investigation and your issuing of this detailed report on this issue that is critically important to this industry.

Mr. Link, GIPSA has traditionally provided Congress with an annual report detailing its performance and activities in both the Federal Grain Inspection Service and the Packers and Stockyards Program. In 2004 the P&SP Division of GIPSA did not provide Congress with an annual report, and again failed to do so for 2005.

Based upon the findings in the 2006 OIG audit report, I think it is imperative that P&SP reinstate its policy of providing Congress with an annual report, and I would hope that you would be willing to do that in the future. Can you give us some idea about when we might be able to expect that?

Mr. LINK. Yes, sir. I was made aware of that quite recently, and I have already enacted that this year there will be a report filed from GIPSA that includes both Packers and Stockyards and Grain Inspection.

The CHAIRMAN. Very good. Thank you.

At this time Senator Harkin has arrived, and Senator, we will turn to you for any comments you might have to make, and if you will, just proceed directly into questioning when you complete any comments you wish to make.

Senator HARKIN. Thank you very much, Mr. Chairman. I apologize for arriving late. But I had read your testimony last night, Mr. Link, be assured of that. And Ms. Fong and Mr. Bertoni, I read your prepared testimonies last night. I just ask that my full statement be made a part of the record. I will just comment on it briefly, Mr. Chairman.

The CHAIRMAN. Without objection.

[The prepared statement of Senator Harkin can be found in the appendix on page 30.]

Senator HARKIN. I just want to first of all commend you, Mr. Chairman, for holding this hearing today to examine USDA's authority and commitment to enforcing this important law, the Packers and Stockyards Act.

Over a period of time I had heard from a lot of producers that USDA was failing to act on their complaints of unfair and anticompetitive practices by packers. I was also hearing through various sources that USDA was purposely misrepresenting its enforcement activities to give the appearance that it was in fact enforcing the Packers and Stockyards Act when it was not, so that is when I asked the Inspector General to investigate. The Inspector General found that USDA management was preventing employees from investigating complaints of anticompetitive conduct, and even covering up its inaction by inflating the number of investigations listed in its annual reports.

Again, Mr. Link, I read your prepared testimony and some of the actions that you are taking. I commend you for that, and I hope you proceed quickly to implement those, but I hope you will understand if I am a little skeptical. We have had promises before. USDA has had a long history of agreeing to make changes and never following through.

The Inspector General, at our insistence—and I don't mean just me, there are a number of us here—in 1997 the Inspector General made recommendations to improve GIPSA at that time. The GAO, Mr. Bertoni, in 2000 conducted another audit suggested those same changes be made as recommended by the Inspector General. A number of us provided funds. GAO said funds were lacking. Well, we provided money. We provided funds to carry out GAO's recommendations in 2001. It is now 2006. None of those recommendations were ever implemented, even though we were told and told and told that they were going to be done, and now GIPSA is in complete disarray.

It is also troubling that while GIPSA was failing to enforce the Packers and Stockyards Act, no one above the level of Deputy Administrator took corrective action. Where was the government oversight? Where was the GIPSA Administrator, the Under Secretary

for Marketing and Regulatory Programs, or even the Secretary of Agriculture?

Most importantly, though, what bothers me is, where was USDA's Office of General Counsel? OGC has a history of inaction on enforcement of the Packers and Stockyards Act. Surely the OGC has a responsibility to enforce the law. I commend, again, the Inspector General for looking at this.

Now, again, we have some legislation that a number of us, bipartisan, have introduced to provide improved enforcement of the law. I would like to hear from you, Mr. Link, on this. This legislation would create an Office of Special Counsel for Competition Matters at USDA, whose sole responsibility is to investigate and punish unfair, anticompetitive behavior in the agricultural markets. This high profile person would be appointed by the President, confirmed by the Senate, to create new accountability for enforcing the Packers and Stockyards Act.

The fact is that upper levels of USDA were unresponsive to the problems at GIPSA, despite the fact that I and many others on both sides of the aisle were sending letters to the Secretary pointing out that such problems existed, and the failure to implement the past OIG and GAO recommendations, supports my assertion that something is needed to change here.

And so I guess my first question to you, Mr. Link, would be just that. I hope you are aware of this legislation that has been introduced. Like I said, it has some bipartisan support. With the low office morale at GIPSA, the rate of turnover, all of the things that happened, please address yourself to the provision of the bill that would set up a high level Special Counsel for Competition Matters, appointed by the President, confirmed by the Senate, to create new accountability for enforcing the Packers and Stockyards Act. Could you address yourself to that, please?

Mr. LINK. Senator, yes, sir. Senator, the Administration has not been asked their opinion of the bill at this point in time. I feel that our agency has the capability to work within the guidelines that we have now, to operate and be successful.

Senator HARKIN. Well, again, as I said, I like to hear that, but I heard that in 1997. I heard it in 2000 under a previous Administration, I want to add, under a Democratic Administration, I heard the same thing. So again, I am just a little skeptical, and I just wonder if we don't need something else. The status quo just does not seem to be working.

How has it been possible, Mr. Link—and I am sure you have investigated this, and I commend you, you have been more active on this than anyone I have seen in a long time—how it is, in your own words, how is it possible that GIPSA was in such disarray for so many years but no one above the level of Deputy Administrator ever took corrective action?

Mr. LINK. Sir, I am not trying to avoid your question, but I really don't know enough about the history of the previous Administrators that were involved with GIPSA to really be able to answer your question intelligently. Really all I can address is what I am aware of after I came on board, and I am sorry, I don't know the history.

Senator HARKIN. Mr. Link, I hope that you and your staff will go back and see what happened in 1997, in some of the hearings we had then, and in 2000. This is not new stuff. It is new because you are new, but sometimes it is interesting to go back and try to take a look at what happened in the past, to inform you of where you are right now. So I hope that you will take a look at that and become more knowledgeable of what has happened in the last eight or 9 years.

What is GIPSA's protocol right now, Mr. Link, for communicating its mission and daily operations up through you to the Secretary? What kind of protocol is that?

Mr. LINK. You mean from an inquiry from a producer, basically?

Senator HARKIN. Yes, for communicating what it is GIPSA is doing, what kind of input is it getting in from producers, what kind of requests are coming in, what actions are taken. How does that get to the Secretary?

Mr. LINK. Well, first of all, when an inquiry comes in from a producer, let's say he feels that he was wronged at a local sale barn, they will contact the regional office in which it occurred. The regional manager then makes a decision as to whether it will be investigated or not. We have clarified what is going to constitute an investigation, a regulatory thing.

The team there then will decide whether action needs to be taken. If that happens, then one of our RAs, resident agents, will go out and start the process to look into this thing, to decide whether yes, it is a violation, or not. If they determine it is, then the team gets involved, with our legal specialist that we have there, the economist that we have there, to determine what the infraction is. Then that decision is made with the Office of General Counsel as to whether to move forward through that, and then it comes, that case then would come to the headquarters for action by the Office of General Counsel.

Senator HARKIN. Now, you may not have this information right now, but would you provide it to the committee? Mr. Chairman, I would like to ask that this information be provided. In the last 7 years, can you go back for the last 7 years and inform this committee how many requests for investigation—I want to make sure I get my terminology right—how many requests for investigation came in regarding anticompetitive practices, and how many that GIPSA referred?

I am told that GIPSA only referred two investigations over the course of several years, but I don't know how many came in. I am told they referred two, but I don't know how many came in, and I would like to know what that was. Is there any recordkeeping of that? I don't know.

Mr. LINK. I would have to go back and look. Part of the problem that we had, and the OIG report pointed that out, was a breakdown in communication as to what the complaint was, whether it was anticompetitive, whether it was check-kiting, and part of that it would be difficult to point out. Some of these, also, we have to realize that a complaint may be made and the evaluation looked at and said, you know, "This isn't a valid complaint. We don't need to go forward with it." But that would be recorded.

Senator HARKIN. I understand that.

Mr. LINK. So this is part of what we are addressing now with our tracking system, is so that we can, if someone does complain, we can enter that and tell where it is at any given time, and if it is followed up on or not.

Senator HARKIN. Well, let me ask you this, Mr. Link, following up on the Chairman's question on the annual report that you say you are now working on developing. That might be a good thing to include in that report, and I would ask that you do so, and if there is any problem with that, I would like to know why you can't. Put in your annual report how many requests came in and then how many were referred on, and obviously we don't need to know the disposition of every one, but sort of categorize them for us, so we have some idea of what is happening there.

Last, Mr. Chairman, I just want to ask one question. For the OIG, what was the cause of the dysfunctions at GIPSA? What caused all this dysfunctional activity going on?

Ms. FONG. Well, I think it was a very difficult situation. As you know, GAO and our office had done a number of reviews over the years, and we pinpointed a number of areas where we thought GIPSA should take action.

Our recommendations have focused on the need to have the legal and economic and statistical expertise integrated as a team early on in the process, so that those kinds of investigations are handled appropriately. We also felt that there was a need to make sure that the appropriate level of management attention was given to these investigations.

Our review showed that GIPSA tried to take action to implement our recommendations back in 2000 and 2001. They attempted to hire more staff with the kinds of expertise that they needed. They attempted to implement a structure where they would make sure that the investigations moving forward had some quality control to them.

Unfortunately, the efforts that GIPSA took to address our previous recommendations in fact inhibited their ability to really implement an effective program. We were told that there was such an emphasis on trying to ensure quality in the investigative process that that tended to create other issues, as detailed in our reports. As a result, there were bottlenecks in the process and policy issues were not addressed, and basically the program was not able to move forward as it should have moved forward.

Senator HARKIN. Well, when a phone call is listed as an investigation, you know there is something wrong.

Mr. Chairman, you have been very kind. I have taken more than my share of time. If we go around again, I would like to ask for some time after others have had the chance.

The CHAIRMAN. Senator Lugar?

Senator LUGAR. Thank you very much, Mr. Chairman. I appreciate the focus of you and Senator Harkin on the procedures and the expert testimony of our witnesses.

Let me take a little different tack. I come from a family in which my grandfather and my father were involved in commission business at the Indianapolis stockyards from the 1930's to the early 1950's. As a boy I went out to the yards. I saw what they did at 5 o'clock in the morning. They were with the packers, with their

customers. I went with my dad out into the field to consult with farmers about when their livestock should come in. He was their advocate. They were his clients.

So that was obviously a different period with the stockyards that came into being in the 1920's, but it was a highly competitive situation. Many bidders, although there were two or three large packers in Indianapolis which dominated the scene, but the price mechanism situation was very active.

Now, what I see described here is a situation which you have detailed in preparation for our hearing, our staff pulled together, in which essentially in the 1990's, with the decade before this one, there were 300,000 farms involved in hog farming, and this was down to less than 100,000. I don't know what the figure is now, but I suspect many fewer. And we are still maybe only 25, 26 percent of the hogs by the turn of the century, 2000, were really involved in a competitive market. This is the allegation, that the other 74 percent became involved with large packers dealing with large feed lots.

And I think, you know, for the general public as well as Senators, we have to look at the heart of the matter. The allegation is that concentration continues, that it is very substantial, and that it inhibits price finding in a competitive way. And in short, that deals are made outside the stockyards and they involve most of the livestock, cattle and hogs, just sort of out of sight, out of mind.

What is left for the few that are still in the yards is also questionable, because at least in the alternative press, not in your testimony here, there are allegations literally that retaliation occurs against some of these small farmers who protest that a deal is being made. Now that is why the enforcement mechanism is of the essence.

If I were Secretary of Agriculture, I would say, "Listen, the integrity of the whole process is at stake here." This is not simply whether GIPSA works or whether it doesn't, whether a few inspectors more are needed here and there, and whether the audits come in quickly. This is sort of basic to the whole competitive aspect in the industry.

And the allegation is being made that the Secretary of Agriculture has not taken that very seriously, not just this one, but this certainly goes back for several years. If you were a conspiracy theorist, you would say that the large packers, the large farmers, really have a friend in whoever the Secretary is. And so whoever down in the weeds is taking a look at all of this, is going to be hobbled by the fact that at the top level, the top guy doesn't say, you know, "Get to it. Let's make sure that there is integrity in the process and we can se what is occurring."

Now at the end of the day economists may say, "Listen, you don't understand the way things are going. Whether it is dairy cattle or regular cattle or hogs, the economic way to handle this is by having very large production, very large feed lots. The logistics of all of this ought to be evident to you."

This is the way our country becomes more competitive, and I think we all understand that. We have all witnessed that in our States. But this is of small comfort, that if you are still out there with 50 hogs or 100 hogs or 200 or what have you in some sort of

minimum lot, you may be "in transition." The next generation may not want to feed that number, may want to join somebody else.

And so I think we realistically understand the trends of things, but we also understand the need for integrity and fairness and somebody with the searchlight of truth, in essence. And as I understand, Mr. Chairman, this is why you and Senator Harkin have called the hearing, so that in fact somebody says to the Secretary of Agriculture, not just to you people, that this is very important; that at least there are some people in the Senate who thing it is important.

We may not be savants as to precisely how you get to it, although I support the thoughts that Senator Harkin has suggested. Procedurally you have to do it in the rule of law. You need proper counsel, proper investigations. But we also need some analysis by the department. What is going on in these markets? Some overview in terms of policy, whether this is good or bad for America, and how in fact we protect at least those from any thoughts of intimidation or being outside the market.

So, having given this essay, I ask you, Mr. Link, if you have any comment as to what kind of interest is there at the level of the Secretary or anybody else in the department? Are you sort of left alone down there to do your duty as a new man on the job, full of vim and vigor, but at the same time you are wondering what is happening upstairs?

Mr. LINK. The Secretary is committed to enforce the act and correct these measures that we are taking right now. The market reporting is a complex issue, and we are working on that right now through this RTI study. Hopefully we will have that information by the end of the year.

Senator LUGAR. About how many farms are left and how they sell and so forth?

Mr. LINK. This is basically on how things are marketed, both through the cattle and the hogs and the sheep industry. We are auditing not only the producers but also the procurers of this, the slaughterhouses also, and hopefully that information will give us a better picture of what we have. I think we are pretty well informed now, but this will either confirm or deny what we know about how the market is functioning right now.

Senator LUGAR. I hope you will share that with the Chairman and the Ranking Member quite promptly, because we need that data. The data we are looking at here is at best circa 1999, maybe 2000. We are way behind the curve, even in terms of the official documents of our government, quite apart from what we have in front of us today, so we don't want to deal with the anecdotal. We need the facts, and I would hope that you would stress the urgency of getting that information here, because this is a committee that might want to take action on this.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Lugar.

And, Mr. Link, I think as you can see, the emotions run pretty high on this issue. This has obviously not been getting the attention at the department that the members of this committee think it should be, and I would hope you would not only think through the comments that Senator Lugar made, but stress that to the

folks underneath you as well as above you, that we are serious about enforcement of this particular act.

I don't know where we are going relative to this legislation. I don't know whether the legislation put forward by Senator Harkin, Senator Enzi, Senator Thomas, and Senator Grassley is a good idea or a bad idea but I would encourage you to take a look at it. And I would encourage you within the next 30 days or so to report back to Senator Harkin your feelings relative to that particular piece of legislation, because I have an idea that there is going to be a movement on the part of these folks to try to pursue some activity on this.

So I can't overemphasize that I know you are the new man, the new sheriff in town, and we appreciate that, but you have been there for about 5 months now, and I would hope that you would certainly move the ball forward and begin addressing the issues that are out there, as well as this legislation, and do so with all due haste so that we can start getting some positive answers.

Senator Salazar?

Senator SALAZAR. Let me just follow up on the question in terms of attention at the higher levels, and I will direct this to the Inspector General, Ms. Fong. You obviously spent a lot of time doing this report, and I commend you for taking the kind of straightforward approach and developing recommendations that I know are harsh, but I think they are real.

Do you have any thoughts about how we get this issue, which has been hanging around the heads of GIPSA now for many, many years under both Democratic and Republican administrations, at a much higher level of attention within USDA?

Ms. FONG. Well, this certainly has been a difficult issue for the department. Just to reiterate our experience in the Office of Inspector General, when Senator Harkin sent us his request last spring that we look into this program, and he detailed first the reasons for his concern, we immediately briefed the Secretary on it. We told him that there was a great deal of concern on the part of the committee, and that we were going to initiate the work. We kept the Secretary apprised of our findings as we uncovered them, and he expressed to me his full support for addressing these issues.

So that is our experience in terms of how the upper levels of the department are viewing these issues. We have been told that it is of prime concern to the Secretary.

Senator SALAZAR. Let me just follow up with that question. I think that the essence of your findings here is that there has been a systemic failure in terms of the enforcement of the law, and I am trying to figure out what the motivation of that systemic failure is.

As Senator Lugar said, and I have the most admiration for him, the allegation might be made that those who have the economic power in this industry now have a good friend in the position of Secretary of Agriculture, regardless of which administration has been in power. Just given the systemic failure that you identified in your report, do you sense that that might have been the case? That there is took much of coziness, if you will, between those who control 80 percent of the market and what's happening in the Secretary's office?

Ms. FONG. I can understand that that question would be on the table. When we did our review, we performed extensive field work. We visited all the field offices and talked with over 50 GIPSA employees. We talked with officials at headquarters. And during our field work, the issue of improper influence or undue influence was never raised with us.

It has been our experience when we do reviews that if there is a concern about improper motivation or lack of interest, those kinds of concerns are put on the table by someone. In this case we did not hear that kind of concern raised. We focused our review on the systems and the processes that we felt required attention, and basically found the systems were in disarray.

Senator SALAZAR. Ms. Fong, in your conducting of your review and developing your report, I know you spoke to many of the employees of GIPSA out in the field to develop your findings and your recommendations. Did you speak as well with people within the Secretary's office, and try to get their assessment as to why we were having these kinds of problems in the enforcement of GIPSA?

Ms. FONG. To the best of my knowledge, we did not. We focused on GIPSA primarily because the scope of our work was to identify what was going on with regard to how investigations were being handled, and how the recordkeeping processes and the approval processes worked within GIPSA itself. At the point where we came up with our findings, which we felt were very significant, we stopped our field work and wrote our report, because we thought it was important to surface these issues as soon as possible. So we did not expand the scope of our audit beyond GIPSA.

Senator SALAZAR. Let me just ask you one more question. One of the things that I think you found was, there were some 1,800 inquiries or investigations that were being cited by GIPSA that they were working on, but in fact only two or maybe three investigations had really moved forward.

And one of the recommendations in your audit is that a standard come forward from GIPSA that would determine what is, you know, just a phone call, what might be just an inquiry, versus what is an investigation. Did you provide recommendations on what kind of standard it is that GIPSA might be able to use with respect to that definition of what is an investigation versus just answering a phone call?

And, Mr. Link, if you would answer that question, too, relative to how you intend to define that standard for what is an investigation versus just picking up somebody's phone call that somebody might answer.

Ms. FONG. Yes, we did address that issue. We found that things that were classified as investigations under the old system ranged from, as you point out, dealing with phone calls or reviewing paperwork within the office, including field visits to field locations. We recommended that GIPSA make an appropriate delineation between what was truly investigative activity versus more administrative oversight or routine correspondence activity.

Senator SALAZAR. Mr. Link?

Mr. LINK. Yes, this is one of the things that we have already done. We have spelled out what constitutes an investigation, and then what other activities are regulatory. The majority of our ac-

tivities are regulatory: getting annual reports, reminding, checking bonds, this type of stuff.

Senator SALAZAR. What would you say is an investigation versus a regulator monitoring action? How would you define an investigation, Mr. Link?

Mr. LINK. Well, if there is a complaint for late payment or a bad check, something like that, that would instantly be an investigation. But again, we do a lot of annual things, like annual reports, checking bonds, checking custodial accounts, that type of stuff that is part of the regulatory action but it doesn't really require an investigation. Or if it is an inquiry, somebody calls in to ask about some order buy or something like that, those aren't counted as investigations. Those are part of the regulatory action.

Now, what actually has to have someone go out or come into the field office, that requires looking into, then that is. We classify that as an investigation. We follow their guidelines almost to the letter.

Senator SALAZAR. If I may, Mr. Chairman, just a quick comment. It seems to me that Senator Lugar's point is a very important point in terms of what has happened in the market out there, with now having 80 percent of the market concentrated among four packers, and how that economic reality of our times is affecting our agricultural industry and our independent livestock producers is something which is just a reality. I mean, I don't know that I know what the answer is to how we deal with that issue, but it is something that would be important, from my point of view, for us as a committee to have a better handle on, also for the Department of Agriculture maybe to give us some guidance on that particular issue.

And the second comment I would make, Mr. Chairman, is that it seems to me there is a management disconnect somehow between the Secretary of Agriculture and what is happening in GIPSA. So notwithstanding that over the years the Congress will make all these recommendations and suggestions, we don't seem to be moving the ball forward in terms of improving the enforcement of GIPSA.

And I think all of us here, Mr. Link, want you to do your job well, and want to support you in doing your job well, but it seems that there is a management disconnect somehow between GIPSA and the Secretary's office.

The CHAIRMAN. Point well taken.

Senator Thomas?

Senator THOMAS. Thank you, Mr. Chairman. I will try and stay within my time here.

It seems like the purpose of the Packers and Stockyards Act is fairly well defined: maintaining competition, banning price discrimination, manipulation of prices and those kinds of thing, misrepresentation of sources and that. So I assume that that is your responsibility.

Mr. LINK. Yes, sir.

Senator THOMAS. What do you think are the biggest obstacles? I hear from my friends that apparently most people don't believe it has been administrated properly. What do you think are the biggest obstacles to accomplishing what is clearly set out here?

Mr. LINK. Well, I think we have addressed them. Like the OIG report, I think there was a breakdown of communications, kind of a case where the left hand didn't know what the right hand was doing, and it slowed the process down.

I think the steps that we have taken to smooth that out, to make sure everybody knows where they fit into the picture so that they can move things forward at a much more rapid pace, will be very helpful, and closer attention to detail. I am kind of detail person, and I have become intimately involved in the operations since I have been here.

And I think clarifying to everybody how they fit into the picture. Some of the strides that we are taking in response to the earlier reports about putting legal specialists in the field and economists in the field, I think there was a little disconnect there that we are fixing, to where they are making more of the decisions at the local level, so they are more in tune to what the problems are on the local level rather than sending them forward to the headquarters to be dealt with at this level.

Senator THOMAS. Thank you. Ms. Fong, I understand or I would think the Inspector General means oversight of activities to see if they in fact are being done thoroughly and properly. Why do you suppose it has taken so long, if in fact what I hear here is the case, for 10 years? Who is responsible for coming up with some solutions to these things or causing things to change?

Ms. FONG. Well, I think we have addressed our recommendations to the department, to GIPSA and its Administrator, and certainly oversight should be provided at the Under Secretary level to make sure those things happen.

Senator THOMAS. What is your responsibility to see that they do happen, if they are not happening?

Ms. FONG. Well, our responsibility is to periodically review and evaluate what is going on, and to report to you and to the Secretary what we see.

Senator THOMAS. And do you feel as if that has been done thoroughly?

Ms. FONG. I believe that our audit work has been very thorough in terms of the issues that we have looked at. We were responding in this particular case to specific questions that were raised to our attention by the ranking minority member here, and I believe that we addressed those questions very thoroughly.

Senator THOMAS. That is good, and I am glad to hear that, but I would think regardless of the minority member, your responsibility is to see that it is carried out in accordance with the provisions of the act.

Ms. FONG. Yes, you are absolutely right, and our oversight continues. It doesn't end when we issue an audit report. We do engage in continual conversation with the agency as to how they follow up on our recommendations.

Senator THOMAS. I understand.

Why is the Natural Resources and Environment Team involved in this?

Mr. BERTONI. We have the agricultural issues in NRE, and we have done prior work on this issue also. We issued a report in 2000 on this.

Senator THOMAS. Thank you. Thank you very much.

The CHAIRMAN. Senator Nelson?

Senator NELSON. Thank you, Mr. Chairman.

Inspector General Fong, I am going to relate a bunch of words that begin with the prefix "in". In dealing with GIPSA, in your report you didn't conclude that they were indifferent or incompetent, but that there were some systems that were inadequate. Is that an appropriate conclusion for me to draw from looking at your report on GIPSA?

Ms. FONG. I think that is a fair statement.

Senator NELSON. Is it also fair to say that in some respects their effort was incomplete and inadequate?

Ms. FONG. That is also fair.

Senator NELSON. Well, to use another word, Mr. Link, when you come back here at our invitation, I assume that all these "in" words will go away, and that you will be able to come back with adequate, complete action and the like, or I can suggest to you that you will be in hot water.

[Laughter.]

Thank you, Mr. Chairman.

The CHAIRMAN. Again, well stated.

Senator Harkin?

Senator HARKIN. Thank you, Mr. Chairman, and I wanted to follow up on Senator Lugar's very probative discourse a little bit ago. I thought, when he started talking, some bells went off in my head. I started remembering some things, so I asked my staff to get me a letter.

And I am going to ask that this letter be included in the record, Mr. Chairman. It is a letter I received in response to an inquiry that I had made 2003, January 14th. It is a letter to me dated February 24, 2003, from Bill Hawks, Under Secretary for Marketing and Regulatory Programs. Are you ready for this? This is his letter to me:

"Given the rapid changes in industry, it is important to note that the Packers and Stockyards Act has not undergone a thorough review since its passage over 80 years ago. While most of the provisions are sufficiently broad to address emerging needs of market participants, there might be changes to the Packers and Stockyards Act that would be appropriate to address the major changes occurring in technology, marketing, and industry business practices. GIPSA is undertaking a top-to-bottom review of the Packers and Stockyards Act and its regulations to help ensure that the Packers and Stockyards Act continues to help assure a healthy, efficient, fair, and competitive market for everyone competing in today's livestock, meat packing, and poultry industries."

It is 3 years later. I haven't seen one iota of anything come out of this. Do you happen to know what happened to that top-to-bottom review at all, Mr. Link? I will bet it is the first time you ever heard of this, probably.

I don't know, Ms. Fong, did you, in your investigation, did you find out anything at all of what happened to this so-called top-to-bottom review?

Ms. FONG. I am not aware of that.

Senator HARKIN. I am just saying that is why I agree Senator Lugar is right on this. I mean, there needs to be something brought up-to-date on this, to make sure that we are doing what needs to be done in the present situation, present marketing practices, to provide that we have transparency in competition.

I just wanted to read one other thing. I just want you to know that this is not something—and, by the way, the legislation has three Republicans and one Democrat. I seem to be lonesome on my side on this right now. I hope to get some more. But this is the one calling for a special counsel. I had said that in my letter at that time, and here is the response from Mr. Hawks:

"Regarding a Special Counsel for Competition, we believe a special counsel in USDA would not benefit USDA or agriculture. Competition issues can affect all parts," he goes on, and basically they are saying they have got all the authority they need. So again you can see why I might be a little skeptical. We have been down that road before, and we were told 3 years ago we didn't need it. They were going to do all this stuff, and nothing has ever happened.

And so again, Mr. Chairman, I just think that we need to proceed on this. I hope that you will follow through, and I think Ms. Fong has done an outstanding job. I shouldn't say you particularly, but your whole department, the IG and the investigation has done a good job. I would say the same with GAO, too.

But one last thing I just wanted to bring out. I had hoped that maybe we might, Mr. Chairman—and I am sorry I didn't mention this to you, I am at fault on this, trying to get Ms. Waterfield to testify, but I didn't request it. She has resigned, I know. She is no longer there.

But for the Inspector General, just for the record, I just want to say, do you feel, given the past Deputy Administrator's actions or inactions, basically actions, that there should be any further action regarding her?

Ms. FONG. I am not sure what further action could be taken. And the reason I say that is, as you mentioned, she has resigned. During our review we looked very carefully at what she did, and how she managed her operation. What we found, we would characterize as tremendous mismanagement. She told us that she was motivated by trying to make sure that the investigations that moved forward were of high quality. Her motivation was to ensure quality in the program, and so she instituted a number of measures that, as we have seen, backfired in a sense.

We did not find any evidence that would lead us to make a referral to our investigative side of the house. In other words, we did not find any indication of criminal conduct, as it were. And so I am not sure what further action could be taken at this point.

Senator HARKIN. Well, are you, in your investigation are you confident that the people above her were not aware of or were not complicit in some of the actions that she was taking? It just seems to me that over all this time, with the things that she was doing, what was happening above her? Was there any oversight? Were there any communications? Or was she just out there on her own?

Ms. FONG. We had no evidence that there was tremendous involvement from the ranks above her, in any kind of sense. The Administrator position had been vacant for a number of months, and

so there was an Acting Administrator for a period of time. The Under Secretary position has been vacant for a period of time as well. And so I think that created a situation where perhaps there weren't the levels of review that would normally exist.

Senator HARKIN. Just in closing, Mr. Link, I would ask you again if you will go back and try to find out what happened to that promised review. Was anything done? I don't know. It was said in the letter that they were going to do this top-to-bottom review and everything. I just don't know how far it got.

Maybe if you go back and have some of your people look back in the files and find out what happened to that promised review, and if there were any findings from that at all. I mean, maybe a review was done and some findings were made but never communicated to us. I don't know. Could you go back? And, Mr. Chairman, I would ask that you formally to do that, and try to get whatever information you have on that back to the committee here.

The CHAIRMAN. Senator Lugar?

Senator HARKIN. Well, I don't know that I have anything else, Mr. Chairman.

The CHAIRMAN. You want to think about it a minute?

Senator HARKIN. Yes, yes.

The CHAIRMAN. Senator Lugar?

Senator LUGAR. Mr. Chairman, I wanted to comment that obviously our witnesses today are taking the brunt of all these questions, and at the same time we are commending them for their conscientious activity. I think in fairness there is some shared responsibility.

And Senator Harkin's letter to the Secretary in 2003 sort of reminds me of hearings even way back in the ancient history of my chairmanship, in which we were trying to probe what is going on in the stockyards in America, what is happening in the cattle and hog markets. Obviously it was of great interest to not only me personally but members of our committee, and it is apparent that not much has happened in the intervening period.

This is why I think the Secretary and each of you have to understand, it is not that I have some brief in conspiracy theories, but the facts are that as you pointed out, Mr. Link, you are pulling together some very important information about concentration in the markets. How many farmers are actually left as competitors in these situations? And what are the realities, if we look at the local level, of the pricing mechanism? The perception and the reality of the fairness of that?

Now, you know, for this committee to act appropriately, we also need to be updated. Not every member of the committee, myself included, really understands precisely who is in the market now and what their perceptions are. It may be the Stockyards Act itself needs substantial amendment, quite apart from the agency that you are trying to regulate. It could be that, as Senator Harkin's letter suggests, and the response from Secretary Veneman, that a lot has changed, a whole lot.

Now this committee, say in dealing with the commodity futures markets, has recognized that. We have had regular amendments of statutes because those markets are dynamic and they have changed abnormally in a very short period of time. I don't see the

same activity in the livestock markets, or the same recognition of what is actually occurring in agricultural America.

So even as we charge you with being very diligent with whatever this act is now, and it may have been just as inadequate 10 years ago as it is now, in order to get something that is up-to-date, we really need to understand the markets and the feelings of people who are in these markets. Otherwise we are going to have political arguments that are based not on the facts but on emotions and feelings of unfairness, and that will not be healthy for the USDA or for us or for, more importantly, the constituents that we serve.

And I think you understand that, but I just wanted to underline my concern once again, to get us the facts, to try to think through, is the act that we now have adequate really to meet these particular circumstances in 2006, as opposed to what they may have been at any one point in our history?

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Harkin?

Senator HARKIN. Mr. Chairman, I just have one last question for the record.

Ms. Hobbie, how long have you been in your position?

Ms. HOBBIE. I have been the Assistant General Counsel in the Trade Practices Division since 1994.

Senator HARKIN. Well, since GIPSA was not performing anticompetitive investigations, few or no referrals were being made to the Office of General Counsel for administrative action for several years, as I pointed out earlier. Ms. Hobbie, didn't you find it odd that GIPSA only referred two minor competition investigations to OGC over the course of many years?

Ms. HOBBIE. Senator, since the Grain Inspection, Packers and Stockyards investigators and legal specialists were not talking to the Office of the General Counsel very freely about the kind of investigations that they were doing, we took what investigations came our way for referral for enforcement. As you have indicated, between November 2004 and the present there were—excuse me, November 2002 and the present—there were only two. Both those cases we have acted on. I really have no answer beyond that, that we acted on what came to us.

Senator HARKIN. I am just saying you never found it odd that only two minor cases were referred to you on this? I mean, you have been there a long time. Wouldn't that kind of raise some questions in your mind?

Ms. HOBBIE. It was my understanding in conversations with the agency that they were investigating competitive matters, and so I expected to receive referrals. I suppose it would be correct to say that I was surprised.

Senator HARKIN. Well, if you were surprised, did you ever contact anyone such as the Under Secretary or the Secretary or the General Counsel, that GIPSA was failing to refer competition investigations.

Ms. HOBBIE. Senator, I didn't know that they were not referring investigations that would rise to the level of showing a potential violation of the act. I knew that they were doing investigations. Often it is the case that when the agency conducts investigations, they will determine that in fact the investigation does not rise to

the level of a violation of the act, or in talking to the subject of the investigation as the investigation proceeds, they are able to achieve compliance without referring the case for enforcement.

Senator HARKIN. But, Ms. Hobbie, you are in a key position in the Office of General Counsel. You have been there a long time. You know what is happening out there. You read the press, and you read the agricultural press. You know how many requests come in.

In 2000 the GAO said the Office of General Counsel and GIPSA must coordinate better. This exchange further shows a breakdown and failure to do what should have been done a long time ago. So you had that information, and it would seem to me that—as you said, you were surprised.

Do you feel it is your obligation in your position to question this, perhaps to the Under Secretary or even to the General Counsel? I mean, if you were surprised, I mean, did you make any inquiries about this at all during this period of time?

Ms. HOBBIE. During this entire period of time my office and the Office of the General Counsel was working with the agency to some extent on investigations that they were pursuing. The investigations that we were working on sometimes did not proceed to come to us in a formal referral for enforcement. In those cases there were generally reasons that the case did not come to us for enforcement. There was no reason that I could see to believe that the agency was not pursuing those cases where there were potential violations of the Packers and Stockyards Act.

Senator HARKIN. But to have only two referrals to your office over this period of years, as you said, came as a surprise to you.

Ms. HOBBIE. Only two competition referrals, Senator. Over the past, since 2003, there have been referrals of almost 100 enforcement cases under the Packers and Stockyards Act, and we have filed 74 enforcement actions under the act in that time period. There was plenty of enforcement activity going on under the Packers and Stockyards Act.

Senator HARKIN. But in terms of the referral of anticompetitive activities, as I understand, there was only two referrals. Now, you may have been doing some other things on your own that I may not have known about. I don't know. But with regard to the referrals from this office, you only had two.

Ms. HOBBIE. The Packers and Stockyards Program has three different categories for cases. One category are the financial cases; the trade practices cases; and the competition cases. Over the period that I mentioned we got referrals from all of Packers and Stockyards, that is, all three of those areas, of almost 100 cases.

Senator HARKIN. Going back to what year?

Ms. HOBBIE. Going back to fiscal 2003, and we filed complaints in 74 of those cases.

Senator HARKIN. But those were in what areas?

Ms. HOBBIE. Two of them—one of those would have been a competition case. The others would have been probably in trade practices enforcement, things like failures to pay, insolvency, false weighing, various kinds of fraud.

Senator HARKIN. OK. I understand. I just wanted to get that clear. What we are here about, I think, well, at least what I am

here about today, I cannot speak for others, is the anticompetitive aspects. That is what we are about, and that is I think sort of what all these letters and these hearings were about.

We are not into this other stuff. I mean, those are other things. We are into the anticompetitive aspects of this, and that is what we are trying to focus on. So please don't try to say that you are doing all these things under Packers and Stockyards. You may be, in these other areas that have to do with those other issues that you are talking about. We are talking about the issue of competition.

Ms. HOBBIE. Yes, sir, and in competition cases, there were two cases referred to us for enforcement and we acted on both.

Senator HARKIN. I have said that repeatedly, Ms. Hobbie, and all I have gotten from you is that you were surprised about this. And I am just asking, don't you feel it is your obligation, as a public servant, don't you feel that it is your obligation that if you are surprised, if you see something you don't think is working right, that you should talk to your superiors about it, or the Under Secretary? I mean, you are in the General Counsel's office. Or do you just wash your hands of it and walk away?

Ms. HOBBIE. Well, Senator, with all respect, to say that I was surprised does not mean that I thought that anything was being handled incorrectly or that there was any wrongdoing. What happened was, the agency did not refer to us competition cases for enforcement. I did not believe that there were cases of alleged violation of the Packers and Stockyards Act that were going unreported or unacted upon. I did not believe that to be the case.

Senator HARKIN. So why were you surprised? Were you surprised that there were two and there shouldn't have been any, or were you surprised that there should have been more? What could have surprised you?

Ms. HOBBIE. I was surprised. I was surprised only in that I did not get more requests from the Packers and Stockyards Program investigators and legal specialists for assistance in a competition investigation. I had little or no knowledge of the type of investigations they were doing, because free communication with the Office of the General Counsel was not encouraged by Packers and Stockyards management.

Senator HARKIN. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Salazar?

Senator SALAZAR. May I just ask one question of you, Mr. Link? Your are now the Administrator and the Honorable James Link, in charge of this program, and no doubt you have inherited here some very important, significant, difficult challenges, and I think, as Senator Chambliss said earlier on, you are the new guy on the block, the new sheriff in town.

Can you just tell me what maybe your top two priorities are, as you assume this position as Administrator? I ask you that question in my context and background as Attorney General, where on my non-criminal side of life I had a number of consumer protection laws that I oversaw, antitrust laws, and I had to make decisions about where my priorities would be in consumer protection because I couldn't do everything. So in my own case in Colorado, among other things, one of the targets for me was going after senior fraud.

In your case now as the man at the top, being in charge of this program that has been in existence now for over 8 years, what would you say would be your one or two top priorities?

Mr. LINK. Well, I will give you both one and two because they changed in December. My first priority now is to correct the inadequacies that is going on and to get smoother investigative reporting going on and tracking this, so that we get it back into what we want it to be as far as the agency goes, get the right people doing the right thing at the right time so that we will move forward.

My second priority is to update some of our regulations, to address what Senator Lugar was discussing about bringing some of the activities up to the time. And I have started that a little but I have been distracted some, working with Office of General Counsel, because we do have regulatory authority to address some of the changing times.

And that is one of the things that I would like to do, is to update our regulations to bring them into the times that we have now, to address the marketing changes that have occurred recently, the differences in the value of the livestock that we are dealing with now as opposed to the last time that was dealt with, and basically find better ways to protect sellers on the open market.

Senator SALAZAR. I would hope that as you move forward with both of those priorities, that you keep me updated as one Senator, and I would expect that the committee would probably also be very interested as you take on both of those major initiatives. Thank you very much.

The CHAIRMAN. Mr. Link, again, just to repeat myself, you can see that there is a lot of keen interest in this issue. And while we know you are still getting your staff together and getting your ducks in a row, so to speak, down there, it is critically important that we continue to move forward.

I am going to ask that staff send you a copy of this letter. I am sure you could probably find it, but just to make sure you have got it. I would like for a copy of your letter, Tom, to the department, plus the department's response to you, be sent to you, Mr. Link, and that you make a review of your files within your office and respond to us within 30 days as to whether or not there was any review. If there wasn't, let us know that, and what may be your intentions in that regard with reference to a review of GIPSA.

Second, I would request that within 90 days that you give us a written report regarding the implementation of the suggestions and recommendations coming from both OIG as well as GAO, and that will be in lieu of us reconvening a hearing, unless Senator Harkin, you think it might be necessary, upon receipt of that written information, that we reconvene another hearing.

We don't want to take any more of your time than we have to, but this thing has been going on too long, and we are not getting the responses that we need. In fact, we are not getting responses, period. And again, I am not throwing this in your lap because you are the new sheriff down there, but as the new sheriff we expect you to provide the leadership that brings this issue to the forefront, and that the information that the committee requests be given to the committee.

So, Mr. Link, if you will do that, both at the end of 30 days and the end of 90 days, give us those respective pieces of information, we will certainly look forward to hearing from you.

We are going to leave the record open until Monday in case anybody has any additional questions. I think Senator Grassley may have some written questions that he will propound to any one of the three of you, and I would ask that you certainly get those responses back, if there are any questions, within 30 days.

Thank you very much, and this hearing is concluded.

[Whereupon, at 12:05 p.m., the committee was adjourned.]

APPENDIX

March 9, 2006

COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

REVIEW OF USDA'S MANAGEMENT AND OVERSIGHT OF

PACKERS AND STOCKYARDS ACT

MARCH 9, 2006

STATEMENT OF SENATOR TOM HARKIN

RANKING DEMOCRATIC MEMBER

In 1921, Congress passed the Packers and Stockyards Act to protect livestock and poultry producers from unfair, unjustly discriminatory, or deceptive and anti-competitive practices in the marketplace. Since enactment of this important law, the livestock and poultry industry has changed dramatically—especially in the past 15 years. Packing companies have become larger and the industry more consolidated and vertically integrated, often leaving producers with just a handful of buyers for their livestock and poultry. This imbalance of economic power increases the potential for unfair or discriminatory practices in the market. That is why enforcement of the Packers and Stockyards Act is so critically important. Producers depend on this law to protect them. So I commend the Chairman for holding this hearing today to examine USDA's authority and commitment to enforcing this important law.

I had heard from a lot of producers that USDA was failing to act on their complaints of unfair and anti-competitive practices by packers. I was also hearing that USDA was purposely misrepresenting its enforcement activities to give the

appearance it was in fact enforcing the Packers and Stockyards Act when it was not. So I asked the Inspector General to investigate. The Inspector General found that USDA management was preventing employees from investigating complaints of anti-competitive conduct and even covering up its inaction by inflating the number of investigations listed in annual reports.

I'm sure USDA officials will promise today to do a better job of enforcing the Packers and Stockyards Act. And for the sake of America's producers, I hope they do. But it is important to remember that USDA has a long history of agreeing to make changes but never following through with them. The Inspector General made recommendations to improve USDA's ability to investigate violations of anti-competitive behavior in 1997, and the Government Accountability Office made similar recommendations again in 2000. I led efforts in Congress to provide funds for USDA to carry out GAO's recommendations. It is now 2006, yet those recommendations were never implemented and the Grain Inspection, Packers and Stockyards Administration (GIPSA) is now in complete disarray.

It is also troubling that while GIPSA was failing to enforce the Packers and Stockyards Act, no one above the level of deputy administrator took corrective action. Where was the governmental oversight? Where was the GIPSA Administrator, the Under Secretary for Marketing and Regulatory programs or the Secretary of Agriculture? Most importantly, where was USDA's Office of

General Counsel (OGC). OGC has a history of inaction on enforcement of the Packers and Stockyards Act. Perhaps it comes as no surprise that OGC was not sending up red flags when GIPSA only referred two investigations of anti-competitive practices to them over the course of several years. Surely OGC has a responsibility to enforce the law.

Recently, I introduced with bipartisan backing the "Competitive and Fair Agricultural Markets Act of 2006" to spur USDA enforcement action and strengthen producer protections against anti-competitive practices. My legislation will create an office of special counsel for competition matters at USDA whose sole responsibility is to investigate and punish unfair, anti-competitive behavior in agricultural markets. This high-profile person will be appointed by the President and confirmed by the Senate to create new accountability for enforcing the Packers and Stockyards Act. The fact that the upper levels of USDA were unresponsive to the problems at GIPSA—despite the fact I was sending letters to the Secretary pointing out that such problems did exist–and the failure to implement past OIG and GAO recommendations, supports my assertion that a reorganization at USDA is badly needed.

USDA officials have a lot of explaining to do in this hearing. We need to hear pledges and specific plans to reconstruct this broken agency. I call on USDA to support the changes I have proposed in my bill to remove layers of bureaucracy

and reverse USDA's longstanding apathy toward enforcing the law. I look forward to working with the Chairman and members of the Committee to enact these needed reforms to the law.

Statement By James E. Link
Administrator of the Grain Inspection, Packers and Stockyards Administration

Senate Agriculture Committee Hearing
On the Office of Inspector General Audit Report:
"Grain Inspection, Packers and Stockyards Administration's
Management and Oversight of the Packers and Stockyards Program"

March 9, 2006

Good morning. I appreciate the opportunity to be here today to highlight for you a number of changes underway at the Grain Inspection, Packers and Stockyards Administration (GIPSA) to improve and strengthen the enforcement of the Packers and Stockyards Act.

On October 17, 2005, I became GIPSA's new Administrator, responsible for, among other areas, the Packers and Stockyards Program (P&SP). P&SP facilitates the marketing of livestock, poultry, and meat, and promotes fair and competitive trading practices for the overall benefit of consumers and American agriculture.

I have spent my life involved in American agriculture. I grew up working on a ranch in the Flint Hills region of Kansas and became the owner of the Link Cattle Company of Crowley, Texas. I have served as a committee member and officer for several national and regional agricultural associations. I came to USDA from Texas Christian University (TCU), in Fort Worth, Texas, where I was the director of the ranch management program.

The recent Office of Inspector General Audit Report, "Grain Inspection, Packers and Stockyards Administration's Management and Oversight of the Packers and Stockyards Programs [sic], Report No. 30601-01-Hy, January 2006", identified weaknesses in P&SP's programs and controls that are hampering our ability to effectively enforce the Packers and Stockyards Act. Our enforcement activities are essential to promoting a fair and competitive livestock market.

Under my leadership, the employees of the Agency can and will make the needed changes to strengthen our enforcement of the Packers and Stockyards Act (P&S Act). We have already begun making the fundamental changes in the culture of the organization that are essential to empower our employees to enforce the Act, and develop the internal processes and controls necessary to deliver improved results.

Since arriving at GIPSA in October, I have met with nearly all P&S Program employees. The vast majority recognized the program deficiencies identified by the Inspector General, and expressed a strong commitment to aggressively and thoroughly correcting the problems. They have shared many ideas on how to improve service delivery at all

levels of the organization, and I am listening. Together, my staff and I are making changes to effectuate positive mission results.

Background

The P&S Act provides protection for ranchers, producers, and poultry growers who are not paid on time, and are treated discriminatorily or unfairly by a packer, dealer, market agency, swine contractor, or live poultry dealer. Specifically, the P&S Act prohibits unfair, deceptive, unjustly discriminatory, and anticompetitive practices in the livestock, meat, and poultry industries.

During the 1980s, the meat packing industry experienced considerable consolidation. In order to better meet the needs of an increasingly complex industry, both headquarters and the regional offices hired legal specialists to assist in investigations and economists to increase our economic expertise. Also, P&SP began consolidating its 11 field offices to strengthen the Agency's ability to conduct complex anticompetitive-practice investigations by increasing the economic, statistical, and legal expertise in fewer field offices. By 1999, GIPSA had completed the restructuring of its headquarters operation and consolidated the 11 P&S field locations into 3 regional offices located in Atlanta, Georgia; Des Moines, Iowa; and Aurora, Colorado. PSP was restructured to reflect the three primary areas of enforcement under the Act -- financial protection, trade practices, and competition.

- The Financial Protection Branch handles payment protection, including requirements for prompt payment for livestock, meat, and poultry; bonds for the protection of livestock sellers; separate custodial bank accounts for auction markets; packer trusts to benefit cash sellers when a packer fails to pay for livestock; and solvent financial conditions for commission firms, auction markets, dealers and order buyers.

- The Trade Practices Branch handles one of the largest areas of work under the P&S Act, enforcing the prohibition against unfair, deceptive, or fraudulent trade practices. This involves monitoring and investigating a wide variety of activities, including weight or price manipulations, misuse of custodial accounts, commercial bribery, bait and switch advertising, check kiting, using unfair tactics to gain business, defrauding consignors, misrepresentation, false accounting and recordkeeping, and illegal brokerage.

- The Competition Branch focuses on preventing or prohibiting anticompetitive practices in the livestock, meat, and poultry industries. This includes detecting and preventing manipulation of prices, market allocation, restraint of commerce, unlawful monopolistic practices, apportioning of trade, predatory pricing, and conflicts of interest.

By 2001, six legal specialists were hired and placed in headquarters and the regional offices. 28 economists joined the P&SP staff and the Agency established an investigative

process modeled on DOJ and FTC procedures. A Senior Management Review Panel began monitoring the overall management of complex investigations.

Enforcement Activities

P&SP's enforcement activities begin when the program identifies possible violations of the P&S Act or regulations through its surveillance and monitoring work. If a potential violation is detected, an investigator reviews documents and reviews to ascertain whether a violation has most likely occurred. If so, generally the first step is informally working with the business to correct the violation without legal proceedings. If we cannot achieve compliance with the P&S Act in that way, we will refer the case to Office of General Counsel. If legal proceedings are warranted under our administrative authority, OGC will prosecute the case before an Administrative Law Judge, or if it's a poultry case, refer it to DOJ. For all proceedings, informal or formal, P&SP works closely with OGC.

It is important to have a clear understanding of the Department's legal authority under the P&S Act. For example, the Department cannot make a packer who owes money to ranchers for cattle in violation of the Act pay restitution as a sanction in an enforcement case. We generally are, however, successful in gaining violators' agreements to pay restitution in informal proceedings or through a settlement of a formal proceeding. If the Department has reason to believe a packer or swine contractor has violated the P&S Act, we may issue a written complaint and require the packer or swine contractor to testify at a hearing. If the Department finds that a violation occurred, we may issue a cease and desist order and may also assess a civil penalty of up to $11,000 per violation. Other penalties that are available for violations include suspension of business operations and through referral to DOJ, permanent injunctions, which include fines and jail sentences imposed for the violations of an order of the Secretary.

The P&S Act does not provide any authority to the Department to alter the structure of the livestock and poultry industries. Firms are largely free to pursue their economic interests, such as opening or closing plants, expanding into new geographic areas, adopting new technology and cost-saving innovations, and integrating livestock production. Similarly, concentration, which is often discussed as a problem to be dealt with under the P&S Act, is not a term defined in the Act, nor is concentration in the livestock, meatpacking, or poultry industries directly addressed by the P&S Act. Therefore, a high level of concentration in these industries is not itself a violation of the P&S Act. The DOJ and FTC have the authority to investigate mergers and acquisitions by firms subject to the P&S Act.

Recent Achievements

Given this overview of our program and our authorities under the Act, I will highlight some of the Agency's recent achievements. I will then address the specific weaknesses identified by the Inspector General.

GIPSA works to resolve cases informally to recover money for producers and restore funds to appropriate accounts for financial protection in the event a regulated entity fails financially. In fiscal year 2005, P&SP recovered $14.1 million for livestock and poultry

sellers and producers, and enforced the restoration of nearly $350 million to custodial accounts and business balance sheets to correct insolvencies, and to protect producers from financial harm.

In FY 2005, GIPSA, working through informal resolution channels, obtained voluntary industry compliance in an instance wherein a market agency and dealer operation in the upper Midwest discovered that one of its employees had defrauded the company of more than $1 million. A GIPSA representative met with company officials to audit their financial records and worked with them to secure sufficient financial protection for those who sold livestock to the firm. As a result of the timely intervention, no livestock sellers were harmed financially by the employee's fraudulent activities.

Investigations need not result in a finding of violation to be valuable to the industry. Following the terrorist attack of September 11, 2001, and then again, in 2002, following rumors about an outbreak of foot and mouth disease in Kansas, P&SP investigated to determine if these events were used to manipulate market prices in violation of the Act. In both cases, P&SP was able to identify the market forces causing the price declines and to reassure the market that they were not due to unfair or discriminatory practices.

Recent OIG Findings

Now, I'd like to focus on the findings of, and GIPSA's response to, the recent OIG report.

The OIG report identified four major areas of weakness in the P&S Program: bad record keeping, poor investigation management, lack of policy vision and decisions, and lack of follow-through on the recommendations of earlier reviews. These are fundamental and serious weaknesses. No business can be successful with this report card.

The Inspector General offered 10 recommendations to improve our operations. We have accepted all 10 and established an aggressive schedule to implement them. OIG has expressed satisfaction with all measures we are taking. Adopting the Inspector General's recommendations represents a good start, but it is only the beginning of the changes that we in GIPSA are going to make.

We have undertaken specific steps to meet the recommendations of the OIG Report. For example, we have implemented four new policy directives to address recommendations number 1, 3, 5, and 6 in the OIG Report, which deal respectively with defining investigation versus regulatory activities; revising the organizational structure to provide greater authority to the regional offices; enabling the legal specialists to freely contact and work more directly with OGC; and developing a structure for receiving, reviewing and acting on policy issues and internal requests for guidance. We are also in the process of programming changes into existing software to accommodate the need to track investigations and identify regulatory versus investigative activity in the old Complaint and Investigation (C&I) Log.

My goal is to achieve a results-oriented culture in which all employees understand their contribution to fulfilling our mission, and can see the results of their dedication and hard work through transparent program performance measures.

To accomplish this goal, we must begin by addressing the needs of our employees. I have opened my door to all employees by establishing a confidential employee-Administrator communication website, by making onsite visits to field offices, and, most recently, by initiating a full-scale organizational review and assessment of the Program. The review team, comprised of USDA officials outside our Agency will begin by analyzing the organization of headquarters staff and continue the evaluation to the field staff. The review team started interviewing Program staff January 30th. By the end of this month I expect a report from the team identifying effective and ineffective activities of the headquarters and field staffs, effective and ineffective interactions with others in GIPSA, and areas for improvement. I also expect the team to identify options for structuring staff and allocating staff resources with advantages and disadvantages for each option. Their analysis will provide me with expert and objective information to aid in creating a more efficient staff structure. I have also contracted with the Office of Personnel Management (OPM) to administer an Organizational Assessment Survey. This voluntary survey, which is currently being conducted, gives employees an opportunity to anonymously let me know what they think about the organization's strengths and weaknesses in a variety of areas. I will use the survey results to enhance our work environment and culture, and to improve our organizational effectiveness.

In the end, our response to the January 2006 OIG Report findings will result in P&SP headquarters and regional management working collaboratively to provide the oversight and guidance that will allow multi-disciplinary teams, comprised of economists, auditors, and legal specialists, working hand in hand with OGC and DOJ, to fulfill our mission.

Competitiveness in Livestock and Poultry Markets

Before concluding, I would like to offer some comments on two characteristics of livestock markets that continue to generate concern – market concentration, and increased use of contracts or alternative marketing arrangements for the procurement of livestock and poultry.

Buyer or market concentration is generally measured by the proportion of total livestock purchased by the four largest firms. During the 1980s, a series of plant closures and mergers raised that proportion to 80 percent in the steer and heifer market. The hog industry four-firm concentration ratio reached 64 percent in 2003 with Smithfield's acquisition of Farmland. In the sheep and lamb industries, the four-firm concentration ratio fell from 72 percent in 1992 to 65 percent in 2004.

Academic research has generally found that livestock markets are competitive. A 1996 study (Azzam and Anderson), reviewing research completed prior to 1995, found that economic factors, and especially technological changes, have driven most of the structural changes in commercial meatpacking. They concluded that research literature suggested that the structure of markets in the red meat packing industry, although not the

ideal of perfect competition defined by pure theory, is not burdened by significant anticompetitive features. More recent studies also have not found a predominance of anticompetitive structure in meat processing or the sale of meat (Koontz and Garcia 1997; Schroeter, Azzam, and Zhang 2000).

The movement towards contracts or other alternative marketing arrangements is another area that continues to generate concern about the potential abuse of market power. Typically, contract prices for cattle and hogs are tied to the spot market price. As a result, as more animals are sold through contracts or other arrangements and fewer through the spot market, the actual number of transactions on which contract payments are based becomes smaller. This "thinning of the market" is often alleged to increase the ability of large buyers to manipulate prices. Research on this issue has been mixed.

Contracts also play a significant role in the poultry markets since nearly all poultry production is grown through contracts. Often, the contracts compensate growers based on their cost performance relative to other growers. Producer concerns frequently involve the substantial investments required for poultry houses and the growers' subsequent dependence on a poultry processor for ongoing contract renewal.

Our role is to protect the specific regulated industries under our authority from corrupt or discriminatory business practices that negatively impact the ability of sellers or producers to compete, and cause competitive harm. A detailed knowledge of the industries and ongoing monitoring of market activity allow the P&S Program to detect damaging business activity in an incipient stage and work with firms to prevent harm to producers and sellers.

We carry out our responsibility by monitoring market behavior; maintaining a comprehensive understanding of industry practices; investigating complaints of alleged violations of the P&S Act, such as price manipulation, unjust discrimination, and apportionment of territory; and conducting studies of market activities. For example, RTI International, Inc. is currently conducting a congressionally mandated study to assess the impact of alternative marketing arrangements of the cattle, hog, and sheep markets.

To monitor the fed cattle markets, we analyze USDA published weekly cattle prices for five direct-fed cattle markets. These publicly available prices are developed using an econometric model to predict prices for the week based on the historical relationships between each market's price and those of the other five markets. With a national market for fed cattle, all market prices tend to move together. If one goes up, the others usually follow, and usually in proportion to each other's prices. Hence, if an actual market price starts to move contrary to the direction of the other markets, rising past a statistically determined boundary predicted by the model, it is termed a "trigger price." Trigger prices are indicators of sudden changes in either supply or demand factors within a market that are not affecting the other markets as a group. The appearance of a trigger price sets off a P&SP review into the possible causative supply or demand changes. If the trigger price cannot be explained based on the publicly available data, P&SP requests

nonpublic, data from the firm to determine if a single firm is the cause of the trigger price and, if so, what behavior of the firm is causing the price behavior.

During fiscal year 2005, we conducted reviews of 25 trigger prices in steer and heifer pricing. P&S staff conducted detailed analyses of these prices to determine whether there were factors not included in the statistical models that explained the outliers. They found no evidence of violations in 24 of the instances; the last investigation is still open.

We recently implemented a similar econometric model to monitor hog markets. The five hog price markets monitored are based on the publicly available USDA data for the Eastern Corn Belt region for negotiated carcasses and for negotiated live hogs, the Iowa-Minnesota region for negotiated carcasses and negotiated live hogs, and the Western Corn Belt region for negotiated carcasses. So far the model has identified two trigger prices and after review, one that has been explained and the other remains under review.

We also monitor market activities by visiting the markets to interview participants and gather information. For example, we collect information about the procurement practices of livestock sellers, dealers, sale barns, order buyers, and packers in the cow and bull market. P&S staff visit individual cow-bull packer facilities and collect data on livestock procurement practices, such as the use of grades in buying decisions, packers' presence or absence at nearby auctions, packers' use of niche product lines, and the use of a single buyer agent to purchase on the behalf of multiple packers.

Conclusion

The P&S Act and the Packers and Stockyard's Program that enforces it, play important roles in American agriculture. The OIG report was a disturbing reflection of weaknesses that are impeding our Agency from carrying out our mission. I am fully committed to establishing the policies and creating the organizational culture that we need to promote fair business practices and competitive environments to market livestock, meat, and poultry. Only through these changes can we protect consumers and members of the livestock, meat, and poultry industries.

Thank you for the opportunity to address the Committee. I am happy to respond to your questions.

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UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

STATEMENT OF THE HONORABLE PHYLLIS K. FONG

INSPECTOR GENERAL

Before the

SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

March 9, 2006

Good morning, Chairman Chambliss, Ranking Member Harkin, and Members of the Committee. Thank you for inviting me to testify before you today to discuss the results of our recent audit regarding the Grain Inspection, Packers and Stockyards Administration's (GIPSA) Management and Oversight of the Packers and Stockyards Programs.

GIPSA works to ensure a productive and competitive global marketplace for USDA products. The agency's Packers and Stockyards Programs (P&SP) are responsible for maintaining fair trade practices in the marketing of livestock, providing financial protection for participants in livestock transactions, and ensuring open competitive marketing conditions for livestock and meat. Competition investigations are complex and often require sophisticated economic modeling and analyses. P&SP is responsible for evaluating complaints regarding restriction of competition, failure to compete, apportionment of territory, price manipulation, price discrimination, and predatory pricing.

In April 2005, OIG received a letter from the Ranking Member of this Committee, Senator Tom Harkin, expressing concerns with GIPSA's management and oversight of the P&SP. Of particular concern was the possible overstatement of the number of investigations that were conducted by the agency's competition division as reported in GIPSA annual reports. The number of actual investigations is an indicator of the level of GIPSA's enforcement activity for a particular year. In response to this inquiry, we

initiated an audit to evaluate GIPSA's management and oversight of P&SP.[1] Specifically, our audit evaluated the adequacy of GIPSA's actions to (1) investigate and act against anti-competitive activities, (2) count and track complaints; (3) strengthen program operations; and (4) allocate and use resources for conducting investigations.

To accomplish these objectives, we conducted our audit work at GIPSA Headquarters in Washington, D.C., and each of the agency's three P&SP regional offices from May to October 2005. We evaluated current investigative policies and procedures and examined pertinent documentation. The documentation we examined included records from P&SP's investigative tracking system, investigative work plans and reports, weekly activity reports, and records of employee turnover and retention. We also interviewed over 50 current and former GIPSA employees and the Assistant General Counsel for Trade Practices with the Office of General Counsel (OGC). We evaluated P&SP's processes and controls for conducting investigations to ensure complaints were effectively examined, reported, and resolved. We did not assess the quality of the investigations performed or the results reported.

OIG's 1997 Review of GIPSA's Oversight of Anti-Competitive Practices

Before discussing the findings of our January 2006 audit, I would like to briefly mention the prior work OIG had conducted pertaining to GIPSA, which involved some of the

[1] OIG has conducted both audit and investigative oversight of GIPSA's P&SP programs. While testimony today will focus on recent audit work, I want to also note that we have devoted investigative resources to pursue allegations of fraud and criminal wrongdoing related to GIPSA programs.

same issues. This was followed by a related Government Accountability Office (GAO) report that was issued in September 2000.

In February 1997, OIG issued a report that assessed GIPSA's efforts to monitor and investigate anti-competitive practices. We concluded that GIPSA was not as effective as it could have been in monitoring the livestock procurement market for anti-competitive behavior. Based on this conclusion and the underlying findings, OIG suggested that GIPSA consider several administrative measures to improve its monitoring of the market for anti-competitive behavior, including (1) redistributing the location of its resources by reorganizing the agency's National and Regional Offices, (2) integrating its economics staff into the investigations of anti-competitive practices, and (3) developing procedures to consult with USDA's OGC regarding the initiation and conduct of anti-competitive practice investigations.

In September 2000, GAO released a report on P&SP activities that followed up on our work and reaffirmed our conclusions. GAO provided an update on the actions GIPSA had taken in response to our concerns. Although GIPSA had completed a major restructuring of its Headquarters and field offices in 1999 and had hired staff to strengthen its investigation of alleged anti-competitive practices, GAO reported that two principal factors continued to detract from GIPSA's ability to investigate concerns about anti-competitive practices in these markets. First, GIPSA's investigations were led and conducted primarily by economists without the formal involvement of attorneys from OGC. Second, GIPSA's investigative processes and practices were designed for

traditional trade practice and financial issues that the agency had emphasized for years, and thus were not suited for the more complex anti-competitive practices they needed to address.

Major Findings of OIG's January 2006 Audit of GIPSA's Oversight of P&SP

1. P&SP's Investigative Tracking System

In our January 2006 report, we first found that P&SP's tracking system counted all P&SP activities as "investigations" because there was no policy to better define its activities. The activities that P&SP's tracking system counted as investigations included monitoring publicly available data, sending routine letters to request company-specific information, and performing onsite reviews of companies. OIG found that records in the tracking system were not complete because there were no procedures for validating the accuracy and completeness of information recorded. Consequently, data fields were left blank and the system could not be relied upon as a control for managing P&SP investigations.

According to P&SP data, the agency was tracking a total of 1,842 investigations as of June 30, 2005. The records, however, could not be used to identify the location of work performed (i.e., the P&SP office or the regulated entity's place of business) for 1,799 of the 1,842 investigations. In addition, we found that agency records were incomplete for 973 of the 1,842 investigations mainly because P&SP staff did not record such information as the primary reasons for conducting the investigation, the status of investigative work, and the disposition of closed cases.

We also found that the three P&SP regional offices were not consistently documenting investigative work in the investigative tracking system. Two of the three regional offices classified all activities (i.e., monitoring activities, sending routine correspondence, or performing onsite reviews) as investigations. The Eastern Regional Office was reprimanded on June 14, 2005, for classifying investigations to only include monitoring activities and onsite reviews. The former Deputy Administrator directed each Eastern Regional Office Unit (e.g., competition, trade practice, and financial protection) to devise a strategic plan to address the deficiency in the number of investigations recorded in the investigative tracking system. According to the strategic plans, the units committed to increasing the number of complaints and investigations in the log by adding activities that were previously not included as investigations. These activities included delinquent annual and special reports, bond terminations, bond increases, and registration and bonding. We found this resulted in a significant increase in the number of investigations recorded in the complaints and investigations log. On June 14, 2005, the region was tracking a total of 425 investigations. By comparison, as of September 15, 2005, a total of 760 activities were being tracked by the region. The region climbed from last to first among the three regions by reclassifying over 300 routine activities as investigations.

We recommended that GIPSA implement a policy defining investigations and procedures for recording data in the investigative tracking system. In response, GIPSA issued a policy statement in January 2006, which defined investigations and differentiated between activities to perform onsite reviews from monitoring publicly available data and

requesting company information. GIPSA also agreed to implement procedures by June 2006 for recording data to be tracked and for validating the accuracy and completeness of this data.

2. Management Control over Competition and Complex Investigations

We found that P&SP had established a Senior Management Review Panel (SMRP) to plan and conduct competition and complex investigations. The SMRP was initiated in response to a recommendation from GAO in September 2000. P&SP had agreed to develop a review process for investigations in which complex investigations of anti-competitive activities are subject to review and approval by P&SP Headquarters and OGC. At the time of our review, the panel was comprised of the Deputy Administrator and the Division Directors for Policy and Litigation, Industry Analysis, and Regional Operations. We found that during the period of our audit, the functioning of the SMRP inhibited the agency's ability to investigate anti-competitive activities and unfair trade practices in the livestock and poultry markets. SMRP did not establish an effective process for identifying the work to be performed, approving work plans, performing fieldwork and analysis, and reporting on results. Consequently, no competition and complex investigations were being completed. As of August 29, 2005, all competition and complex investigations, a total of 50, were engaged in the process of being approved by SMRP. Of these 50 investigations, 3 were opened in 2003, and 1 was opened over 3 years ago, in July 2002.

Since P&SP was not performing and completing competition and complex investigations, no referrals were being made to OGC for formal administrative action. In February 2005, P&SP referred one competition investigation to OGC. The most recent referral prior to February 2005 was in November 2002, over 2 years earlier. OGC had not filed any administrative complaints against market participants for anti-competitive practices since 1999 due to the lack of referrals by P&SP.

We recommended that GIPSA implement a well-defined investigative process and a system to effectively communicate management's expectations to staff regarding P&SP's investigative process and specific investigations. GIPSA agreed to implement these recommendations by March 2006. We also recommended that GIPSA implement an organizational structure that appropriately divides responsibility. In January 2006, GIPSA issued a policy statement which described its revised organizational structure to divide responsibility between the Regional Managers and the Deputy Administrator for approving work plans, managing investigations, and reporting results. This should improve GIPSA's ability to complete its investigations.

3. Policy Decisions

We found that due to the flawed control structure that was in place during the period of our review, P&SP was not making policy decisions or evaluating the need for changes in regulations. A new policy group had been created in June 2005; however, P&SP did not establish an internal structure for this group to use to receive, review, and act on policy questions raised by P&SP staff. As a result, timely action was not being taken on issues

that impact the day-to-day business activities of producers and the entities P&SP regulates (e.g., packers, stockyards, and live poultry dealers). We identified 64 policy issues that were awaiting decisions in P&SP Headquarters as of September 30, 2005. These issues covered all types of P&SP investigations (e.g., trade practice, financial protection, and competition) and a variety of topics to be addressed by the Deputy Administrator and the Policy and Litigation Division, such as how to make entries in the system used to track investigations. For 55 of the 64 issues, guidance was requested prior to 2004, with 2 submitted in 2000.

We recommended that GIPSA implement a structure for receiving, reviewing, and acting on policy issues and a process for evaluating the need for regulatory reforms. GIPSA agreed to implement these actions by March 2006.

4. GIPSA's Implementation of Prior OIG and GAO Recommendations

In prior reports, OIG and GAO advised GIPSA on steps P&SP could take to better allocate its resources to monitor the market for anti-competitive behavior. In response, P&SP did take action to reorganize its operations in 1998 and charged the three regional offices with maintaining a high level of expertise in one or more species of livestock. P&SP also assessed its staff's qualifications and hired staff with legal, economic, and statistical backgrounds to strengthen its program operations. In our recent report, however, we found that the agency's actions pertaining to four areas of suggested improvements did not achieve sufficient results. Specifically, P&SP did not (1) effectively integrate economists into investigations, (2) empower the agency's legal

specialist to consult with OGC, (3) hire a manager with experience in leading P&SP investigations, and (4) develop a teamwork approach for investigations with P&SP's economists and OGC's attorneys.

We recommended that GIPSA implement procedures that empower its legal specialists to consult with OGC. In response, GIPSA issued a policy statement in January 2006. We also recommended that the agency implement a process for effectively implementing changes in P&SP operations and establish an internal review function, which GIPSA agreed to do by September 2006.

Conclusion

In summary, we concluded that GIPSA had not established an adequate control structure and environment that allowed the agency to oversee and manage its investigative activities for P&SP. Our review identified material weaknesses in three areas: (1) defining and tracking investigations, (2) planning and conducting competition and complex investigations, and (3) making agency policy. We also found that GIPSA had not taken sufficient actions to strengthen operations in response to findings previously reported by GAO and OIG.

The new leadership at GIPSA has committed to take significant corrective actions to address the issues identified in our report. In January 2006, GIPSA issued policy statements which completed the necessary corrective actions for three of our recommendations. These statements addressed such issues as the agency's definition of

its investigative activities and a revised organizational structure to divide responsibility between the National and Regional Offices for managing the work. GIPSA is working to complete actions on the remaining seven recommendations no later than September 2006. I appreciate the cooperation we received from GIPSA staff throughout the audit and the open manner in which the new Administrator worked with us to address the results of the audit.

This concludes my testimony. Thank you again for inviting me to testify before the Committee and I would be pleased to address any questions you may have.

United States Government Accountability Office

GAO

Testimony
Before the Committee on Agriculture, Nutrition, and Forestry
United States Senate

For Release on Delivery
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PACKERS AND STOCKYARDS PROGRAMS

Continuing Problems with GIPSA Investigations of Competitive Practices

Statement of Daniel Bertoni
Acting Director,
Natural Resources and Environment

GAO-06-532T

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss the U.S. Department of Agriculture's (USDA) management and oversight of the Packers and Stockyards Act. Within USDA, the Grain Inspection, Packers and Stockyards Administration (GIPSA) is responsible for administering the Packers and Stockyards Act and investigating concerns about unfair and anticompetitive practices in the $90 billion livestock market.

As you know, prior reports issued by the USDA Office of Inspector General (OIG) and our office have identified weaknesses in GIPSA's investigation and enforcement activities, and recommended actions to address them.[1] A more recent OIG report shows that, in several key areas, GIPSA still has not taken sufficient steps to address those recommendations.[2] My testimony today will focus on our prior work and discuss (1) factors that have affected GIPSA's ability to investigate concerns about anticompetitive practices, (2) GIPSA's actions to address our recommendations and areas where their efforts have fallen short, and (3) challenges and other issues we believe GIPSA should consider as it moves to further strengthen its capacity to address competitiveness issues.

In summary, in 2000, we identified two critical factors that detracted from GIPSA's ability to investigate anticompetitive practices in livestock markets, and another area where improvement was needed. First, the agency's investigations were planned and conducted primarily by economists without the formal involvement of attorneys from USDA's Office of General Counsel (OGC). As a result, a legal perspective that focused on assessing potential violations was generally absent when investigations were initiated and conducted. Second, GIPSA's investigative practices were designed for traditional trade practices and financial issues the agency had emphasized for years and were not suited for the more complex competition-related concerns it was addressing. Finally, while not a critical concern, we noted that GIPSA had an

[1]U.S. Department of Agriculture, Office of Inspector General, *Agency Efforts to Monitor and Investigate Anti-competitive Practices in the Meatpacking Industry*, Report No. 30801-01-Ch (Washington, D.C.: February 26, 1997) and GAO, *Packers and Stockyards Programs: Actions Needed to Improve Investigations of Competitive Practices* (Washington, D.C.: September 21, 2000).

[2]U.S. Department of Agriculture, Office of Inspector General, *Grain Inspection, Packers and Stockyards Administration's Management and Oversight of the Packers and Stockyards Programs*, Report No. 30601-01-Hy (Washington, D.C.: January 10, 2006).

important role in keeping the industry and the Congress informed about its monitoring of livestock markets and could have done more to identify market operations or activities that appeared to raise concerns under the Packers and Stockyards Act. In our September 2000 report, we recommended that USDA better integrate attorneys from USDA's Office of General Counsel into GIPSA's investigative processes and develop a teamwork approach to investigations similar to that of the Department of Justice (DOJ) and the Federal Trade Commission (FTC). We also recommended that GIPSA adopt more systematic approaches for selecting cases and conducting investigations.

USDA concurred with our findings and noted specific actions it planned to take in response to our recommendations, including (1) formalizing consultations between GIPSA and OGC on complex investigations, and integrating OGC attorneys into its investigative teams; (2) developing a tiered process whereby routine investigations would be reviewed and approved by headquarters staff, while complex investigations received an additional OGC review; (3) adopting relevant procedures used by DOJ and FTC for planning, developing, implementing, and reviewing investigations; and (4) reporting publicly on changing business practices and activities that raise fairness and competition concerns. Despite these plans, the January 2006 OIG report identified substantial ongoing weaknesses in GIPSA's investigative processes and noted that GIPSA's actions to respond to the prior OIG and GAO reports had fallen short in key areas. In particular, GIPSA had not yet developed a teamwork approach for investigations whereby GIPSA's economists and USDA's OGC attorneys could work together to identify violations of law, nor had it taken sufficient steps to ensure legal specialists within GIPSA were used most effectively. In addition, GIPSA had not followed through in adopting appropriate investigative guidance similar to those of DOJ and FTC to strengthen its ability to investigate anticompetitive and unfair practices.

Given GIPSA's lack of progress in addressing prior report findings and recommendations dating back for almost a decade, continued vigilance and monitoring of its key activities and management initiatives by the OIG and other oversight bodies is essential. In its response to the OIG's 2006 report, GIPSA noted that it intends to reassess and develop a defined process for managing investigations, enhancing communication among staff and managers, appropriately dividing responsibility for its varied types of investigations, and developing an internal review function to monitor and report on corrective actions resulting from the OIG and GAO reviews. Consistent with our prior recommendations, GIPSA also plans to define the role of OGC attorneys and GIPSA legal specialists in investigations and to move forward in identifying and adopting certain

techniques used by the DOJ and the FTC. As GIPSA moves ahead in reexamining its processes it should consider assigning lead roles to OGC attorneys for certain investigations involving complex anticompetitive practices. Finally, going forward, GIPSA's efforts to periodically inform the industry and the Congress about competitive conditions could be of further usefulness. GIPSA plans to complete a study on livestock and red meat marketing practices later this year. While potentially informative to the industry and policymakers, it could also help GIPSA identify current and emerging areas of vulnerability and better target its oversight resources.

Background

The Packers and Stockyards Act was passed in 1921 in response to concerns that, among other things, the marketing of livestock presented special problems that could not be adequately addressed by existing antitrust laws. The provisions of the act were based, in part, on prior antitrust statutes including the Sherman Act and the Federal Trade Commission Act. The Packers and Stockyards Act prohibits packers from engaging in or using any unfair, unjustly discriminatory, or deceptive practice or device, or making or giving any undue or unreasonable preference or advantage to another party. The act also makes unlawful packer anticompetitive practices that are antitrust-type actions, including a packer's activities that manipulate or control prices or restrain trade.

Within USDA, GIPSA is responsible for implementing the Packers and Stockyards Act. GIPSA initiates investigations and actions to halt unfair and anticompetitive practices by meatpacking companies and by other parties involved in livestock marketing. To prove that such an activity has occurred under the act, GIPSA, in most instances, must show that the purpose of the packer's action or its actual effect was to carry out the prohibited activity. GIPSA may also choose to treat such activity as an unfair practice, which may be easier to prove than a violation of the act's antitrust-type provisions. Also, while mergers are a concern because they can reduce competition, the act does not provide USDA with premerger review authority. OGC also has an enforcement role and, among other activities, represents USDA in administrative and court proceedings addressing violations of the act.

The Packers and Stockyards Act allows GIPSA to start investigations and administrative actions to halt packer practices that it deems to be unfair or anticompetitive. When an investigation finds and develops evidence to show that a packer may have engaged in an anticompetitive or unfair practice, GIPSA may file a complaint against the packer. The packer has a right to a hearing, which is held before a USDA administrative law judge.

If, after reviewing the evidence presented by GIPSA and the packer, the administrative law judge decides that there has been a violation of the act, a cease and desist order may be issued, and a civil fine may be levied. An administrative law judge's decision can be appealed to USDA's Judicial Officer, who acts on behalf of the Secretary of Agriculture. The packer, but not USDA, may file a further appeal to a Federal Circuit Court of Appeals.

In 1996, GIPSA reported that dynamic changes had taken place in the cattle and hog industries, including increasing concentration and vertical integration—where packers own the animals. GIPSA stated that these changes had reduced the role of the public markets, where terms of a trade are visible to all. That same year, an advisory committee to the Secretary of Agriculture reviewed the concerns of producers and others about changes in livestock markets and recommended, among other things, a review of GIPSA's efforts to enforce the Packers and Stockyards Act. The Secretary then asked the OIG to review GIPSA's program.

The subsequent OIG report noted that while GIPSA had a credible record in certain areas, it (1) did not have the capability to perform effective anticompetitive practice investigations and (2) faced formidable obstacles to become effective in performing such investigations. The OIG found that GIPSA had not been organized, operated, or staffed for that purpose and stated that GIPSA should employ an approach similar to that used by DOJ and FTC, and integrate attorneys and economists from the beginning of the investigative process. In response, GIPSA completed a major restructuring of its headquarters and field offices in 1999 and hired staff to strengthen its investigations of alleged anticompetitive practices. GIPSA now has regional offices in Denver, Colorado, for its work on the cattle industry; in Des Moines, Iowa, for handling work on the hog industry; and in Atlanta, Georgia, for its work on the poultry industry. Along with those changes there were relocations of staff and the addition of economists and legal specialists to assist with investigations of competitive practices.

Because of continued concerns about whether GIPSA was taking sufficient action to protect competition in livestock markets, GAO was requested to review USDA's efforts to implement the Packers and Stockyards Act. We issued our final report and recommendations for improvement in September 2000. Subsequently, the OIG completed a follow-up review on GIPSA's administration and oversight of the Packers and Stockyards Programs in January 2006. It too issued a report with recommendations.

2000 GAO Review Identified Critical Factors Detracting From GIPSA's Investigative Capabilities

We identified two critical factors that detracted from GIPSA's investigative capability, as well as areas where GIPSA could improve its efforts to develop and share key information. First, the agency's investigations were planned and conducted primarily by economists without the formal involvement of attorneys from OGC. Second, GIPSA's investigative practices were designed for traditional trade practices and financial issues the agency had emphasized for years and were not suited for the more complex competition-related concerns it was addressing. While not of a critical nature, we also found that despite prior dynamic changes in the livestock markets, GIPSA's efforts to periodically update the industry and Congress on competitive conditions and emerging fairness and equity issues were lacking.

Attorney's Participation in Investigations

At the time of our review, OGC attorneys did not usually participate at the start or throughout the agency's investigations. Assignment of OGC attorneys typically occurred after GIPSA performed an investigation and forwarded a developed case file to them for review and action. Thus, the agency's investigations were planned and conducted primarily by economists, most of whom had limited investigative experience. GIPSA relied on OGC attorneys mainly for legal advice, and its OGC reviewed the results of GIPSA's investigations to determine if violations of law might have occurred. In contrast, we noted that DOJ and FTC utilized integrated teams of attorneys and economists to perform investigations of anticompetitive practices. Attorneys were assigned to lead and conduct investigations from the outset so that officials with a legal perspective focused on assessing potential violations of law. Economists were routinely assigned as an integral part of the investigation teams. This approach ensured that a legal perspective was brought to bear on the interpretation of law, development of evidence, and preparation of cases for presentation in administrative and judicial proceedings.

We also reported that OGC officials provided GIPSA with only limited informal assistance which had declined over the years as the number of OGC attorneys assigned to assist GIPSA decreased. In fact, the number of OGC attorneys assigned to GIPSA cases had decreased from eight to five because of budget constraints, according to USDA's General Counsel. These attorneys were also not all assigned full-time to GIPSA's financial, trade practice, and competition cases; some had responsibilities in other USDA areas as well.

We concluded that GIPSA's program needed additional steps to become more effective and efficient in performing investigations and recommended that GIPSA develop a teamwork approach for

investigations with GIPSA's economists and OGC's attorneys working together to identify violations of the law. We also recommended that the Secretary reassess current OGC staffing needs relative to current GIPSA investigations, assign attorneys to lead or participate in more complex investigations, and increase the effectiveness of legal specialists by providing them with leadership opportunities and better supervision.

Processes and Practices For Anticompetitive Practice Investigations

We also found that GIPSA's basic investigative processes and practices were not designed for addressing the complex anticompetitive practices it had begun to encounter in recent years—instead they were designed for the more traditional trade practice and financial issues that the agency had emphasized for years. In comparison, DOJ and FTC had processes and practices specifically designed for guiding investigations of similarly complex competition-related issues.

DOJ and FTC emphasized establishing the theory of each case and the elements necessary to prove the case. At each stage of an investigation, including selecting the case, planning, and conducting the investigation, regular reviews by senior officials-attorneys and economists–focused on developing sound cases. For example, DOJ and FTC required their attorneys, with the assistance of economists, to establish a theory explaining how a company's (or companies') behavior may be a violation of the law. The case theory and evidence were reviewed early on by senior officials, and periodically as the factual underpinnings of the case came into focus. In contrast to DOJ and FTC, GIPSA does not require investigations to be (1) planned and developed on the basis of how a company's actions may have violated the law and (2) periodically reviewed as they progress by senior officials with anticompetitive practice experience.

GIPSA also did not have specific requirements for approving an investigation or an investigation plan. These conditions were reflected in the comments of GIPSA's regional office managers and economists, who said that they often had questions about how to interpret the law and how best to scope and perform investigations. Also, OGC officials told us that anticompetitive practice cases that GIPSA had forwarded often had weaknesses that needed to be addressed before they could determine whether a violation had occurred. Both OGC and GIPSA officials said that OGC's reviews of GIPSA's cases led to disagreements about the interpretation of the act and the sufficiency of evidence. Finally, we found that GIPSA's investigative guidance manual had not been revised since the agency's reorganization and did not contain specific guidance for anticompetitive practice investigations, such as the contents of an

investigative plan, the information needed for approval of an investigation, or the frequency of reviews of the investigations.

Developing and Sharing Information on Competitive Conditions With Key Stakeholders

GIPSA periodically made educational outreach efforts and shared information via its Web site and annual reports. GIPSA also held and participated in numerous town hall meetings and conferences with producers and state and industry officials. Even so, GIPSA officials said they could do more to inform the industry and others on competitive conditions. In fact, at the time of our review, it had been several years since GIPSA had last reported on conditions in livestock markets, despite previous dramatic changes in industry concentration and vertical integration.

GIPSA officials also recognized that it would be helpful if producers had a more current understanding of the Packers and Stockyards Act and how the act applies to market activities. They also agreed that GIPSA could report on market activities and identify those that may raise concerns about fairness and competition, as FTC had done. In our report, we recommended that GIPSA provide industry participants and the Congress with clarifications of GIPSA's views on competitive activities by reporting publicly on changing business practices in the cattle and hog industries and identifying market operations or activities that raised concerns under the Packers and Stockyards Act. GIPSA has published four such assessments from 2000 to 2004.[3]

GIPSA's Actions To Address GAO's Recommendations Fell Short in Several Areas

USDA's General Counsel and the Under Secretary for Marketing and Regulatory Programs concurred with our recommendations and provided encouraging details about their planned implementation. Among other things, they stated that GIPSA and OGC would formalize their relationship for complex investigations to ensure that all investigative, economic, and legal issues were carefully considered before embarking on complex investigations. As part of that process, they stated that they were examining the procedures of the Antitrust Division of DOJ and the FTC and would adopt relevant portions for investigation planning, development, implementation, and review. They also stated that GIPSA and OGC senior management would review plans for complex investigations to ensure the effective use of investigative resources and

[3] GIPSA's report for 2004 was issued in April 2005. U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, *Assessment of Cattle, Hog, and Poultry Industries* (Washington, D.C.: April 2005).

facilitate successful litigation if evidence demonstrates that the Packers and Stockyards Act has been violated.

The General Counsel and Under Secretary also stated that they would increase the integration of OGC attorneys into GIPSA's investigative teams early in the investigative process. They noted that OGC attorneys would work closely with GIPSA's economists, legal specialists, and other technical specialists to ensure that investigative plans had a sound basis and to address critical legal issues throughout the conduct of an investigation. In addition, the effectiveness of legal specialists was also to be enhanced. However, they stated that GIPSA's legal specialists would not act as attorneys for either GIPSA or the Department, but would provide front-line legal advice on investigations. Legal specialists would also be trained by OGC attorneys and consult with them regularly.

It is troubling that these plans, which appeared to be carefully laid out by USDA in late 2000, were never wholly or effectively implemented as noted in the OIG's 2006 follow-up report. Unfortunately, as the report makes clear, GIPSA's senior management review panel became a log jam to the progress of investigations. Investigations were thwarted by management delays in providing policy and investigative guidance and by inaction on on-going investigations when they required management concurrence or direction. Further, GIPSA and OGC apparently have not effectively implemented a team approach to the investigation of complex competition related investigations. Overall, it appears that as GIPSA officials responded to the prior OIG and GAO reports, they did so in a manner that prevented, rather than facilitated the desired actions and results.

Challenges and Other Issues Associated With Addressing Longstanding Weaknesses

Given GIPSA's lack of progress in addressing prior report findings and recommendations dating back almost a decade, continued vigilance and monitoring of its key activities and management initiatives by the OIG and other oversight bodies is essential.

In response to the most recent OIG report GIPSA has stated that, among other things, it is:

- developing a defined process for managing investigations, including controls for preliminary investigations to obtain sufficient facts to decide whether to proceed with further investigation;
- revising its organizational structure to appropriately divide management responsibility for work plans, managing investigations, and the reporting of results;

- developing an internal review function to monitor and report on the progress of corrective actions resulting from external reviewers, such as the OIG and GAO;
- moving forward in identifying techniques used by DOJ and FTC that are most appropriate under the Packers and Stockyards Act.

GIPSA also stated that it will enable its legal specialists to consult with OGC and will integrate attorneys into complex competition investigations earlier in the process.

Beyond increased monitoring, GIPSA's success in fully implementing the above initiatives will require sustained management attention and commitment that has, thus far, been elusive. However, we continue to believe that such a focus is needed and will ultimately result in a more vigilant and skillful federal presence. It will also instill greater public confidence that concerns about the industry will be investigated fairly and diligently. Finally, as GIPSA moves forward in developing its processes, it should consider the feasibility of assigning lead roles to OGC attorneys for investigations that involve more complex anticompetitive practices—an approach we have recommended that is also consistent with DOJ and FTC practices. Going forward, it is also possible that GIPSA's efforts to periodically inform the industry and the Congress about its monitoring efforts, as well as changing competitive conditions could be of further usefulness. GIPSA has issued reports on the cattle, hog, and poultry industries from 2000 through 2004, and has initiated a broad study on livestock and red meat marketing practices. While informative to the industry and policy makers, such analyses could also be internally valuable to GIPSA as a tool for identifying current and emerging areas of vulnerability and better targeting its oversight resources and activities.

Mr. Chairman, this concludes my formal statement. If you or other Members of the Committee have any questions, I will be pleased to respond to them.

For future questions about this testimony, please contact me at (202) 512-5988. Charles M. Adams made key contributions to this testimony.

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MARCH 9, 2006

Statement of Senator Craig Thomas
Senate Committee on Agriculture, Nutrition & Forestry

Hearing to Review USDA Management of Packers and Stockyards Act
March 9, 2006

I would like to thank you, Mr. Chairman, for holding this hearing. This issue is very important to many of my constituents and to livestock producers around the country.

I was very disappointed by the U.S. Department of Agriculture Inspector General's report released in January. The report detailed the failure on the part of the Grain Inspection, Packers and Stockyards Administration (GIPSA) to enforce the Packers and Stockyards Act. The report described widespread inaction on the part of the agency, actions by management to block and prevent employees from conducting investigations into complaints of anti-competitive market behavior, and efforts to cover up the lack of enforcement by inflating the reported number of investigations conducted. These findings are very disconcerting, and raise serious concerns about how the law is enforced and what needs to be done to ensure fair competition and transparency in our livestock markets.

The issue of fair competition in livestock markets has been a problem for a long time. The Packers and Stockyards Act was originally put in place to protect livestock producers from unfair and anti-competitive market behavior of a small number of meat packers controlling the livestock markets in the 1920's. Among other things, the act bans price discrimination and manipulation, and other unfair and deceptive practices. One of the early drafters and advocates for the Packers and Stockyards Act was Wyoming Senator John Kendrick. During debate on the Senate floor in 1921, he made the following comments in support of the Act:

> It has been brought to such a high degree of concentration that it is dominated by few men. The big packers, so called, stand between hundreds of thousands of producers on one hand and millions of consumers on the other. They have their fingers on the pulse of both the producing and consuming markets and are in such a position of strategic advantage they have unrestrained power to manipulate both markets to their own advantage and to the disadvantage of over 99 percent of the people of the country. Such power is too great, Mr. President, to repose in the hands of any men.

Although much has changed since then, many of the concerns about ensuring fair competition and market transparency remain today. Over the last

two decades, the number of meat packers has decreased in nearly every sector of animal agriculture. As the number of packers shrinks, the market share of the remaining hand-full of large packers becomes even greater – as does their ability to control the markets and the prices they pay for livestock. With increased concentration in the industry comes a greater need to investigate reports of anti-competitive behavior and enforce all of the terms of the Packers and Stockyards Act.

I often hear from my Wyoming constituents who, to an individual, are concerned that the big meat packers have too much control of the livestock markets. Livestock producers often feel they are at the mercy of the large packers. Although there are thousands of ranchers and farmers who raise livestock, there are only a few packers who control the markets. Reports that USDA is not properly or thoroughly enforcing the law to ensure transparency and fair competition demonstrate that livestock producers are concerned for a good reason.

I have joined with Senator Harkin to introduce the Competitive and Fair Agricultural Markets Act, which would strengthen the Packers and Stockyards Act and provide greater accountability for the USDA to ensure fair competition. I believe the bill would help solve many of these problems. Until the bill is enacted, I strongly recommend that the USDA aggressively enforce the laws. The current inaction by the Department is not acceptable.

I look forward to hearing the comments of the witnesses, and working with the members of this Committee on this issue.

Statement by

Senator Charles E. Grassley

Thank you Mr. Chairman. I would like to thank you for holding this hearing today on this important issue.

I find unacceptable what was revealed in the January 2006 report by the OIG. The report indicated that their has not been established an adequate control structure and environment that allows it to conduct investigations to ensure open and competitive markets for livestock, meat, and poultry.

With all the vertical integration occurring in agriculture over the years this should be the main priority.

This report only confirms my skepticism of how some agencies within USDA are not carrying out the intent of the law.

How many more negative OIG and GAO reports do we need to see over the course of time coming out of the Marketing and Regulatory Programs division at USDA.

I called for a GAO investigation last year on Mandatory Price Reporting. The final report was released in December of 2005 and it revealed that USDA could improve the transparency of its market news reports, and its auditing of packers' transactions.

The two USDA agencies responsible for this are AMS and GIPSA that fall under the jurisdiction of the Marketing and

Regulatory Programs division.

This only confirms the fact that the next Under Secretary for Marketing and Regulatory Programs will need to give their full dedication to examining these reports and fixing the problems.

We need to make sure confidence is restored in our government entities to provide the stability needed in the marketplace for our producers and consumers.

Once again, thank you Mr. Chairman.

Written Testimony Submitted for the Record by
J. Randall Stevenson, Wheatland, WY
To the Senate Committee on Agriculture, Nutrition & Forestry
Hearing to Review USDA Management of Packers and Stockyards Act
March 9, 2006

On January 18, 2006 the Office of the Inspector General (OIG) publicly released its audit report of the Grain Inspection, Packers and Stockyards Administration's (GIPSA) management and oversight of the Packers and Stockyards Programs (PSP). I commend Ms. Fong for her diligence in conducting the investigation of GIPSA and compiling this stunning report.

The report confirms precisely what livestock producers have believed for some time; that GIPSA administrators have failed to initiate, or complete, competition and complex investigations; that timely action was not taken on issues that impact livestock markets; that investigations into anti-competitive, deceptive and discriminatory market practices were blocked by administrators; that highly qualified economists and legal specialists employed by the agency were prevented from conducting the work they were hired to do; and that administrators failed to establish an adequate control structure and environment that would allow GIPSA personnel to initiate and complete their work.

Even worse is the OIG's finding that GIPSA falsified activity reports to members of Congress.

Alarmingly, both the OIG and GAO had previously issued reports advising GIPSA officials on how better to allocate its resources to monitor markets for anti-competitive behaviors by effectively integrating economists into investigations, empowering the agency's legal specialists to consult with the Office of General Counsel (OGC); hire managers with experience in leading PSP investigations and developing a teamwork approach for investigations with PSP economists and OGC attorneys.

The January 18 OIG report reflects GIPSA's lack of action on prior advice from the OIG and GAO. In essence, the previous reports fell on deaf ears among GIPSA administrators. The shame to be shared is that while GIPSA administrators were blocking investigations and lying to Congress about agency activities, many of America's independent producers were erased from the landscape as concentration and monopolization extrapolated exponentially, predicated upon manipulative market practices.

This audit report vindicates those livestock producers across America who, for nearly a decade, have filed complaints with GIPSA requesting specific investigations into manipulative market behaviors and received little or no protection.

I am one of those producers. I am a Wyoming rancher. Together with my family we own and operate Double S Livestock near Wheatland, Wyoming, a cattle-feeding and cow/calf operation. Attached to this testimony you will find copy of an affidavit I filed with GIPSA requesting an investigation into anti-competitive market practices applied to Double S Livestock.
To date, I have yet to receive a written response from GIPSA administrators about the status of my complaint. I did receive a phone call the field investigator who took my original statement. He said the agency had contacted the packer about whom the complaint was registered and asked them what their response was. The packer gave a brief explanation and that was the end of the investigation as far as I can tell. My complaint was based on Section 202(e), which states that packers will not be allowed to:

> (e) Engage in any course of business ... with the effect of manipulating or controlling prices.

By nature any complaint that falls under Section 202(e) should be considered a complex investigation. I believe my complaint received less than adequate consideration by GIPSA.

Will this complaint and others that were inadequately investigated be revived?

It has repeatedly been stated that legal specialists need to get involved in investigations early in the process. The same process should be applied to the investigative contract that GIPSA has let out to examine the effect of captive supply on the cash market. In other words, without legal specialists involved, that study will likely yield results just as hollow as everything GIPSA has delivered since 1997. Will those contracts just present results based on an academic standard, or will they use legal expertise to present results consistent with legal standards?

Also troubling is the fact that Kansas State University was one institution involved in the contract for investigation. One of their economic professors testified on behalf of Tyson in the Pickett v. Tyson Fresh Meats trial. Moreover, he said during the trial that it was not necessary for him to look at the Tyson data in order to come to his conclusion. The Pickett trial centered on the question of captive supply, just like GIPSA's investigative contract.

Will GIPSA review the specifications of the already contracted study to make sure they are consistent with the universal expectation of legal specialist involvement?

The OIG report shows little prosecutorial activity by the OGC due to a lack of referrals by GIPSA administrators. Broadening the investigation to include the OGC's involvement or role in lack of cooperation with GIPSA may provide evidence that the resistance to performance of duties as they relate to anti-competitive practices extends well beyond GIPSA.

Did OGC actively refuse to permit its attorneys from working on investigations with GIPSA personnel?

In preparation for the Pickett v. Tyson Fresh Meats trial, Pickett collected data on over a million transactions bearing on the question of the effect of captive supply on the cash market. That data is superior to anything GIPSA or any of their contractors have collected in terms of both quantity and quality. As a cattleman, it is disturbing to me that GIPSA is unwilling to review evidence that provided the basis for a jury verdict against Tyson, subsequently resulting in $1.2 billion damages awarded to the plaintiffs.

Why is GIPSA unwilling to examine the Picket data?

The ranchers and cattlemen that I know feel like they are living under an economic dictatorship. They long for the remedy to that dictatorship which would be the economic equivalent of an election—real competition.

State of Wyoming]

] ss

County of Platte]

J. Randall Stevenson,being first duly sworn, states under oath:

1 I am a Platte County, WY cattleman. The facts recited in this affidavit are known to me personally.

2 On 9-17-02 Craig Luttrell, an IBP cattlebuyer, called upon me at Wheatland WY at our feedyard there. He looked at high quality cattle we had on our show list for sale. The market was about $66 cwt in the cash market, based on live weight.

3 Mr Luttrell was very complimentary of our cattle's quality. He said his hands were tied and he could not offer more for the cattle, despite their above average quality. Mr Luttrell said "In the old days I would have been able to offer $67.50 for these cattle, but now paying more would screw up 20,000 formula cattle."

4 It was completely clear to me that Mr Luttrell was telling me paying a higher price for our cattle would influence prices for cattle bought on a formula contract basis, off the cash market, before the transaction involving our cattle occurred. We lost money in this deal because IBP would not allow its buyer to engage in competitive bidding.

5 I made notes of this conversation on the buyer's card. A copy this card with my notes on the back side, is attached hereto.

J. Randall Stevenson

Subscribed and sworn to before me on October 11th

2002 by J. Randall Stevenson.

Notary Public

MARILYN E. MAXSON - NOTARY PUBLIC
County of Platte
State of Wyoming
My Commission Expires September 2, 2005

QUESTIONS AND ANSWERS

MARCH 9, 2006

Witness Questions for the Record
Chairman Chambliss

United States Senate
Committee on Agriculture, Nutrition & Forestry

A full committee hearing to review the United States Department of Agriculture's management and oversight of the Packers and Stockyards Act

Thursday, March 9, 2006, at 10:30 a.m. in SR-328A

Mr. James E. Link
Administrator
Grain Inspection, Packers and Stockyards Administration

1. Mr. Link, GIPSA has traditionally provided Congress with an annual report detailing its performance and activities for both the Federal Grain Inspection Service and the Packers and Stockyards Program (P&SP). In 2004, the P&SP division of GIPSA did not provide Congress with an annual report and again failed to do so for 2005. Based upon the findings in the 2006 Office of Inspector General (OIG) audit report, I think it is imperative that P&SP reinstate its policy of providing Congress with an annual report and I am pleased you agreed to do so during the hearing.

   When can we expect to receive the 2006 annual report from P&SP?

ANSWER:
The Grain Inspection, Packers and Stockyards Administration will begin submitting an agency-wide report (both from the Federal Grain Inspection Service and the Packers and Stockyards Program) to Congress by December 1 of each calendar year. You can expect Packers and Stockyards annual report to be included in the GIPSA wide report for FY 2006, on or before December 1, 2006.

2. Mr. Link, given the nature of competition and the changes in the livestock marketplace since passage of the Packers and Stockyards Act in 1921, is the Act still relevant today?

ANSWER:
The Packers and Stockyards Act of 1921(Act) is absolutely relevant in 2006. The purpose of this Act in the words of the Congress is "to assure fair competition and fair trade practices, to safeguard farmers and ranchers...to protect consumers...and to protect members of the livestock, meat, and poultry industries from unfair, deceptive, unjustly discriminatory and monopolistic practices." Packers and Stockyards' major oversight areas are payment protection, unfair, deceptive, and fraudulent practices, and anti-competitive practices. Changes in theses industries can and do rapidly occur, and we believe that these changes can be adequately addressed by amendments to the regulations promulgated under the Act, or by the promulgation of new regulations.

a. There has been much discussion concerning concentration and consolidation in the agriculture industry. What role does GIPSA play in encouraging competitiveness and how does this role differ from the responsibilities and authorities of the Department of Justice and the Federal Trade Commission?

ANSWER:
Section 202 of the Packers and Stockyards Act of 1921 prohibits certain anticompetitive practices. However, the Act does not provide authority to the Department to alter the structure of the livestock and poultry industries. Firms are largely free to pursue their economic interests, such as opening or closing plants, expanding into new geographic areas, adopting new technology and cost-saving innovations, and integrating livestock production. Similarly, concentration, which is often discussed as a problem to be dealt with under the P&S Act, is not a term defined in the Act, nor is concentration in the livestock, meatpacking, or poultry industries directly addressed by the Act. A high level of concentration in these industries is not a violation of the Act. The Department of Justice (DOJ) and the Federal Trade Commission (FTC) have the authority to investigate mergers and acquisitions by firms subject to the Act.

DOJ and FTC recognize the Act as granting USDA regulatory authority over the meatpacking industry. The Antitrust Division of DOJ promotes and protects the competitive process — and the American economy — through the enforcement of the antitrust laws. The anti-trust laws prohibit a variety of practices that restrain trade, such as price-fixing conspiracies, corporate mergers likely to reduce substantially the competitive vigor of particular markets, and predatory acts designed to achieve or maintain monopoly power.

DOJ, with its broad powers under the Sherman Antirust and Clayton Acts to investigate possible violations of anti-trust laws, could and does investigate anticompetitive activity that would also violate the Packers and Stockyards Act. In response to a congressional inquiry, DOJ stated that

"the [Anti-trust] Division will scrutinize closely all proposed consolidations in the [meatpacking] industry," but notes that "the Department of Justice does not enforce the Packers and Stockyards Act, nor does it enforce potential violations of that Act."
FTC's antitrust arm, the Bureau of Competition, also enforces the anti-trust laws. The Commission's antitrust authority comes primarily from the Federal Trade Commission Act and the Clayton Act, both enacted in 1914. In 1997, OIG stated that Section 5(a)(2) of the FTC Act excludes from its coverage any activities subject to the Packers and Stockyards Act.

b. How does the Packers and Stockyards Act differ from other laws that govern the business practices of meat packers such as the Sherman Act, the Clayton Act, the Robinson-Patman Act and the Uniform Commercial Code?

ANSWER:
The Packers and Stockyards Act is not antitrust, but rather a comprehensive regulatory statute that governs trade practices in the livestock, meat and poultry industries, and prohibits certain anticompetitive practices by packers, live poultry dealers and swine contractors. Section 202 of the Act prohibits certain practices that are also violative of the antitrust law. To the extent that antitrust prohibits similar conduct, precedents established under antitrust law may be useful to the enforcement of the Packers and Stockyards Act.
Section 5(a) of the FTC Act, 15 U.S.C. Sec. 45(a), prohibits "unfair methods of competition." . The Clayton Act prohibits corporate acquisitions that may tend substantially to lessen competition (Section 7, 15 U.S.C. Sec. 18) and also bars certain forms of price discrimination (Section 2 of the Robinson Patman Act, 15 U.S.C. Secs. 13-13b). As with its consumer protection responsibilities, the Commission uses both administrative and judicial remedies to enforce the law.

The Uniform Commercial Code (UCC) is basically a collection of model or uniform statutes that have been adapted in whole or part by states in an attempt to provide standards for business laws pertaining to sales and other commercial transactions. Section 414 of the P&S Act preempts any state requirements that conflict with the packer bonding and prompt payment provisions of the P&S Act. States are not precluded from enforcing requirements that do not conflict with the P&S Act or from enforcing State laws or regulations on packers that are not subject to the Act.

Witness Questions for the Record
Chairman Chambliss

United States Senate
Committee on Agriculture, Nutrition & Forestry

A full committee hearing to review the United States Department of Agriculture's management and oversight of the Packers and Stockyards Act

Thursday, March 9, 2006, at 10:30 a.m. in SR-328A

Ms. Mary Hobbie
USDA/Office of General Counsel

3. Ms. Hobbie, the 2006 OIG audit report generally calls for more coordination between your office, the Office of the General Counsel (OGC) and GIPSA.

   a. **In your opinion, why have coordination efforts between GIPSA and OGC failed in the past and more specifically, why has P&SP failed to refer formal complaints regarding competition investigations to OGC?**

ANSWER:
OGC has always had an open door policy with the Packers and Stockyards Program (P&SP), and has encouraged the agency officials to seek legal assistance or advice at any time, whether formally or informally. However, as both the OIG report of 2006 and the GAO report of 2000 remarked, P&SP did not encourage early and frequent contact between GIPSA and OGC. OGC believes that the communication between GIPSA and OGC failed in the past because some P&SP officials discouraged or did not permit investigators and field office GIPSA staff to contact OGC on an informal basis. As a result, many questions whose answers might have helped to shortcut investigations or to provide a more effective or quicker result were never posed to OGC. Additionally, P&SP officials required extensive review and revision of workplans and investigations before top officials cleared the investigation file or workplan for referral to OGC. OGC is aware that P&SP conducted some investigations in which the allegations were of anti-competitive violations. Investigations that were not referred to OGC were ended either because the agency could not find evidence to support the allegations or because the agency wanted to do more work prior to referral to OGC.

4. Ms. Hobbie, in your opinion, does P&SP have adequate authority to conduct oversight and ensure competitiveness in livestock markets?

ANSWER:
P&SP has adequate authority to conduct oversight of the regulated industry and to investigate anti-competitive practices. The P&S Act does not provide the agency with authority to "ensure" competitive markets, but the agency does have authority to investigate anti-competitive activity and, in coordination with the Department of Justice and the Federal Trade Commission, is authorized and empowered to take action when anti-competitive activity can be proven.

Chairman Chambliss' Questions for Phyllis Fong

1. Ms. Fong, during the audit process did your office discover any instances of fraud or malfeasance within P&SP?

   Answer: The audit work performed did not identify any instances of fraud or malfeasance within P&SP. We found systemic weaknesses in P&SP's control structure for managing its competition and complex investigations. P&SP had established a Senior Management Review Panel (SMRP) to plan and conduct competition and complex investigations. The SMRP was initiated in response to a recommendation from GAO in September 2000. P&SP had agreed to develop a review process for investigations in which complex investigations of anti-competitive activities are subject to review and approval by P&SP Headquarters and OGC. At the time of our review, the panel was comprised of the former Deputy Administrator and the Division Directors for Policy and Litigation, Industry Analysis, and Regional Operations. We found that during the period of our audit, the functioning of the SMRP inhibited the agency's ability to investigate anti-competitive activities and unfair trade practices in the livestock and poultry markets. SMRP did not establish an effective process for identifying the work to be performed, approving work plans, performing fieldwork and analysis, and reporting on results. Consequently, no competition and complex investigations were being completed.

   a. How would you characterize the failings within P&SP outlined in the audit? Do you consider these failings managerial in nature or, in your opinion, is there a more systemic problem within P&SP?

      Answer: As noted above, we found systemic weaknesses in P&SP's control structure for managing its competition and complex investigations. The weaknesses were compounded by the fact the former Deputy Administrator did not have experience in leading P&SP investigations.

2. Does your office have any intent to conduct a follow-up audit to ensure that P&SP has adhered to the aggressive timeline they have implemented to adopt the recommendations provided by your office?

   Answer: We have no work planned at this time, but will evaluate the need for additional work when formulating our FY 2007 audit plans.

3. Ms. Fong, in your testimony you detail P&SP's investigative tracking system and how P&SP counted all activities, including monitoring publicly available data and sending routine letters, as "investigations".

   a. During the course of your audit, did you find evidence that any interest group or corporate entity directly benefited from P&SP's increasing their number of reported investigations in this manner?

      Answer: Nothing came to our attention to indicate that any interest group or corporate entity directly benefited from P&SP's increasing their number of reported investigations in this manner. However, our audit scope was not designed to address this issue.

Senator Tom Harkin's Questions for Phyllis Fong

1. In order to have full enforcement of the Packers and Stockyards Act, there must be adequate coordination between OGC and GIPSA, but past reports by both the Inspector General and GAO have suggested that is not the case. The recent Inspector General's report suggests that this relationship has not improved. Since GIPSA was not performing anti-competitive investigations, few or no referrals were being made to OGC for administrative action for several years. Both OGC and GIPSA have responsibility to ensure the Packers and Stockyards Act is enforced.

QUESTIONS

It is my understanding that GIPSA's legal specialists are not allowed to communicate with OGC in the very beginning of any case involving anti-competitive practices. Is that lack of communication due to OGC or GIPSA? If there was communication, is that sufficient to allow meritorious cases to move forward? Or should GIPSA legal specialists have the ability to provide legal advice themselves, regardless of whatever advice OGC may be providing?

Answer: At the time of our audit, we found that P&SP legal specialists were not allowed to consult with OGC attorneys until the former Deputy Administrator had first been briefed on all issues pertaining to an investigation. Therefore, the lack of communication was due to GIPSA.

On January 5, 2006, P&SP issued a policy statement describing the changes in organizational structure and clarifying its guidelines for the legal specialists to contact OGC. According to GIPSA's response to our report, the procedures established parameters for the types of issues that must be discussed with the Deputy Administrator before consultations with OGC. In general, legal specialists have full authority to contact OGC regarding questions or concerns related to the development, implementation, or future litigation of potential and ongoing investigations. In addition, the chain of command for legal specialists changed from the Deputy Administrator to the Regional Manager, who manages the office that is the legal specialists' permanent duty station. P&SP initiated a process with OGC so that competition investigations will be assigned an OGC attorney at an earlier stage of the investigation to facilitate broader and greater communication between P&SP legal specialists and OGC attorneys.

Our audit work provides no basis for opining on whether more communication would have allowed meritorious cases to move forward or whether GIPSA legal specialists should have the ability to provide legal advice themselves, regardless of the advice OGC may be providing.

Did the working relationship between the former GIPSA deputy administrator JoAnn Waterfield and the assistant general counsel Mary Hobbie break down? How often did they communicate on cases regarding violations of the Packers and Stockyards Act, and specifically on cases involving anti-competitive practices?

Answer: Our audit work did not evaluate the relationship between the former GIPSA Deputy Administrator and the current OGC Assistant General Counsel for Trade Practice.

Based on the Inspector General's past and recent work studying GIPSA, did the Inspector General find there was pressure either directly or indirectly from OGC to GIPSA to not pursue cases of anti-competitive practices?

Answer: Nothing came to our attention during the audit to indicate there was direct or indirect pressure from OGC to not pursue cases of anti-competitive practices. However, our audit was not designed to address this issue.

Are there any memoranda, emails, or any documents that reflect OGC's position on cases involving anti-competitive practices?

Since no referrals were being made to OGC because P&SP was not performing anti-competitive investigations, our audit work did not evaluate this question. As we reported, in February 2005, P&SP referred one competition investigation to OGC. The most recent referral prior to February 2005 was in November 2002, over 2 years earlier. OGC had filed no administrative complaints against market participants for anti-competitive practices since 1999 due to the lack of referrals by P&SP.

Even if anti-competitive investigations had been referred to OGC, would investigations of anti-competitive practices have been pursued and acted upon by OGC? Is there a problem here?

Answer: Our audit work does not provide a basis for opining on these questions. If GIPSA had been performing complex investigations and making referrals to OGC, we may have been able to evaluate the involvement of OGC in the process.

2. The recent Inspector General's report brought attention to the fact that GIPSA lacks the ability to use certain powerful investigative tools. In recommendation number 9 of Inspector General's report stated that the "use of civil investigative demands (CIDs) are not available to GIPSA. Currently, a memorandum of understanding (MOU) exists between USDA, the Federal Trade Commission and Department of Justice to allow the Packers and Stockyards program staff to learn from antitrust agencies those techniques and procedures most appropriate for use under the Packers and Stockyards Act.

QUESTIONS

Would there need to be statutory changes to the Packers and Stockyards Act to allow GIPSA the use of CIDs?

Answer: In its response to our recommendation that GIPSA develop and implement a strategy and process for effective implementation of changes in its operations, GIPSA indicated that it did not have CIDs available to it. Our recent audit did not look into the various investigative tools available to GIPSA and evaluate their usefulness. In response to your question, we did look at the authority for CIDs, variously codified at 15 U.S.C. 57B-1, 15 U.S.C. 1312, and 31 U.S.C. 3733, and none appear to provide CID authority to GIPSA. While GIPSA would be the best source in this instance to speak to the question of additional authority it believes it might need for more effective investigations, we support GIPSA having the full array of techniques or approaches appropriate for effectively and efficiently investigating anti-competitive activities.

Is a memorandum of understanding between GIPSA, Federal Trade Commission and Department of Justice sufficient or should GIPSA's authority be expanded to allow the use of CIDs.

Answer: In earlier OIG and GAO reviews, we both recommended that GIPSA learn from DOJ's and the Federal Trade Commission's (FTC) experiences in investigating anti-competitive practices and develop the necessary expertise and tools to conduct effective anti-competitive practices investigations. As stated in response to the previous question, GIPSA does not appear to have CID authority. Since our recent audit did not look into the various investigative tools available to GIPSA and evaluate their usefulness, GIPSA would be the best source to speak to additional investigative tools that might be gained from a memorandum of understanding with DOJ or FTC. Again, we would support GIPSA having the full array of techniques or approaches appropriate for effectively and efficiently investigating anti-competitive activities.

Witness Questions for the Record
Senator Tom Harkin

United States Senate
Committee on Agriculture, Nutrition & Forestry

A full committee hearing to review the United States Department of Agriculture's management and oversight of the Packers and Stockyards Act

Thursday, March 9, 2006, at 10:30 a.m. in SR-328A

QUESTIONS FOR JAMES LINK

1. At the hearing, I asked you why there had been no governmental oversight or corrective action given the high rate of staff turnover, management preventing employees from doing their jobs and management demanding that staff inflate the number of investigations listed in annual reports at GIPSA. You stated that you did not know why because you were not employed by USDA during that time. Nevertheless, it is imperative that these types of actions do not occur in the future.

QUESTIONS

What is GIPSA's protocol for communicating with the Secretary concerning its mission and daily operations relating to anti-competitive practices?

ANSWER:
Both the Secretary's office and the Undersecretary's office for Marketing and Regulatory Programs (MRP) have an open door policy with GIPSA. The Administrator meets weekly with all MRP administrators, the Undersecretary, and the Deputy Undersecretary to discuss issues ongoing within the agency. These discussions involve all types of Packers and Stockyards cases, including financial, trade practice, and competition issues. Also, weekly activity reports are submitted to the Undersecretary's office, which again include all important issues ongoing within GIPSA. As needed, the Administrator briefs both the Undersecretary and Secretary on investigations that may have a large economic impact.

What will you do to make sure that the Under Secretary and Secretary know what GIPSA is doing in regard to cases involving anti-competitive practices?

ANSWER:
Since becoming Administrator five months ago, I have committed myself to open and transparent communication with both the Secretary's and Undersecretary's staff, as well as with the Secretary and the Undersecretary. This includes all issues of importance including anti-competitive behavior in the market place, but also other investigations ongoing in PSP, as well as issues that the Federal Grain Inspection Service is dealing with. GIPSA plans to continue meeting weekly and when warranted, more often with the Undersecretary to keep him apprised of all issues, including anti-competitive behavior.

2. As recommended by the GAO, GIPSA hired attorneys to assist with investigations and coordinate with USDA's Office of General Counsel (OGC). However, these attorneys are not allowed to function as lawyers. OGC has informed GIPSA that these attorneys are "legal specialists" and only OGC is authorized to provide legal advice.

QUESTIONS

What function does the "legal specialist" serve to GIPSA if they are not allowed to give legal advice on investigations of anti-competitive practices?

ANSWER:
P&SP Legal Specialists are stationed in each of the three P&SP Regional Offices. Legal Specialists assist investigators in clarifying uncertainty about interpretations of the Act and proper legal procedures for conducting investigations. The legal specialist and lead investigator are jointly responsible for preparing a work-plan. In developing investigations, OGC works with the Agency to identify potential violations and to structure the investigation. The Legal Specialists, during the course of the investigations, assist investigators to ask appropriate questions and to seek necessary documents to prove the elements.

In response to the IG recommendations, P&SP has reviewed the role of Legal Specialists and issued directive 9700.1 on January 5, 2006, to clarify their responsibilities and authorities. The directive gives special attention to the Legal Specialists' interaction with OGC. According to the directive, while Legal Specialists are supervised by the manager in the regional office where they

are assigned, the Legal Specialists are empowered to provide guidance and support to investigators throughout the planning, carrying out, and reporting of results of investigations. They are generally authorized to consult at any time with OGC. Specifically, the directive states:

i. At any point in the investigation process, Legal Specialists may consult with OGC for advice in order to offer the appropriate guidance and support to P&SP investigators.
ii. In general, there are no limitations on the types of issues on which legal specialists may consult with OGC, as long as the issues are related to a P&SP investigation.
iii. Legal Specialists have the authority to use their discretion in determining when an issue should be brought to a P&SP supervisor's attention before consulting with OGC.
iv. Instances in which Legal Specialists must consult with their supervisors before consulting with OGC are rare, but may include situations in which a P&SP employee's misconduct may jeopardize the outcome of the investigation.

Is it not true that GIPSA has not been getting advice from OGC on investigations of anti-competitive practices?

ANSWER:
GIPSA and OGC attorneys talk on a nearly daily basis regarding how to bring cases forward, the types of evidence needed, and the format of complete investigation files. Also, OGC attorneys routinely participate in meetings that GIPSA has with other enforcement bodies including FTC, CFTC, and DOJ.

3. There is a persistent failure by USDA to enforce the Packers and Stockyards Act. The Inspector General made recommendations to improve anti-competitive investigations in 1997 and the Government Accountability Office made similar recommendations in 2000. A good portion of those recommendations were never implemented, despite promises by USDA to do so.

QUESTIONS

Given the ongoing problems that plague the Department regarding cases involving anti-competitive practices, is USDA now ready to seriously address the structural problems that exist by reorganizing the Department such as I have proposed in legislation (S.2307) or will USDA continue with the status quo?

ANSWER:
The Department is conducting an analysis of Senate Bill S.2307 a. The status quo at GIPSA ended when I reported to work in October. Since that time GIPSA has taken many steps to correct the problems identified in the Audit Report prepared by the Inspector General of the Packers and Stockyards Program. Certainly a significant step will be the hiring of a new Deputy Administrator of the Packers and Stockyard Program. The announcement of this position closed March 20th. I have formed a review panel to examine the credentials of the applicants for the position. Provided an applicant meets the criteria of the panel and mine, I anticipate making a hiring decision in the coming months. As the Packers and Stockyards Program continues to work through problems and meet the recommendations of the Audit Report we are making significant changes in the way the agency does business and in the existing culture of the agency. We will provide an extensive report on those changes to the Senate Agriculture Committee by June 13, 2006. We have already made significant changes. In January, I revised the organizational structure for planning and conducting investigations. On March 3rd I set new policy to addresses the regulatory review process in the Agency. On March 20th, I implemented new policy for the management of investigations I have also issued policy guidance to build better communication. The Agency is conducting a substantial programming project to correct deficiency in the old Complaints & Investigation log. Additionally, I have received a report made by an organizational team from APHIS that conducted a study of the organizational structure of the Packers and Stockyard Program. Based on that report, I anticipate making staffing changes in the Headquarters organization of the Program. Together these changes and others that are ongoing are substantive and do not reflect the status quo and will enable the Program to more effectively enforce the P&S Act.

In 2003, USDA stated that the legislation that I proposed to create an office of special counsel was not needed. Does USDA still hold the same position on the creation of this office as I have proposed in S.2307?

ANSWER:
The Department is conducting an analysis of Senate Bill S.2307.

If restructuring is not needed, what specific steps will you carry out at GIPSA to cure these chronic, systemic failures to enforce the Packers and Stockyards Act?

ANSWER:
GIPSA is taking many steps to correct the problems identified in the Audit Report prepared by the Inspector General of the Packers and Stockyards Program and to ensure that recommendations from previous Government Accountability Office and the Office of the Inspector General audit reports are followed through to completion. As was stated in my response to part of one of your earlier questions, a significant step will be the hiring of a new Deputy Administrator of the Packers and Stockyard Program. The announcement of this position was made earlier this year

and closed March 20th. I have formed a review panel to examine the credentials of the applicants for the position. Provided an applicant meets the criteria of the panel and mine, I anticipate making a hiring decision in the coming months. As the Packers and Stockyards Program continues to work through and meet the recommendations of the Audit Report, we are making significant changes in the way the agency does business and in the culture of the agency. We will provide an extensive report on those changes to the Senate Agriculture Committee by June 13, 2006. We have already made significant changes.

In January, I revised the organizational structure for planning and conducting investigations. On March 3rd I set new policy to addresses the regulatory review process in the Agency. On March 20th, I implemented new policy for the management of investigations I have also issued policy guidance to build better communication. The Agency is conducting a substantial programming project to correct deficiency in the old Complaints & Investigation log. Additionally, I have received a report made by an organizational team from APHIS that conducted a study of the organizational structure of the Packers and Stockyard Program. Based on that report, I anticipate making staffing changes in the Headquarters organization of the Program. Together these changes and others that are ongoing are substantive and do not reflect the status quo and will enable the Program to more effectively enforce the P&S Act.

4. In the past year, two court decisions have limited the protections in the Packers and Stockyards Act. In London vs. Fieldale Farms, the Eleventh U.S. Circuit Court of Appeals ruled that in order for producers to succeed in cases involving unfair actions, they must prove how it adversely affects competition for their region. In Pickett vs. Tyson, the Eleventh U.S. Circuit Court of Appeals ruled that packers can engage in certain market practices as long as they have a business justification to do so in order to stay competitive. That is not what Congress envisioned when it passed the Packers and Stockyards Act. I have introduced legislation (S.2307) that clarifies Congress' intent.

QUESTIONS

Has GIPSA ever proposed any legislation to address the issues and interpretations of the Packers and Stockyards Act reflected in recent court decisions or previous ones? I have posed this same question to USDA's Office of General Counsel as well.

ANSWER:
GIPSA has not proposed legislation to address the issues and interpretations of the Act in London vs. Fieldale Farms or Pickett vs. Tyson, nor has it, to my knowledge, introduced legislation in recent years to address any previous court cases.

What is USDA's legal opinion regarding the language I have proposed in S.2307 to address the Pickett and Fieldale Farm cases?

ANSWER:
"Section 202(a) of the Packers and Stockyards, Act, 1921 (7 U.S.C. 192), is amended by inserting after "device" the following: ",regardless of whether the practice or device causes a competitive injury or otherwise adversely affects competition."

USDA is currently reviewing the provisions of S.2307. Legal review of that bill and its specific provisions has not been completed.

5. We have a number of reports both verbally and by letters from producers who filed a complaint with GIPSA for unfair practices by a packer, and are then retaliated against for having done so. This creates an environment where producers will not want to speak up, despite being subjected to ongoing unfair practices. This happens frequently in the poultry industry.

QUESTIONS

Does GIPSA have rules or procedures to protect producers from retaliation?

ANSWER:
The Packers and Stockyards Act does not include the terms "retaliate" or "retaliation", nor does it include any specific "whistleblower" provisions. However, the Act does prohibit packers, swine contractors, live poultry dealers, stockyard owners, market agencies, and dealers from engaging in "unfair" or "unjust" practices in Sections 202 (a)-(b), 303-305, 307, 311, 312(a), 307(a)-(b), 409(c) and 410(b). If the regulated entities retaliate against producers, that retaliation would be an unfair practice. In the past, however, many allegations of retaliation have not been supported by evidence sufficient to prove the unfair practice.

Section 201.43 (b) (4) of the regulations prohibits packers, live poultry dealers, market agencies, or livestock dealers from imposing, demanding, compelling, or dictating the terms or manner of

payment, or attempting to "obtain a payment agreement from a seller through any threat of retaliation or other form of intimidation."

What statutory limitations, if any, does USDA face that could hinder its ability to investigate and prosecute live poultry dealers for violations of the Packers and Stockyards Act? How does this authority differ for the hog and cattle industry?

ANSWER:
USDA has authority under the Packers and Stockyards Act to investigate live poultry dealers. However, USDA lacks authority to enforce the Act against a live poultry dealer through the administrative process. Presently, the Act only permits administrative enforcement (section 202) against meat packers and swine contractors. USDA must refer suspected violations of section 202 involving live poultry dealers to the Attorney General for prosecution.

Section 202 of the Act makes it unlawful for "any live poultry dealer" to engage in specified practices in commerce, including unfair, unjustly discriminatory, or deceptive practices, making it unlawful for live poultry dealers to engage in the same practices in which meat packers and swine contractors are prohibited from engaging. However, sections 203, 204, and 205 -- the sections that permit administrative enforcement authority for violations of section 202 of the Act speak only of packers and swine contractors and do not include the term "live poultry dealer."

If statutory limitations exist for live poultry dealers, has USDA ever previously proposed legislation to address the lack of authority?

ANSWER:
USDA proposed legislation in 1997 that would have expanded its administrative authority to prosecute violations of section 202 against live poultry dealers. In 2002, USDA expressed support for legislation that would confer such authority and amend the definition of "poultry grower" to include not only those persons raising poultry for purposes of slaughter, but also those persons raising poultry for another person for any reason, i.e., breeding flocks, egg production, etc.

6. In recent years, captive supply arrangements have allowed packers to not regularly bid for livestock on the open market.

QUESTIONS

Does USDA view the following pricing methods such as plant average

pricing, top of the week pricing and Real Time Marketing Value (RTMV) pricing methods as anti-competitive, or having the potential to be anti-competitive?

ANSWER:
These pricing methods raise competitive concerns for two reasons. First, plant average and top of the week pricing methods partially rely on spot market prices. Large buyers may have the ability to manipulate prices if the spot market becomes too "thin." In a thin spot market, a small number of spot transactions are used to establish prices for plant average and top of the week pricing methods. Secondly, the methods for determining prices under plant average pricing and RTMV are not transparent to producers. Producers are unable to obtain information to replicate the base prices under these pricing methods as these methods utilize company and plant specific data. Because of this lack of transparency, producers are particularly concerned about the use of these price mechanisms, but the pricing methods themselves have not been shown to be anti-competitive.

What is USDA doing to ensure that plant average pricing, top of the week pricing and RTMV pricing methods does not adversely affect competition in the livestock industry?

ANSWER:
GIPSA has the responsibility to protect regulated markets from unfair or discriminatory business practices that negatively impact the ability of producers and sellers to compete, and cause competitive harm. GIPSA performs that responsibility by monitoring market behavior, maintaining a comprehensive understanding of industry practices and investigating complaints of alleged violations of the Act, such as price manipulation, unjust discrimination, and apportionment of territory, and conducting market studies.

GIPSA is in the progress of conducting procurement reviews of the top four beef packers to ensure that payment to livestock producers is correct. The procurement reviews replicate a sample of transactions that rely on various pricing methods, including plant average pricing and RTMV. GIPSA has completed procurement reviews at two of the four major beef packers. Procurement reviews are underway at the other two beef packers, with one review nearing completion.

As discussed in my opening statement during the March 9 hearing, GIPSA also monitors fed cattle markets using an econometric model that compares actual to predicted prices in five direct-fed cattle markets. If the difference between the actual and predicted market prices in any region is outside a statistically determined boundary, GIPSA conducts a review into the causative supply and demand factors in the market to determine the reason for the greater than expected price difference. If the price difference cannot be explained by causative supply and demand factors, GIPSA requests non-public data to investigate which firm(s) is responsible for the price

difference and to determine the reason for the price behavior. If plant average pricing, top of the week, and RTMV pricing methods are adversely affecting competition in a regional market, the fed cattle market monitoring program is useful to identify the resulting price effects.

The congressionally mandated study to assess the impacts of alternative marketing arrangements on the cattle, hog, and sheep market will shed additional light on the effect of these pricing methods on livestock markets.

Have these pricing methods been ruled lawful by a court?

ANSWER:
Insofar as we have been able to determine, these pricing methods have not been addressed by the Federal courts. As you know, a recent case has ruled that for a packer's use of captive supply contracts to be an unfair practice, the contract's use must be shown to adversely affect, or likely adversely effect competition. Pickett v, Tyson Fresh Meats, 420 F.3d 1272,1279 (11th Cir. 2005). While courts have not yet addressed pricing aspects of captive supply contracts, we believe that the courts will apply the same standard when determining whether a pricing method is unfair under the Act. , The Clayton Act prohibits corporate acquisitions that may tend substantially to lessen competition (Section 7, 15 U.S.C. Sec. 18) and also bars certain forms of price discrimination (Section 2 of the Robinson Patman Act, 15 U.S.C. Secs. 13-13b). As with its consumer protection responsibilities, the Commission uses both administrative and judicial remedies to enforce the law. The Sherman Act prohibits any combination of conspiracy in restraint of trade.

The Uniform Commercial Code (UCC) is basically a collection of model or uniform statutes that have been adapted in whole or part by states in an attempt to provide standards for business laws pertaining to sales and other commercial transactions. Certain activities that would violate antitrust statutes, the Sherman Act, the Clayton Act and the FTC Act, may also be violations of section 202 of the Packers and Stockyards Act. With regard to those activities, the chief differences between the statutes would be the level of sanction availabel to the law enforcement agencies, abd tge greater level of regulatory oversight if tge industries that is availabel under the Act, which allows the Secretary of Agriculture to regulate and monitor packers, live poultry dealers and swine contractors.

Witness Questions for the Record
Senator Tom Harkin

United States Senate
Committee on Agriculture, Nutrition & Forestry

A full committee hearing to review the United States Department of Agriculture's management and oversight of the Packers and Stockyards Act

Thursday, March 9, 2006, at 10:30 a.m. in SR-328A

QUESTIONS FOR MARY HOBBIE

1. GIPSA hired attorneys to assist with investigations and coordinate with OGC. However, these attorneys are not allowed to function as lawyers. OGC has informed GIPSA that these attorneys are "legal specialists" and only OGC is authorized to provide legal advice.

What function does the "legal specialist" serve to GIPSA if they are not allowed to give legal advice on investigations of anti-competitive practices?

ANSWER:

GIPSA legal specialists do not function as attorneys for the United States Department of Agriculture (USDA) because all legal services for USDA and its agencies are provided by the Office of the General Counsel (OGC) to ensure a coordinated and unified response to legal issues throughout USDA. The Secretary of Agriculture's delegations of authority to the General Counsel provide: "The General Counsel, as the chief law officer of the Department, is legal adviser to the Secretary and other officials of the Department and responsible for providing legal services for all the activities of the Department." 7 C.F.R. § 2.31.

Additionally, the requirements for the position of legal specialist as specified by GIPSA do not include possession of a law degree or bar membership. The functions of the position as specified by the agency include the planning, design, organization, and conduct of investigations and legal research, including the review of legal periodicals, business records, and analysis of competitive aspects of the livestock, meat, and poultry industries. Legal specialists help set the course of investigations to ensure that the evidence obtained in investigations on competition issues is the evidence necessary to show likelihood of harm to competition and to assist the rest of GIPSA's investigatory staff to ask the appropriate questions and seek the best documentary evidence. The

functions of the position do not include litigation or the provision of legal advice.

Since OGC does not allow GIPSA legal specialist to function as attorneys is OGC staffed to handle GIPSA's anti-competitive workload?

ANSWER:

GIPSA legal specialists do not function as attorneys for USDA because the Secretary has delegated that authority only to the General Counsel. OGC has sufficient staff to handle GIPSA's anti-competitive workload.

In fiscal year 2001, I got provisions enacted to provide funds for OGC to assign attorneys specifically for enforcement of the Packers and Stockyards Act. Did this happen, and have the same number of attorneys assigned since OGC received the funds remained in that assignment?

ANSWER:

Yes, OGC did hire additional attorneys for this purpose. In addition, the same number of attorneys assigned since OGC received the funds remain in that assignment.

How many attorneys, staff, FTE's does OGC devote to GIPSA?

In particular, how many attorneys, staff, FTE's are dedicated to cases involving anti-competitive violations?

ANSWER:

The Trade Practices Division of OGC, which provides legal services to the Packers and Stockyards Program of GIPSA, currently has a staff of eleven attorneys and one attorney vacancy, a paralegal, and two support staff. All attorneys and staff assigned to the Trade Practices Division provide legal services to GIPSA as well as to a program of the Agricultural Marketing Service (AMS). As workload varies, attorneys and staff may work on a P&S competition investigation, while also working on litigation or investigations in other areas of the P&S Act, or on AMS issues. In recent years, P&SP has consulted OGC on a very limited number of competition cases.

What is OGC doing, or will do, to make sure that GIPSA has the legal ability to develop, investigate and pursue anti-competitive violations?

ANSWER:

OGC has worked in the past, and will continue to work, to provide legal services as needed and requested by GIPSA, including informal legal advice, assistance in framing investigations and workplans, and litigation of its administrative enforcement cases, including the administrative litigation of three cases against major packers. Over the past several years, OGC has provided training for GIPSA staff, including training of GIPSA legal specialists, and has worked with P&SP investigators and field staff on their competition investigations and workplans.

Additionally, OGC has collaborated with P&SP on the framing, information collection, and completion of economic studies of the livestock industry. OGC has also coordinated GIPSA cooperation with DOJ, including recently assisting the agency is detailing an economist to the DOJ Antitrust Division, and has worked directly with DOJ to assist them in their work in the livestock and poultry industries.

2. In the past year, two court decisions have limited the protections in the Packers and Stockyards Act. In London vs. Fieldale Farms, the Eleventh U.S. Circuit Court of Appeals ruled that in order for producers to succeed in cases involving unfair actions, they must prove how it adversely affects competition for their region. In Pickett vs. Tyson, the Eleventh U.S. Circuit Court of Appeals ruled that packers can engage in certain market practices as long as they have a business justification to do so in order to stay competitive. That is not what Congress envisioned when it passed the Packers and Stockyards Act. I have introduced legislation (S.2307) that clarifies Congress' intent.

QUESTIONS

Has OGC ever proposed any legislation to address the issues and interpretations of the Packers and Stockyards Act reflected in recent court decisions or previous ones? I have posed this question to GIPSA as well.

ANSWER:

No. OGC does not propose legislation, although it is continually involved in legal review of proposed legislation. However, USDA did argue in an *amicus* brief filed by the Department of Justice that a violation of section 202(a) of the Packers and Stockyards Act did not require proof of competitive harm or the likelihood of competitive harm. London v. Fieldale Farms Corporation, 410 F.3d 1295 (11th Cir. 2005).

What is USDA's legal opinion regarding the language I have proposed in S.2307 to address both the Pickett and Fieldale Farm cases?

> ***"Section 202(a) of the Packers and Stockyards, Act, 1921 (7 U.S.C. 192), is amended by inserting after "device" the following: ",regardless of whether the practice or device causes a competitive injury or otherwise adversely affects competition."***

ANSWER:

USDA is currently reviewing the provisions of S.2307. Legal review of that bill and its specific provisions has not been completed.

Witness Questions for the Record
Senator Ken Salazar

United States Senate
Committee on Agriculture, Nutrition & Forestry

A full committee hearing to review the United States Department of Agriculture's management and oversight of the Packers and Stockyards Act

Thursday, March 9, 2006, at 10:30 a.m. in SR-328A

1. **As you know, one of the recommendations from the Office of the Inspector General (OIG) was to develop and implement a well defined process for identifying the work to be performed, performing fieldwork, etc. GIPSA is tasked with protecting producers from unfair trade practices. Why do you think this agency had absolutely no protocol or motivation for identifying the problems that they were designed to mediate?**

ANSWER:
I cannot speak from personal knowledge of the agency's activities prior to my assuming the position of Administrator in October 2005. In discussions with agency employees since that time, I have learned that a number of factors lead to the problems with implementing a well defined process for identifying work to be performed, preparing and approving work plans, performing fieldwork and analysis, and reporting results.

First, the agency underwent a significant structural change in the late 1990's in response to the OIG's 1997 audit report. This structural change resulted in consolidation of 11 regional offices into 3 locations and changed the structure of the headquarters offices as well. These changes impacted the agency's standard operating procedures as employees worked to adapt to the new structure. New positions were created for economists and legal specialists. The agency worked through a process of trial and error to best use the experience and talents of these employees.

Second, the agency experienced a nearly complete turnover in its upper management. Since 2000, new managers were hired to fill the positions of Deputy Administrator, the three division director positions, and two of the three regional manager positions. During this time, a new GIPSA Administrator took office and then vacated that position in late 2004. The new management team worked under the direction of the Deputy Administrator during this time to develop and implement new processes in an effort to improve the agency's performance.

As the OIG noted in its latest audit report, the agency's management implemented a Senior Management Review Panel (SMRP) process to replace existing procedures for managing investigations. Unfortunately, the SMRP process was cumbersome and ineffective.

Under my direction, the agency has returned much of the authority for managing investigations to the regional managers and in response to OIG's recommendation has developed a process for defining work to be performed, preparing work plans, performing fieldwork and reporting results. The new process is currently being implemented and has already shown positive results.

In addition, your agency has said that you will now develop and implement a clearly defined process for identifying work to be performed. According to the OIG report, the development and implementation of the investigation policy will be completed by March 2006. Has this process been completed and where is this process in its implementation?

ANSWER:
Directive 9700.20 *Management of Investigations* was signed by the GIPSA Administrator on March 20th. This directive responds to the third recommendation made in the Audit Report prepared by the Inspector General. The Packers and Stockyards Program through the regional offices and divisions are responsible for the immediate implementation of the Directive. Additionally there will be compliance reviews initiated later in the year to follow up and verify that the regions and divisions are adhering to the Directive.

2. **According to the OIG audit, only three investigations were opened in 2003, and only one was opened in 2002. The OIG audit also stated that the Senior Management Review Panel process inhibits the Packers and Stockyards programs from investigating anti-competitive activities and unfair trade practices in the livestock and poultry markets. Furthermore, it is my understanding that the Senior Management Review Panel was initiated in response to another recommendation from the GAO in September 2000, however, the process for reviewing process investigations by the Senior Management Review Panel was not formalized until May 2005. Why did it take five years to formalize the review process?**

ANSWER:
To first clarify, OIG stated that only three *anti-competitive* investigations were opened in 2003, and only one in 2002. However, other types of investigations were ongoing. The chart below dictates the total number of investigations and violations found, in the past 3 years. These numbers also include trade practice and financial investigations, which is, and will continue to be the vast majority of our regulatory and compliance work. While we do expect more competition investigations to be completed, we do *not* anticipate this

to be a substantial increase as these investigations can be very complex and take many months to complete and analyze the data.

Year	Investigations	Violations Cited
2003	721	564
2004	771	695
2005	626	507

As I noted in my response to your first question, the agency has experienced a nearly complete turnover in its upper management. Since 2000, new managers were hired to fill the positions of Deputy Administrator, the three division director positions, and two of the three regional manager positions. The new management team worked under the direction of the Deputy Administrator to develop and implement new processes in an effort to improve the agency's performance. This new management team worked to adapt to the Deputy Administrator's management style. The team developed and repeatedly revised the process for reviewing investigations over several years before finally formalizing the process in May 2005.

3. **After seeing this report, I am sure you will agree that the management and oversight of the Packers and Stockyards Act has been unacceptable. The shortcomings mentioned in the audit – the inadequate process for managing investigations, policy decisions not being made, logs and investigations incomplete – seemed to be either intentional efforts to prevent effective oversight for occurring, or to be the result of a disturbing misunderstanding on the part of those running the programs as to just what their responsibilities were. <u>What do you believe is the reason for the problems that have occurred with these programs and how are you going to make sure that they do not happen again?</u>**

ANSWER:
I believe the reason for a large amount of the problems that have occurred with the Packers and Stockyards Program (P&SP) pertains to the overall management of the Program.

As stated in the OIG Report, GIPSA hired a former OGC attorney, with experience in litigating cases associated with P&SP activities, as its Deputy Administrator. This individual, however, had limited experience in leading a program with the types of investigations P&SP performs (e.g., trade practice, financial protection, and competition).

Since the resignation of the former Deputy Administrator, I have started implementing a business execution plan within the Program. Accordingly, I have given greater authority and responsibility to P&SP's Division Directors and Regional Managers in the operations of their divisions and regions. I expect them to make more decisions on their own, and

increase their coordination with each other. Efforts also have been made to increase cooperation between P&SP and the Office of the General Counsel (OGC), to ensure that investigative files are forwarded more timely, and that the files are accurate, complete, and have legal sufficiency. Previously, contacts with OGC by the regional offices were specifically limited, including prior to, and during, the course of investigations. Now P&SP's legal specialists can contact OGC directly for legal advice and guidance.

As stated earlier, P&SP has also put in place a directive on the management of investigations. This directive will address inadequacies in the processing of investigations. As part of P&SP's overall compliance program, periodic reviews will be conducted of regional and headquarters' offices to ensure that program activities are being carried out appropriately, and in accordance with established procedures and guidelines. Another directive (Program Directive 9700.3), describing specific investigation responsibilities for the Deputy Administrator, Division Directors and the Regional Managers, has already been issued.

4. **One of the OIG audit recommendations is for the Agency to develop and implement an organizational structure that appropriately divides the responsibility for approving work plans, managing the investigations and reporting the results between managers and the Deputy Administrator. In response, the Agency stated that a Packers and Stockyards program policy statement was issued on January 5, 2006, describing changes in organizational structure intended to address these issues. Please comment on the status and effectiveness of this new policy. Do you have any documented evidence of its effectiveness?**

ANSWER:
Packers and Stockyards Program Directive 9700.3, issued and effective January 5, 2006, describes the respective responsibilities of the Regional Managers, Division Directors, and the Deputy Administrator for planning, supervising, supporting, and reviewing investigations. This directive has greatly facilitated clearing the log jam of investigative work plans that had been awaiting approval under the former Senior Management Review Process (SMRP). Since institution of the new policy, investigation work plans, formerly awaiting approval, have been either approved or rejected and a number of new investigations begun. An initial review of the effectiveness of the policy indicates that the new system has dramatically streamlined the investigative work plan approval process. This has also resulted in significantly increased investigator presence in the field.

Employees have been empowered to plan, approve, and conduct investigations that previously required lengthy and scrutinizing Senior Management approval. Additionally, investigation and regulatory activities are being completed with greater efficiency. This increase in efficiency has resulted from increased employee morale and from an allocation of employee resources to investigation and regulatory activities and away from

activities aimed at obtaining Senior Management approval of investigation work plans. For example:

1. A number of investigations have been undertaken, and many completed, that would have been stalled previously. Recent examples include conducting a contract compliance investigation, at least two new trade practices investigations, and two new competition investigations, that would have previously been hung up for months in the SMRP process.

2. Poultry compliance investigations that had come to a near halt under the SMRP process have been restarted. Six poultry investigations have been scheduled that would not have been approved in a timely manner under the previous system.

Some examples of documented evidence of the new policy's effectiveness include:

1. Compliance reviews regarding the use of committed procurement by the major beef packers have recently been completed, although work plans were originally submitted in December 2004.

2. An investigative work plan, regarding a "Big Four" packer investigation to follow-up on previous violations of the Act, was started in October 2004, but it took until December 2005 before Senior Management approved it. Once the new policy came out, the regional office immediately began preparations for the investigation, which is in progress and scheduled to conclude in May 2006.

3. An investigative work plan, regarding a "major" auction market investigation, was started in February 2005, and forwarded to Washington, D.C. for review and approval, but it was not approved until December 2005. Following implementation of the new policy, the regional office took immediate steps to begin the investigation. It took only a week to perform and no violations were found. In addition to the primary issue that caused this investigation, two ancillary complaints were received in January 2005 and September 2005. The regional office was able to complete all three investigations during that same week, maximizing the use of resources.

4. An investigation of a "Big Four" packer was started in June 2004 and completed in October 2004, but because Senior Management controlled the investigation throughout its process, the regional office did not have an exit interview with packer officials prior to leaving the plant. After the regional office received the authority in January 2006 to handle the matter, the exit conference was finally held.

5. **The OIG reported stated that many of the investigation logs were incomplete and were never investigated properly. <u>Do you have plans to reexamine the cases that were incomplete? Do you have plans to review cases that were turned down?</u>**

ANSWER:
We do not interpret the IG report as addressing the adequacy of past investigations in response to complaints. In fact, most complaints tend to relate to financial matters and trade practices, and the report noted (pg i) that the IG review did not evaluate P&SP's management and oversight of those types of investigations.

The report focused primarily on complex and competition cases. Although it indicates that it found several instances where such investigations had not been completed and other instances where work plans had not yet been approved to initiate investigations, it does not cite instances of prematurely closed investigations or inadequate investigations in response to complaints. The specific example it cites of a work plan not being approved (pg. 11) pertains to P&SP's annual analysis of procurement data. This activity is agency-generated rather than a response to a complaint from outside and in fact would be classified as a monitoring activity under new guidelines. The only other discussion of a specific investigation described how procedures delayed formally closing the investigation (pg. 12). The discussion of that example noted that the investigators and the Competition Branch all recommended closure, based on their determination that available evidence collected and evaluated during the investigation did not indicate a lack of competition. This investigation was then properly closed.

The recent GAO report of the Agency's review of data reported under Mandatory Price Reporting (MPR) did include a recommendation that the Secretary direct the Administrators of GIPSA and AMS to further investigate reporting of one packer's low-price purchases of livestock reported under MPR. We are in the process of analyzing AMS data and requesting additional data from the private sector. Because this is an ongoing investigation, we will refrain from making detailed comments.

We also acknowledge that, as stated in the report (pg. 12), the Senior Management Review process has inhibited P&SP investigations of anti-competitive activities and unfair trade practices in the livestock and poultry markets. We are taking steps to streamline the review process, as noted in our response to Recommendation 3 in the Report (pg. 12-13). The improvements in the process will enable us to initiate investigations, whether resulting from external complaints or internal monitoring and surveillance, in a much more expeditious manner.

Witness Questions for the Record
Senator Craig Thomas

United States Senate
Committee on Agriculture, Nutrition & Forestry

A full committee hearing to review the United States Department of Agriculture's management and oversight of the Packers and Stockyards Act

Thursday, March 9, 2006, at 10:30 a.m. in SR-328A

Questions

1) According to the Inspector General's Report, a number of complaints under Packers and Stockyard's Act were not acted investigated over a period of years. What process is being employed to review these claims and what criteria are being applied to determine which of these are still timely and worthy of investigation? Have the parties who filed these complaints been notified of their status?

ANSWER:
The Inspector General's report focused on the complaints and investigations log that the Agency used to track investigation activities. The report concluded that the records in the log were incomplete due to a lack of a standard definition for investigations and a lack of procedures for ensuring accuracy of the log:

> **Inability to Track Investigations**. P&SP's tracking system counted all P&SP activities as "investigations" because there was no policy to define investigations. These activities included monitoring publicly available data, sending routine letters to request company-specific information, and performing onsite reviews of companies. In addition, records in the tracking system were not complete because there were no procedures for validating the accuracy and completeness of information recorded. Consequently, data fields were left blank. As a result, the system could not be relied upon as a control for managing P&SP investigations. (OIG Report No. 30601-01-Hy, pg. ii)

These problems clearly resulted in labeling as investigations some work that was more accurately monitoring and compliance review. However, we did not interpret the report as concluding that the Agency ignored legitimate complaints, and would disagree with any such conclusion. The Agency investigated all complaints that the Agency received. Currently, GIPSA is considering a policy to notify complainants by letter what the status of their complaint is (i.e., still under investigation, closed because of insufficient evidence, etc.)

2) As to the future, what checks and balances have been instituted to assure that no one individual can preclude investigations and where warranted, citations, from moving forward in a timely manner?

ANSWER:
In the past, much of the decision–making regarding the review and movement of investigative files was made at the Deputy Administrator level. This caused a severe bottleneck in the way investigations were reviewed, processed, and forwarded to the Office of the General Counsel (OGC). Division Directors and Regional Managers have now been given greater authority and responsibility in the operations of their divisions and regions. They are expected, and encouraged, to make more decisions on their own, and to increase their coordination with each other. Efforts have also been made to increase cooperation between the Packers and Stockyards Program (P&SP) and OGC, to ensure that investigative files are forwarded more timely, and that the files are accurate, complete, and have legal sufficiency. P&SP's legal specialists can contact OGC directly for legal advice and guidance.

P&SP is also in the process of revising its Management Control Program directive. The directive will address internal controls and provide for corresponding checks and balances. Periodic reviews will be conducted of regional and headquarters' offices to ensure that program activities are being carried out appropriately, and in accordance with established procedures and guidelines.

3) The Inspector General's Report identified 1,842 "investigations" logged by GIPSA as of June 30, 2005. Yet it appears that many of these investigations are routine activities, and not necessarily full-blown investigations of complaints alleging violations of the Packers and Stockyards Act. Do you have a clearer idea of the actual volume and content of individual complaints that have

been filed with GIPSA since 1999, and the disposition of those complaints?

ANSWER:
The incompleteness in our Complaint & Investigation log makes it difficult to compile data back to 1999, but we were able to compile data for the last 3 years on investigations and violations, which yielded the following totals:

Year	Investigations	Violations Cited
2003	721	564
2004	771	695
2005	626	507

These totals consist only of activities that would be classified as investigations under our revised definitions. They exclude compliance and regulatory activities that were previously classified as investigations. Note however that monitoring and compliance reviews, although properly classed as regulatory activity under our revised definitions, are a critical part of the mission of the P&S program that often result in an Agency-initiated investigations even in the absence of any outside complaint.

The totals in the table include investigations originating from both sources, i.e. those conducted in response to complaints from outside and those initiated internally by the Agency as a result of the Agency's own monitoring activities and compliance reviews. The data in the log did not enable us to identify with precision the disposition of investigations that were initiated as a result of complaints from outside. We are working to resolve the difficulties in our status tracking of investigations, in particular through the programming work that is being done to redesign and enhance our Complaint & Investigation log.

4) Will complaints that were inadequately investigated be revived?

ANSWER:
As noted above in our response to question 1 above, we do not interpret the IG report as addressing the adequacy of past investigations in response to complaints. In fact, most complaints tend to relate to financial matters and trade practices, and the report noted (pg i) that the IG review did not evaluate P&SP's management and oversight of those types of investigations.

The report focused primarily on complex and competition cases. Although it indicates that it found several instances where such investigations had not been completed and other instances where work plans had not yet been approved to initiate investigations, it does not cite instances

of prematurely closed investigations or inadequate investigations in response to complaints. The specific example it cites of a work plan not being approved (pg. 11) pertains to P&SP's annual analysis of procurement data. This activity is agency-generated rather than a response to a complaint from outside and in fact would be classified as a monitoring activity under new guidelines. The only other discussion of a specific investigation described how procedures delayed formally closing the investigation (pg. 12). The discussion of that example noted that the investigators and the Competition Branch all recommended closure, based on their determination that available evidence collected and evaluated during the investigation did not indicate a lack of competition. This investigation was then properly closed.

The recent GAO report of that Agency's review of data reported under Mandatory Price Reporting (MPR) did include a recommendation that the Secretary direct the Administrators of GIPSA and AMS to further investigate reporting of one packer's low-price purchases of livestock reported under MPR. We are in the process of analyzing AMS data and requesting additional data from the private sector. Because this is an ongoing investigation, we will refrain from making detailed comments.

We also acknowledge that, as stated in the report (pg. 12), the Senior Management Review process has inhibited P&SP investigations of anti-competitive activities and unfair trade practices in the livestock and poultry markets. We are taking steps to streamline the review process, as noted in our response to Recommendation 3 in the Report (pg. 12-13). The improvements in the process will enable us to initiate investigations, whether resulting from external complaints or internal monitoring and surveillance, in a much more expeditious manner.

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