

January 18, 2007

The Honorable Tom Harkin  
Chairman, Senate Committee on Agriculture, Forestry and Nutrition

The Honorable Saxby Chambliss  
Ranking Member, Senate Committee on Agriculture, Forestry and Nutrition

The Honorable Collin Peterson  
Chairman, House Committee on Agriculture

The Honorable Bob Goodlatte  
Ranking Member, House Committee on Agriculture

The Honorable Patrick Leahy  
Chairman, Senate Committee on the Judiciary

The Honorable Arlen Specter  
Ranking Member, Senate Committee on the Judiciary

The Honorable John Conyers, Jr.  
Chairman, House Committee on the Judiciary

The Honorable Lamar S. Smith  
Ranking Member, House Committee on the Judiciary

**Dear Chairmen and Ranking Members:**

The over 200 undersigned organizations strongly urge you to make the issues of agricultural competition and market concentration a top priority as Congress considers the crafting of agricultural legislation and the next Farm Bill. During the 2002 Farm Bill debates, public testimony provided clear and compelling evidence of the need for free market competition and fairness for the nation's farmers and ranchers. Since that time these concerns have become even more urgent and prominent in the public eye.

Today, a small handful of corporations overwhelmingly dominate our food supply. The concentration of market control in the top four firms in U.S. food retailing, grain processing, red meat processing, poultry processing, milk processing, and nearly every category of food manufacturing is at an all time high. Corporate mergers and buyouts have concentrated the power of these firms and increased their ability to unfairly manipulate market conditions in their favor. This unprecedented level of horizontal market consolidation effectively eliminates free market competition to the detriment of independent family farmers and consumers.

Compounding the problem associated with horizontal consolidation is the rapid trend toward vertical integration. Manufacturers, processors, and packers increasingly control

all stages of production and inventory through commodity ownership and one-sided contracts. This corporate control of production unnecessarily eliminates market transparency, creating an environment ripe for price manipulation and discrimination. It replaces farm-level decision making with centralized corporate planning and leaves farmers trapped in long-term debts tied to short-term, non-negotiable production contracts. In addition, top retailers and packers increasingly engage in relationships with dominant suppliers that exclude smaller competitors and minimize price competition. Because both supply and demand are controlled by the same few players in the market, the basic principles of supply and demand cannot function.

A critical role of government is to ensure fairness by facilitating properly operating markets and balance in the economic relationships among farmers/ranchers, consumers and food companies. Currently, inadequate federal legislation and the lack of enforcement of anti-trust policies allow a handful of corporations to continue to consolidate market power, manipulate prices, and create anti-competitive market structures. Federal government inaction has a dramatic, negative impact on not only farmers and ranchers, but also on rural communities, the environment, food quality, food safety, and consumer prices. It undermines sustainable production practices and state and local laws that support family-scale, sustainable farm and ranch operations.

Policy makers often voice the laudable policy goals of maintaining a diverse, farm-and-ranch-based production sector and providing consumers with a nutritious, affordable food supply. However, government failure to redress industry concentration--both vertical and horizontal--is thwarting these policy goals and driving the earnings of farmers and ranchers down and consumer prices up.

To address these problems, we urge you to champion a strong, comprehensive Competition Title in the 2007 Farm Bill. We also ask that you co-sponsor and support any of the following measures of this comprehensive package if they are introduced as separate or combined bills and to work for speedy congressional consideration of these proposals.

## **LIMIT PACKER CONTROL/MANIPULATION OF LIVESTOCK MARKETS**

**1. *Captive Supply Reform Act:*** This legislation will bring secret, long-term contracts between packers and producers into the open and create a market for these contracts. The Captive Supply Reform Act would restore competition by making packers (and livestock producers) bid against each other to win contracts. Currently, formula contracts and marketing agreements are negotiated in secret, where packers have all the information and power. These formula contracts and agreements depress prices and shut small and independent producers out of markets. The Captive Supply Reform Act would require such contracts to be traded in open, public markets to which all buyers and sellers have access.

**2. *Prohibition on Packer-Owned Livestock:*** Meat packers such as Tyson, Cargill, and Smithfield Foods use packer-owned livestock as a major tool for exerting unfair market power over farmers and ranchers. This practice fosters industrial livestock production and freezes independent farmers out of the markets. Packer-owned livestock has been proven to artificially lower farm gate prices to farmers and ranchers while consumer food prices

continue to rise. By prohibiting direct ownership of livestock by major meatpackers, a packer ban addresses a significant percentage of the problem of captive supply which packers use to manipulate markets, and would help increase market access for America's independent producers who currently experience great restrictions in market access due in part to packer ownership of livestock.

## **INCREASE FAIRNESS IN AGRICULTURAL CONTRACTS AND MARKETS**

**3. *Fairness Standards for Agricultural Contracts:*** In order to address the worst abuses contained in processor-drafted contracts, legislation that provides a set of minimum standards for contract fairness is urgently needed. Such standards should include at a minimum the following:

(a) prohibition of the use of forced, mandatory arbitration clauses, which have been used by some packers or integrators to force growers to give up their access to the courts, even in the case of fraud, breach of contract, misrepresentation or other blatant contract abuses by the integrator or packer firm;

(b) clear disclosure of producer risks;

(c) full prohibition on confidentiality clauses;

(d) recapture of capital investment so that contracts that require a significant capital investment by the producer cannot be capriciously canceled without compensation; and

(e) a ban on unfair or deceptive trade practices, including "tournament" or "ranking system" payment.

## **4. *Clarification of "Undue Preferences" in the Packers & Stockyards Act (PSA):***

Packers commonly make unjustified, preferential deals that provide unfair economic advantages to large-scale agriculture production over smaller family owned and sustainable farms. Courts have found current undue preference legal standards virtually impossible to enforce. Additional legislative language is needed in the PSA to strengthen the law and clarify that preferential pricing structures (those that provide different prices to different producers) are justified only for real differences in product value or actual and quantifiable differences in acquisition and transaction costs. Specifically, we are asking to:

(a) Make clear that farmers damaged by packer/processor unfair and deceptive practices need not prove "harm to competition" to receive a remedy.

(b) Make clear that "pro-competitive effects" or "legitimate business justifications" are not recognized packer defendant defenses, and not necessary for farmer-plaintiffs to prove the absence of, in a court case under the PSA.

(c) Require courts to award attorneys fees to successful producer plaintiffs under the PSA.

**5. *Closing Poultry Loopholes in the Packers & Stockyards Act (PSA):*** USDA does not currently have the authority under the PSA to bring enforcement actions against poultry dealers. Poultry producers should have the same basic enforcement protection that is offered to livestock producers when packers and livestock dealers violate the PSA. We seek legislation to clarify that USDA has authority over PSA violations involving poultry dealers in their relations with all poultry growers, including those who raise pullets or

breeder hens as well as broiler producers. The PSA enforcement loophole for poultry dealers should be closed.

**6. *Bargaining Rights for Contract Farmers:*** Loopholes should be closed in the Agricultural Fair Practices Act of 1967 (AFPA) and processors should be required to bargain in good faith with producer organizations. The AFPA was enacted to ensure that livestock and poultry producers could join associations and market their products collectively without fear of retribution by processors. These goals have not been attained due to loopholes in that Act. Retaliation by processors is commonplace in some sectors. Legislation should be enacted that promotes bargaining rights and prevents processor retaliation.

## **ASSURE ADEQUATE MARKET INFORMATION AND TRANSPARENCY FOR PRODUCERS AND CONSUMERS**

**7. *Livestock Mandatory Price Reporting:*** The Livestock Mandatory Price Reporting Act of 1999 (LMPRA) requires packers, processors, and importers to provide price, contracting, supply and demand information to USDA, which then uses the information to create price reports for livestock producers. Since its implementation, bureaucratic inertia has blocked effective enforcement of the LMPRA and prevented the Act from operating to benefit independent livestock producers. The Government Accountability Office, at the request of Senators Harkin (D-IA) and Grassley (R-IA), has reviewed USDA implementation of the Act. In December 2005, the GAO issued a report documenting lengthy lag times for USDA corrections to missing or incorrect information from packers, and the failure of USDA to inform the public about violations of the Act revealed in USDA audits. The LMPRA was reauthorized in September 2006 without including GAO recommendations to improve the Act. If USDA does not implement these recommendations, Congress should amend the Livestock Mandatory Price Reporting Act in 2007 by incorporating the GAO report recommendations as legislative directives to USDA in implementing the Act.

**8. *Mandatory Country of Origin Labeling:*** Country of origin labeling (COOL) for beef, lamb, fresh fruits, fish and shellfish was passed as a provision of the 2002 Farm Bill. Mandatory COOL for the fish and shellfish commodities was implemented by USDA in April of 2005, but COOL implementation for all other commodities has been successfully stymied by the meatpackers and retailers. Country of origin labeling is a popular measure that allows consumers to determine where their food is produced and also enables U.S. producers to showcase their products for quality and safety. It also limits the ability of global food companies to source farm products from other countries and pass them off as U.S. in origin. Congress should reauthorize COOL to reiterate its benefits to producers and consumers and should provide funding to ensure that USDA undertakes immediate implementation of COOL.

In conclusion, farmers, ranchers, and consumers across the country are asking for these legislative reforms to ensure fair markets and a competitive share for family farmers and ranchers of the \$900 billion dollars that consumers pay into the food and agriculture economy annually. Market reforms remain a key ingredient for rural revitalization and meaningful consumer choice. The legislative reforms summarized above are key to achieving the goals of promoting an economically healthy and diverse agricultural

production sector and providing consumers with healthy, affordable food.

Thank you.

Sincerely,

A Little Taste of Everything  
A Taste of the North Fork (NY)  
Adams County Farmers Union (ND)  
Agricultural Missions, Inc. (NY)  
Agriculture and Land Based Training Association (CA)  
Agriculture of the Middle  
Alabama Contract Poultry Growers Association  
Alabama Sustainable Agriculture Network  
Alliance for a Sustainable Future (PA)  
Alliance for Sustainable Communities (MD)  
Alternative Energy Resources Organization (AERO) -MT  
American Corn Growers Association  
American Society of Agronomy  
Appalachian Crafts (KY)  
Art & Nature Project (NY)  
Beartooth Stock Association (MT)  
Berkshire Co-op Market  
Bird Conservation Network  
Blessed Kateri Tekakwitha Region, Secular Franciscan Order, NYS  
Bronx Greens  
California Dairy Campaign  
California Farmers Union  
California Institute for Rural Studies  
Californians for GE-Free Agriculture  
Campaign for Contract Agriculture Reform  
Campaign for Family Farms and the Environment  
Caney Fork Headwaters Association (TN)  
Catholic Charities Diocese of Sioux City, IA  
Catholic Charities of Chemung /Schuyler Counties (NY)  
Catholic Charities of Kansas City - St. Joseph, Inc.  
Catholic Charities of Louisville, Parish Social Ministry Dept. (KY)  
Catholic Rural Life, Archdiocese of Dubuque, IA  
Cattle Producers of Washington  
Center for Food Safety  
Center for Earth Spirituality and Rural Ministry (MN)  
Center for Popular Research, Education and Policy (NY)  
Center for Rural Affairs  
Central Colorado Cattlemen's Association  
Chemung County Church Women United (NY)  
Chemung County Council of Churches (NY)  
Church Women United of NYS  
CitySeed (CT)  
Community Action Resource Enterprises (OR)

Community Food Security Coalition  
Concerned Citizens of Central Ohio  
The Cornucopia Institute (WI)  
Corson County Farmers Union (SD)  
Court St Joseph #139, Catholic Daughters of the Americas, Corning (NY)  
Court St Joseph #139, Corning/Elmira, Catholic Daughters of the Americas (NY)  
Crop Science Society of America  
Crowley-Kiowa-Lincoln Cattlemen's Association (CO)  
Cumberland Counties for Peace & Justice (TN)  
Dakota Resource Council  
Dakota Rural Action of SD  
Delmarva Poultry Justice Alliance  
Delta Land and Community, Inc.  
Eagle County Cattlemen's Association (CO)  
Endangered Habitats League (CA)  
Environmental Action Committee of West Marin (CA)  
Environmental Coalition of Mississippi  
Family Farm Defenders  
Family Farms for the Future (MO)  
Farm Aid  
Farm Fresh Rhode Island  
FH King Students of Sustainable Agriculture at UW Madison  
First Nations Development Institute  
Florida Organic Growers  
Food Alliance (OR)  
Food and Water Watch  
FoodRoutes Network  
Foodshed Alliance of the Ridge and Valley (NJ)  
Friends of Rural Alabama  
Georgia Organics  
Georgia Poultry Justice Alliance  
Global Exchange  
Government Accountability Project  
GRACE/Sustainable Table  
Grassroots International  
Hahn Natural Foods (PA)  
Harding County Stockgrowers Association (SD)  
Harvest Co-op Market (MA)  
Heartland Center / Office of Peace and Justice for the Diocese of Gary, Indiana  
Hispanic Farmers and Ranchers of America Inc.  
Hispanic Organizations Leadership Alliance  
Horseheads Grange #1118, Chemung City (NY)  
Humane Society of the United States  
Idaho Rural Council  
Illinois Farmers Union  
Illinois Stewardship Alliance  
Independent Beef Association of North Dakota  
Independent Cattlemen of Iowa  
Independent Cattlemen of Nebraska

Independent Cattlemen's Association of Texas, Inc.  
Indiana Campaign for Economic Justice  
Indiana Farmers Union  
Institute for Agriculture & Trade Policy  
Institute for Responsible Technology  
Iowa Citizens for Community Improvement  
Iowa Farmers Union  
Just Food (NY)  
Just Harvest, Pittsburgh  
Kansas Cattlemen's Association  
Kansas City Food Circle  
Kansas Farmers Union  
Kansas Rural Center  
Kerr Center for Sustainable Ag (OK)  
Kit Carson County Cattlemen's Association (CO)  
La C.A.S.A. de Llano (TX)  
Ladies of Charity of Chemung County (NY)  
Land Stewardship Project (MN)  
Little Seed CSA (NY)  
Madera County Cattlemen's Assoc (CA)  
McKenzie City Energies & Taxation Association (ND)  
Merced-Mariposa Cattlemen's Association, (CA)  
Mesa County Cattlemen's Association (CO)  
Michigan Farmers Union  
Midwest Organic and Sustainable Education Service  
Minnesota Farmers Union  
The Minnesota Project  
Mississippi Contract Poultry Growers Association  
Mississippi Livestock Markets Association  
Missouri Farmers Union  
Missouri Rural Crisis Center  
Montana Cattlemen's Association  
Montana Farmers Union  
National Campaign for Sustainable Agriculture  
National Catholic Rural Life Conference  
National Center for Appropriate Technology (NCAT)  
National Family Farm Coalition  
National Farmers Organization  
National Farmers Union  
National Hmong American Farmers, Inc.  
National Latino Farmers & Ranchers Trade Association  
National Organic Coalition  
National Poultry Justice Alliance  
Nebraska Farmers Union  
Network for Environmental & Economic Responsibility  
Nevada Live Stock Association  
New England Small Farm Institute (NESFI)  
New York Beef Producers Association Southern Tier Region  
NY Sustainable Agriculture Working Group

Nojoqui Ranch Produce (CA)  
North Carolina Contract Poultry Growers Association  
North Dakota Farmers Union  
Northeast Organic Dairy Producers Alliance  
Northeast Organic Farming Assoc -MA  
Northeast Organic Farming Assoc -NY  
Northeast Organic Farming Assoc-CT  
Northeast Organic Farming Assoc-VT  
Northern Plains Sustainable Agriculture Society  
Northern Plains Resource Coun (MT)  
NYS Safe Food Coalition  
Ohio Environmental Council  
Ohio Farmers Union  
Oregon Livestock Producer Association  
Oregon Tilth  
Organic Consumers Association  
Organic Seed Alliance (WA)  
Organization for Competitive Markets  
The Partnership for Earth Spirituality (NM)  
Past Regents Club, Diocese of Rochester (NY)  
PCC Natural Markets (WA)  
PCC Farmland Trust (WA)  
Pennsylvania Association for Sustainable Agriculture  
Pennsylvania Farmers Union  
Perkins County Farmers Union (South Dakota)  
Platte County Farm Bureau (NE)  
Powder River Basin Resource Council (WY)  
Producers Livestock  
Provender Alliance (OR)  
Putting Down Roots (PA)  
Rainbow Natural Grocery (MS)  
R-CALF United Stockgrowers of America  
Red Tomato (MA)  
Regional Farm and Food Project (NY)  
Rochester Farm Connection (NY)  
Rochester Roots (NY)  
Rocky Mountain Farmers Union  
Rural Advancement Foundation International-USA (RAFI-USA)  
Rural Coalition/Coalición Rural  
Rural Life Committee of the North Dakota Conference of Churches  
Selene Whole Foods Co-op (PA)  
Sevananda Natural Foods Market  
Sierra Club Agriculture Committee  
Social Concerns Office, Diocese of Jefferson City  
Social Concerns/Rural Life Department, Catholic Charities, Diocese of Sioux City, IA  
Soil Association  
Soil Science Society of America  
South Dakota District IV Farmers Union  
South Dakota Farmers Union

South Dakota Stockgrowers Association  
Southern Colorado Livestock Association  
Southern Research & Development Corp. (LA)  
Southern Sustainable Ag Working Group  
Spokane County Cattlemen's Association (WA)  
St John the Baptist Fraternity, Secular Franciscan Order, Elmira NY  
Stevens County Cattlemen's Association (WA)  
Sustainable Agriculture Coalition  
Temple Beth El of Flint, Michigan  
Texas Mexico Border Coalition Community Based Organization  
Tilth Producers of Washington  
United Hmong Association  
The Urban Nutrition Initiative (PA)  
Utah Farmers Union  
Valley Stewardship Network (WI)  
Virginia Association for Biological Farming  
Washington Cattlemen's Association  
Washington County Stockmen's Assoc (CO)  
WA Sustainable Food & Farming Network  
West Carroll Cattleman Assoc. (LA)  
Western Organizations of Resource Councils  
Wisconsin Farmers Union