

By Mr. MCCONNELL (for Mr. ENZI (for himself, Mr. DORGAN, Mr. GRASSLEY, Mr. THOMAS, and Mr. CONRAD)):

S. 1017. A bill to amend the Packers and Stockyards Act, 1921, to prohibit the use of certain anti-competitive forward contracts; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. ENZI. Mr. President, Wyoming's late, great country music star Chris LeDoux has a song Some Things Never Change. I wish that were the case for Wyoming's hardworking livestock producers. As production agriculture has evolved and improved in the United States, producers in Wyoming continue to be held hostage to a regulatory nightmare and bound by the chains of unfair and manipulative marketing contracts. It is this regulatory nightmare that must be addressed. That is why I am reintroducing legislation today to break the chains and require livestock contracts to contain a fixed base price and be traded in open, public markets.

From Kaycee to Kansas City, captive supply is destroying the health of our family ranches. Many of these small businesses have operated for generations. Unfortunately, a handshake and an honest day's labor cannot compete with deceptive business practices. Captive supply is a business practice not well known to those outside of the industry, but a practice that has had a tremendous impact on the ranchers of the West.

I go back to Wyoming almost every weekend. Because Wyoming is such a large State, my travels take me to a different section of the State on each trip. Throughout Wyoming I hear the same concerns from my constituents. They are all clamoring for attention and relief so they can continue the work that so many in their families have done for so many years. These concerns are not unique to Wyoming. Captive supply is an industry-wide problem.

So what is captive supply--and how is it harming our Nation's ranchers to such an extent? Simply put, captive supply refers to the ownership by meat packers of cattle or the contracts they issue to purchase livestock. It is done to ensure that packers will always have a consistent supply of livestock on the kill floor which keeps slaughterhouses in perpetual operation.

The original goal of captive supply makes good business sense. All businesses want to maintain a steady supply of animals to ensure a constant stream of production and control costs.

But captive supply allows packers to go beyond good organization and business performance--to market manipulation--and this is where the problem lies.

The packing industry is highly concentrated. Using captive supply and the market power of concentration, packers can purposefully drive down the prices by refusing to buy in the open market. This deflates all livestock prices and limits the market access of producers that have not aligned with specific packers.

We made an attempt to address the problem of captive supply on the Senate floor during the 2002 Farm Bill debate, but the amendment to ban packer ownership of livestock more than 14 days before slaughter did not survive the conference committee deliberation. I look forward to working with my colleagues on the reauthorization of the Farm Bill this year. I will press this issue during the drafting of the Competition Title of the Farm Bill with my congressional colleagues.

The problems caused by captive supply are alive and well, just as Wyoming producers have testified to me in the phone calls, letters, faxes and emails I receive from them. Although I supported the packer ban and have cosponsored it again this Congress, I do not think that banning packer ownership of livestock will solve the entire captive supply problem. Packers are using numerous methods beyond direct ownership to control cattle and other livestock.

Currently, packers maintain captive supply through various means including direct ownership, forward contracts, and marketing agreements. The difference between the three is subtle, so let me take a moment to describe how they differ. Direct ownership refers to livestock owned by the packer. In forward contracts, producers agree to the delivery of cattle one week or more before slaughter with the price determined before slaughter. Forward contracts are typically fixed, meaning the base price is set.

As with forward contracts, marketing agreements also call for the delivery of livestock more than one week before slaughter, but the price is determined at or after slaughter. A

formula pricing method is commonly used for cattle sold under marketing agreements. In formula pricing, instead of a fixed base price, an external reference price, such as the average price paid for cattle at a certain packing plant during one week, is used to determine the base price of the cattle. I find this very disturbing because the packer has the ability to manipulate the weekly average at a packing plant by refusing to buy in the open market. Unfortunately, marketing agreements and formula pricing are much more common than forward contracts.

Livestock producers have the same questions when they lose to the market pressures applied by captive supply. Captive supply gives packers the ability to discriminate against some producers. And those producers pay for it with their bottom line. At the same time, packers use contracts and marketing agreements to give privileged access and premiums to other producers regardless of the quality of their product. These uses of captive supply should be illegal. In fact, they are.

Section 202 of the Packers and Stockyards Act states in (3) (a) and (b):

“It shall be unlawful for any packer with respect to livestock to:

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

“(b) Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.”

Packers that practice price discrimination toward some producers and provide undue preferences to other producers are clearly in violation of the

[Page: S4059] GPO's PDF

law. But this law is not being enforced. So what we are left with are unenforced laws or no laws at all to protect the independent producer. The Packers and Stockyards Act is not being enforced and the cost of enforcing the law on a case-by-case basis in the courts is expensive and time-consuming.

A law is not worth the paper it is printed on if it is not enforced. The posted speed limit is not a suggestion. Our law enforcement officers enforce the law when motorists fail to heed the posted sign. This section of the Packers and Stockyards Act is like a sign on the road of commerce that no one is paying attention to because the police are busy doing something else. The bill I am introducing today is not just another sign on the road. It is a speed bump. It does not just warn cars to go slower; it makes it much more difficult for them to speed.

My bill does two things to create the speed bump. It requires that livestock producers have a fixed base price in their contracts. It also puts these contracts up for bid in the open market where they belong.

Under this bill, forward contracts and marketing agreements must contain a fixed base price on the day the contract is signed. This prevents packers from manipulating the base price after the point of sale. You may hear allegations that this bill ends quality-driven production, but it does not prevent adjustments to the base price after slaughter for quality, grade or other factors outside packer control. It prevents packers from changing the base price based on factors that they do control. Contracts that are based on the futures market are also exempted from the bill's requirements.

In an open market, buyers and sellers would have the opportunity to bid against each other for contracts and could witness bids that are made and accepted. Whether they take the opportunity to bid or not is their choice, the key here is that they have access to do so.

My bill also limits the size of contracts to the rough equivalent of a load of livestock, meaning 40 cattle or 30 swine. It does not limit the number of contracts that can be offered by an individual. This key portion prevents small and medium-sized livestock producers, like those found in Wyoming, from being shut out of deals that contain thousands of livestock per contract.

Requiring a firm base price and an open and transparent market ends the potential for price discrimination, price manipulation and undue preferences. These are not the only benefits of my bill. It also preserves the very useful risk management tool that contracts provide to livestock producers. Contracts help producers plan and prepare for the future. My bill makes contracts and marketing agreements an even better risk management tool because it solidifies the base price for the producer. Once the agreement is made, a producer can have confidence on shipping day in his ability to feed his family during the next year because he will know in advance how much he can expect to receive for his livestock.

This bill also encourages electronic trading. An open and public market would function much like the stock market, where insider trading is prohibited. The stock market provides a solid example of how electronic livestock trading can work to the benefit of everyone involved. For example, price discovery in an open and electronic market is automatic.

Captive supply is still weighing on the minds and hurting the pocketbooks of ranchers in Wyoming and across the United States. Wyoming ranchers encourage me to keep up the good fight on this issue on every trip I make to my home state. The economic soul of Wyoming is built on the foundation of small towns and small businesses. All livestock producers, even small and medium-sized ones, should have a fair chance to compete that allows them to get the best price possible for their product. We must do everything we can to keep our small producers in business.

My bill removes one of the largest obstructions preventing livestock producers from competing--formula-priced contracts. I ask my colleagues to assist me in giving their constituents and mine the chance to perform on a level playing field.

While Some Things Never Change, it is time for a sea change in the area of captive supply.