

November 6, 2017

President Donald Trump  
1600 Pennsylvania Ave., NW  
1<sup>st</sup> Floor, West Wing  
Washington, DC 20500

Dear President Trump,

We, the undersigned organizations, respectfully request you take immediate action to protect America's independent family farmers and ranchers from the prevalent predatory and retaliatory actions of foreign and multi-national corporations.

On October 17, 2017, U.S. Secretary of Agriculture Sonny Perdue announced that he would withdraw two of the three rules collectively known as the Farmer Fair Practices Act, which would have restored the intent of the Packers & Stockyards Act (P&S Act) of 1921.<sup>1</sup> While these rules were issued in 2016 under the prior administration, their development has been an ongoing process led by farmers and ranchers since 2010. The prior administration simply did not get the job done. You, Mr. President, have the opportunity to make the difference in the future of rural America and preserve America's family farmers and ranchers.

In withdrawing the Interim Final Rule, and announcing he would take no further action on the Unfair Practices and Undue Preferences in Violation of P&S Act, Secretary Perdue stated, "The initial Packers and Stockyards Act indicated that it should help in facilitating competition, not necessarily one-on-one litigation."<sup>2</sup> This is wrong and an attempt to erase nearly 100 years of USDA interpretation and understanding of the P&S Act. Further, these actions ignore that leading authorities acknowledged that the intent and purpose of the P&S Act is not only to protect the market but also individual farmers from unfair, predatory and retaliatory practices.

Unlike the intent of the Sherman and Clayton anti-monopoly statutes, the original intent of the P&S Act of 1921 was to protect individual producers against the heavy hand of large corporations. It was enacted in response to a 1919 Federal Trade Commission report outlining concerns that the "Big Five" large meat packers, Swift & Company, Armour & Company, Cudahy Packing Company, Wilson & Company, and Morris & Company, were engaging in anticompetitive practices that harmed individual producers and consumers.<sup>3</sup> The USDA has

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<sup>1</sup> Interim Final Rule; Farmer Fair Practices Act; Scope of Section 202(a) and (b) of Packers and Stockyards Act (202(a)(b)); Docket No. GIPSA\_FRDOC\_0001-0315 (202(a)(b) and the Farmer Fair Practices Act; Unfair Practices and Undue Preferences in Violation of Packers and Stockyards Act; Docket No. GIPSA\_FRDOC\_0001-0316 (UPUPVP&S Act).

<sup>2</sup> Zimmerman, Cindy. "GIPSA Rules Withdrawn by Administration." *AgWired*. 17 October 2017. <http://agwired.com/2017/10/17/gipsa-rules-withdrawn-by-administration/>. Accessed October 2017.

<sup>3</sup> 66th Congress HOUSE OF REPRESENTATIVES DOCUMENT 2nd. Session No. 751 ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION, 1919.

agreed, and it has been the longstanding position of USDA that no harm to the market needs to be shown in a P&S Act complaint.<sup>4</sup>

In the Federal Register published document, “Scope of Sections 202(a) and (b) of the Packers and Stockyards Act,” GIPSA clearly stated:

“As we explained in the proposed rule, the longstanding agency position that, in some cases, a violation of section 202(a) and (b) can be proven without proof of likelihood of competitive injury is consistent with the language and structure of the P&S Act, as well as its legislative history and purposes.”<sup>5</sup>

Further, in their amicus brief in the case of *London v. Fieldale Farms Corp.*, 410 F.3d1295, (11<sup>th</sup> Cir.2005), USDA clearly argued and established the Secretary’s interpretation of the P&S Act that the purpose and the plain language of the P&S Act is that in order to prove that any practice is ‘unfair’ under § 202(a), it is not necessary to prove predatory intent, competitive injury, or likelihood of injury.

Secretary Perdue’s decision ignores all previous USDA Secretaries’ interpretation of the intent and purpose of P&S Act and is releasing the abusive market power of foreign corporations and foreign countries onto family farmers and consumers alike. We call on you, by executive order, to do what others have failed to do and are unwilling to do: return justice to the marketplace by implementing the Interim Final Rule; Farmer Fair Practices Act; Scope of Section 202(a) and (b) of Packers and Stockyards Act (202(a)(b); Docket No. GIPSA\_FRDOC\_0001-0315 (202(a)(b) and the Farmer Fair Practices Act; Unfair Practices and Undue Preferences in Violation of Packers and Stockyards Act; Docket No. GIPSA\_FRDOC\_0001-0316 (UPUPVP&S Act).

We remain hopeful you and your administration can take these rules across the finish line on behalf of America’s family farmers, our rural communities and consumers.

Thank you for your consideration,

National Farmers Union  
Organization for Competitive Markets

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<sup>4</sup> The National Agricultural Law Center. “The Packers and Stockyards Act: An Overview.” Available at <http://nationalaglawcenter.org/overview/packers-and-stockyards/>. Accessed October 2017.

<sup>5</sup> United States Government. Federal Register. “Scope of Sections 202(a) and (b) of the Packers and Stockyards Act.” Available at: <https://www.federalregister.gov/documents/2016/12/20/2016-30424/scope-of-sections-202a-and-b-of-the-packers-and-stockyards-act>. Accessed October 2017.