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**REPORT OF THE
COMPTROLLER GENERAL
OF THE UNITED STATES**



LM102427

**Marketing Meat: Are
There Any Impediments
To Free Trade?**

**Department of Agriculture and
Other Federal Agencies**

Union/management agreements in some cities, mainly in the Midwest, restricted the form or hours in which certain meats could be marketed. The use of such restrictions appeared to be declining and they were estimated to affect less than 10 percent of the population.

More effective actions are needed in dealing with commercial bribery in the meat industry which, according to the Department of Agriculture, is widespread and limits competition.

Several pending court suits filed by cattle producers allege manipulation and fixing of meat prices by certain slaughterhouses, principal national food chains, and a private meatprice reporting service. The suits were still pending as of April 1977.

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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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John Melcher
United States Senate

Alvin Baldus,
Berkley Bedell,
Glenn English,
Charles E. Grassley,
Jack Hightower,
James P. Johnson, and
Charles Thone
House of Representatives

In March 1976 you requested that we investigate impediments that may exist to selling processed, plant-packaged beef, commonly referred to as boxed or fabricated beef, in urban markets. You also requested that we investigate any other impediments to the sale of meat--their nature, legality, and frequency--wherever they exist.

We reviewed applicable laws, regulations, and records and discussed various meat marketing practices with Department of Agriculture officials, including officials of the Packers and Stockyards Administration, Economic Research Service, Agricultural Research Service, Agricultural Marketing Service, and Animal and Plant Health Inspection Service. We also interviewed officials or representatives of the Department of Justice, Federal Trade Commission, Internal Revenue Service, Amalgamated Meat Cutters and Butcher Workmen of North America at the union's international headquarters in Chicago and at union locals in 13 cities, 33 meat packing firms, 80 retail food stores or supermarket chains, various trade associations, and two private market information services--the National Provisioner and "The Meat Sheet."

Our findings are summarized below and are discussed in more detail in appendixes I, II, and III.

UNION/MANAGEMENT AGREEMENTS
RELATING TO HANDLING MEAT

Various union/management collective bargaining agreements restricted the sale of various forms of fabricated beef (e.g., primal or subprimal cuts) by meat packers to

merchants in several cities, mainly in the Midwest. Some also restricted the hours during which retail stores could sell meat to consumers. Most of the restrictions generally applied also to other meats, such as lamb and veal. The various restrictions appeared to be on the decline; they were estimated by some meat packers and grocery officials to affect less than 10 percent of the population. The Department of Justice was considering whether the restrictions possibly violate antitrust statutes.

Officials of the Amalgamated Meat Cutters and Butcher Workmen of North America said that the union had a direct responsibility to protect workers against the disruptive impacts of automation. For this purpose, the union had worked out contract provisions protecting wage rates, assuring job security wherever possible, and allowing for the transfer of workers from old to new operations without loss of rights and benefits.

Quality, sanitation, and more efficient labor use were the predominant reasons cited by merchants who favored use of the fabricated meats. They had virtually no data to show its economic benefits. However, economic research by the Department of Agriculture and two universities indicated that cost savings could be achieved when a supermarket chain prepared retail cuts from carcasses at an urban central fabricating facility and distributed the meat to its stores from that point. These studies indicated that sub-primal cuts obtained by retail stores, either from the packer or a central fabricating facility operated by a supermarket chain, also had economic advantages. One of the studies showed that the unit cost of packer-fabricated meat dropped as the distance for transportation increased.

Available information indicated that sanitation was not a barrier to handling and merchandising fabricated meats. Nevertheless, such meats, although used extensively and considered to be safe, have been and are being investigated to further study potential health hazards.

COMMERCIAL BRIBERY IN THE MEAT INDUSTRY

The Packers and Stockyards Administration is the Federal agency charged with investigating meat transactions to ensure that prices are established by fair and competitive marketing practices. It has reported to the Congress

that commercial bribery is widespread in the meat industry and, when it occurs, competition is limited and consumers are likely to pay higher prices for meat.

During the 12-year period, 1964 through 1975, the agency issued formal complaints for bribery-related offenses against 21 different meat packers. Until recently, its sanctions had been limited to issuing a cease and desist order against the packer. This action may be supplemented with a fine of up to \$10,000 as a result of legislation enacted in September 1976. The agency's follow-up procedures, however, did not assure that packers were complying with cease and desist orders and needed to be strengthened.

In bribery-related cases, the Department of Agriculture may also request the Department of Justice to prosecute individuals involved in preparing false records--a felony providing for possible imprisonment up to 3 years and/or a fine of \$1,000 to \$5,000. According to Justice Department officials, this is seldom successful because false records cases lack prosecutorial appeal and would likely result in no more punishment than the cease and desist order.

Currently, persons paying, handling, or accepting bribes are not specifically violating Federal criminal statutes. However, where State law prohibits commercial bribery, a person may violate Federal law if traveling in or using interstate commerce facilities to further the unlawful activity. Also, those who do not report bribes as income are subject to prosecution for income tax evasion.

Packers and Stockyards Administration employees have referred a few possible tax evasion cases informally to the Internal Revenue Service; however, they did not have a systematic procedure for making or following up on such referrals. Moreover, if a case is referred, there is no assurance that it will be prosecuted or, if it is prosecuted and convictions are obtained, that the punishment will be severe enough to deter further bribery acts. The agency needed to implement an effective agency-wide referral system so that all possible legal action may be taken. Also, to the extent permitted by law, the Internal Revenue Service should advise the Administration of the disposition of its referrals.

Some U.S. attorneys we interviewed believed that a more effective way to curtail bribery activities would be to make commercial bribery a Federal crime and to provide for minimum prison sentences for all parties to the bribe. House bill 2311, now before the Congress, would make commercial bribery a Federal crime. However, it does not provide for minimum prison sentences.

In this regard, the Department of Justice said that it did not favor establishing mandatory minimum sentences for white collar crimes. It said that experience indicated that such sentences do not increase deterrence. However, Justice said it was considering proposals for imposing sentences, such as Senate bill 181 now before the Congress.

Recommendations

We are recommending to the Secretary of Agriculture that:

- To provide increased assurance of compliance with a cease and desist order, the Administration's follow-up procedure include a timely assessment of the packer's planned corrective action.
- The Administration formalize procedures for referring bribery cases to the Internal Revenue Service, and for documenting such referrals and their final disposition.

We are also recommending that:

- The Secretary of the Treasury have the Internal Revenue Service advise the Administration, to the extent permitted by law, of (1) the action taken on bribery cases referred by the Administration and (2) bribery matters involving meat packing firms that come to its attention in the course of income tax investigations.
- If commercial bribery is made a Federal crime, the Secretary of the Treasury have the Service inform the Secretary of Agriculture of any alleged violations of the law involving meat packing firms which may come to its attention in the course of income tax investigations when the information is

obtained from sources other than the taxpayer; the taxpayer's return, books, or records; or the taxpayer's representative.

Agency comments

The Packers and Stockyards Administration concurred in our recommendations and outlined the actions it took, effective March 23, 1977, to implement them. At the time the final report was prepared, the Secretary of the Treasury had not commented on our recommendations involving the Internal Revenue Service.

ALLEGED FIXING OF MEAT PRICES

Several pending civil suits have been filed in U.S. district courts by cattle producers alleging the manipulation and fixing of meat prices by certain slaughterhouses and the principal U.S. food chains. Among other things, the plaintiffs allege that a private publication--the primary source of information for establishing wholesale meat prices--is being manipulated to artificially (1) depress prices paid to producers and (2) increase prices paid to meat packers and, hence, by consumers. The plaintiffs contend that these actions violate antitrust statutes. As of April 1977, the cases had not gone to trial.

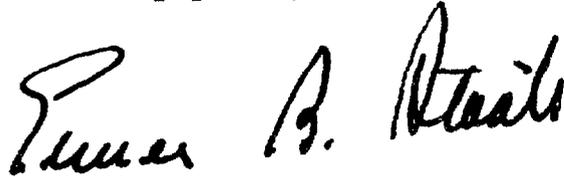
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As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report. Accordingly, copies of the report will be released in the near future to the above Committees and to the Secretaries of Agriculture and the Treasury so that the requirement of section 236 can be set in motion. When released, the report will also be sent to other interested Committees and Members of Congress; the

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Director, Office of Management and Budget; the Attorney General; and other parties.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James B. Stewart". The signature is written in a cursive style with a large initial "J" and "S".

Comptroller General
of the United States

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ABBREVIATIONS

BLS	Bureau of Labor Statistics
FTC	Federal Trade Commission
IRS	Internal Revenue Service
PSA	Packers and Stockyards Administration
USDA	United States Department of Agriculture

UNION/MANAGEMENT AGREEMENTSRELATING TO HANDLING MEAT

Union/management collective bargaining agreements in some urban areas, mostly in the Midwest, contained clauses limiting the form in which meat--particularly beef, veal, and lamb--could be procured, handled, and sold at the retail level. Although the restrictions varied, merchants in two urban areas--Chicago and St. Louis--were required to take delivery of carcass meat and let retail store butchers perform specified cutting operations which could otherwise be done at central fabricating facilities or at meat packing plants using mass production techniques. In certain other areas, some fabricating operations were allowed before the meat reached the retail store. In addition, union/management agreements in two urban areas--Chicago and Cleveland--restricted times during which certain meats could be sold. The trend in recent years has been toward fewer restrictions, and according to some estimates, less than 10 percent of U.S. consumers are affected by the restrictions.

Merchants in areas not subject to the restrictions cited improved product quality, sanitation, and more efficient labor use as the main reasons for discontinuing delivery of carcasses to retail stores and shifting to packer-fabricated or centrally fabricated meat. Also, some studies showed cost advantages in using central fabricating facilities rather than having butchers cut carcasses at individual stores. Some merchants, having used fabricated meat on a test basis, cited inconsistent quality, cost, and shrinkage as disadvantages.

National and some local officials of the Amalgamated Meat Cutters and Butcher Workmen of North America told us that the restrictions were necessary to (1) protect the jobs of union members and (2) prevent possible monopoly by large meat packers which would raise prices to consumers.

Food industry officials in some localities contended that the restrictions constituted a restraint of trade. The Department of Justice was considering whether these restrictions possibly violate antitrust statutes.

MEAT PROCESSING OPERATIONS

Traditionally, cattle have been slaughtered near the urban centers where the meat was to be used; cut into either halves, quarters, or primals (e.g., chuck, rib, loin, round); and delivered to individual grocery stores or meat markets in the naked form, or swinging carcass. There, the butchers would cut the halves, quarters, or primals into smaller cuts, which eventually became retail cuts.

In recent years slaughtering operations have tended to shift to the cattle-feeding regions of the Midwest and Southern Plains. Also, new packers have entered the industry and established processing facilities which break the carcasses into subprimal cuts, for example, by splitting a primal round into top round, bottom round, and sirloin tip. (See chart on p. 3.) These cuts are generally sealed in vacuum-type bags and placed in a box for shipment to the retail store. This type of meat is referred to by some as "boxed beef." Other meats, such as lamb and veal, are also marketed in this manner. For purposes of this report, we will use the term "fabricated meat" to refer to meat processed in this manner. Pork was not included in our analysis because it has traditionally been fabricated by the packer.

Surveys in 1972 and 1974 of large and medium size independent grocery stores and chains representing about one-third of U.S. supermarket sales disclosed that 51 and 68 percent, respectively, of the fresh beef arrived at the retail store as fabricated primal and subprimal cuts. The studies, made by a food industry consultant, predicted that the percentage would increase to 79 percent by 1980.

BEEF CHART

RETAIL CUTS OF BEEF — WHERE THEY COME FROM AND HOW TO COOK THEM

<p>CHUCK Brase Cook in Liquid</p>	<p>RIB Roast Broil Panbroil Panfry</p>	<p>SHORT LOIN Roast Broil Panbroil Panfry</p>	<p>SIRLOIN Broil Panbroil Panfry</p>	<p>ROUND Brase Cook in Liquid</p>
<p>FORE SHANK Brase Cook in Liquid</p>	<p>BRISKET Brase Cook in Liquid</p>	<p>SHORT PLATE Brase Cook in Liquid</p>	<p>FLANK Brase Cook in Liquid</p>	<p>TIP Brase</p>

*May be Roasted Broiled Panbroiled or Panfried from high quality beef
**May be Roasted (Baked) Broiled Panbroiled or Panfried

This chart approved by
National Live Stock and Meat Board

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UNION/MANAGEMENT AGREEMENTS COVERING
THE FORM IN WHICH MEAT CAN BE PURCHASED

Local affiliates of the Amalgamated Meat Cutters and Butcher Workmen of North America had agreements with many meat retailers across the country specifying negotiated limits within which the retailers could purchase meat and operate their facilities. (See table 1, pp. 16 and 17, which shows the cities or areas we reviewed. They include those which packers, grocers, and union officials identified as having restrictive union/management agreements or which we selected to provide wide geographic coverage.) In most cases the restrictions applied to lamb and veal as well as beef. Further, some contracts restricted handling of other items, such as precut chickens, or "offal" items, such as prepackaged sweetbreads and liver. Also, the restrictions applied only to meat sold to grocers and meat markets and not to hotels, restaurants, and institutions.

The most restrictive clauses covered the Chicago, St. Louis, and Kansas City areas; although six other areas, mostly in the Midwest, had certain prohibitions on the use of fabricated meat. The restrictions were not uniform; most allowed some fabricated items to be marketed. One national food chain estimated that the restrictions affected about 7 percent of the U.S. consumers it served. Examples of restrictive clauses are as follows.

1. The St. Louis contract states:

"* * * all fresh or frozen meat * * *
must be cut, weighed, sliced, and wrapped on the premises. It is expressly understood that to do otherwise will be a violation of this Agreement except * * * items that were prepared and packed off the premises prior to October 2, 1950 * * *."

In practice this clause prohibits obtaining fabricated meat from packers (although naked and unboxed primals are allowed), and prevents the establishment of central facilities to fabricate meat for distribution to individual stores. Chicago operates essentially the same as St. Louis even though its contract is worded somewhat differently.

2. The Minneapolis contract, which is somewhat less restrictive, prohibits purchase of fabricated meat from an outside source (except for three specials a year) and allows only specified primal cuts listed in an appendix to the contract. A central fabricating facility is allowed, subject to negotiation, but union members must do the work. The Minneapolis contract states:

"* * * Any work presently performed by retail employees in the stores covered by this agreement must be done by members of Local 653 only and if transferred or done by the Employer elsewhere within the area of jurisdiction of this Agreement, the Agreement shall cover such work to the extent of recognition but wages and other conditions shall be negotiated."

* * * * *

"* * * sir butts may be brought from outside sources providing the cutting * * * is done by members of the bargaining unit * * *."

"* * * Effective March 1, 1974, boxed ready beef shall be allowed in accordance with APPENDIX B * * *."

"* * * In addition, sub-primal cuts may be used for purposes of special sales up to three (3) times each year for no longer than one (1) week at any time. * * *"

"Journeyman, meat helpers and apprentices cannot be laid-off or lose hours as a result of the sub-primal cut special. The Union will be prenotified prior to the use of the sub-primal special."

3. Another even less restrictive variation is the Northern California contract which states:

"* * * all fresh meat shall be cut, prepared and fabricated on the premises, * * * however, the carcasses may be processed up to and

including the maximum reductions listed and described in Exhibit 'A' and may be delivered to the premises in that form but all further processing of these parts shall be performed on the premises."

Because Exhibit "A" is an extensive listing, this clause, in practice, allows nearly all types of fabricated meat to be brought in. This contract also contains a "New Methods" clause which provides that, if the employer intends to initiate a major change in the content of any job presently covered, he must notify the union, and the matter will be negotiated.

According to union and food industry officials, there has been a recent trend toward liberalizing the restrictive clauses. For example, the March 1974 Minneapolis contract introduced the clause that allowed specified types of boxed-ready beef. This liberalization, if continued, could increase the marketing of fabricated meat.

Impact on meat packers

Many meat packers handle both carcass and fabricated meat. The impact of the restrictions is greater on those packers who have committed their operations to the sale of fabricated meats. Although most packers considered the restrictions to be impediments to selling meat, some minimized the seriousness, saying that they could still sell meat in those cities with restrictions. Some packer officials told us that, if the restrictions were lifted, they would handle meat in those cities in the form now restricted. One packer said that the markets which restrict fabricated meat were inconsequential in that they represented less than 10 percent of the total market.

Impact on retail grocers

Retail grocery chains can usually establish a central fabricating facility (see table 1) where they break the carcasses into smaller cuts for distribution to their individual stores.

The extent of breaking varies between cities. For example, in St. Louis, the union/management agreement does not

allow central fabricating unless it was done before October 2, 1950. In Chicago, the union/management agreement states that all cutting, preparing, fabricating, and packaging must be done on store premises or immediately adjacent thereto. In other cities, such as Kansas City, Milwaukee, and Omaha, central fabricating facilities can be established subject to negotiation of working conditions and wages. Generally, there can be no employee displacement, and the local union must have jurisdiction.

Almost all central fabricating facilities currently operating in the restricted cities do not cut meat into retail cuts. With few exceptions, reducing meat to retail cuts is still done at the store level. Any change which would allow it to be done at another level would be subject to negotiation between the chain and the union.

Most grocery officials in Chicago and Kansas City said that the restrictions imposed by the union/management agreements were impediments to marketing meat; however, grocers contacted in other cities did not express the same opinion. Many grocery officials believe that they should be able to choose the form and manner in which they get their meat so that they can determine the most economical method for their operation. Most grocery officials said that they would like to test fabricated meat if the restrictions were lifted; others said they would like to supplement their current supply of carcass meat with fabricated meat. Others said they had gone back to carcasses after using fabricated meat because the fabricated meat was of inconsistent quality, had greater shrinkage, and cost more.

Although food chains are generally allowed to set up central fabricating facilities, many stores cannot afford them. Some grocery officials said they were at a competitive disadvantage if another chain in the same market had a central fabricating facility while they were restricted to using carcass meat. Most grocery officials said that the use of fabricated meat would not necessarily cut their stores' labor force.

CITED ADVANTAGES/DISADVANTAGES OF FABRICATED MEAT

Officials of some grocery stores cited various advantages of fabricated meat over carcass meat. These included

- better sanitation,
- more efficient labor use,
- more efficient inventory control,
- less shrinkage due to dehydration and trim,
- improved labor scheduling,
- less costly store construction because (1) no overhead rails are needed to move bulky carcasses and (2) less cooler space is required,
- easier handling,
- lower transportation costs because less fat and bone are shipped,
- longer shelf life, and
- better product availability and selection.

Six merchants we contacted, who had tested the use of fabricated meat, cited (1) inconsistent quality (two cases), (2) cost (four cases), and (3) shrinkage (one case) as disadvantages. In three cases, the union/management agreements had restricted the type of fabricated meat or number of stores in the tests. In four cases, the tests were conducted several years ago, and improvements in product packaging have since occurred.

The advantages cited most often by grocery store officials were (1) improved product quality, (2) sanitation, and (3) more efficient labor use. Data supporting cost advantages of fabricated meat over carcass meat was virtually nonexistent, although some studies have been made in this area and in the area of sanitation. Grocery officials said that each store must be considered individually in determining the best method.

Sanitation

Most grocers and packers cited improved sanitation as one of the main advantages of fabricated meat because the meat is usually vacuum packaged at the packer or central

fabricating facility and is not subject to outside exposure until opened. In addition, most meat packer facilities are inspected by the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service.

Studies by the University of Missouri 1/ and Texas A&M University 2/ concluded that vacuum packaging inhibited the growth of spoilage bacteria thereby extending the product's shelf life. These and other studies emphasize that sanitation is only as good as the conditions under which the meat is vacuum packaged and depends on proper temperature control and handling between the packer and the store. Some contend that pathogens (disease-producing organisms) develop in vacuum-packaged meats. However, others state that this possibility is remote and that, before pathogens would reach a dangerous level, the meat would have visible signs of spoilage and possess a distinctive odor. Nevertheless, vacuum-packaged meats, although used extensively and considered to be safe, have been and are being investigated to further study potential health hazards.

Most grocery officials said that fabricated meat was more sanitary than carcass meat, and no sanitation or contamination problems were identified. The Animal and Plant Health Inspection Service has not opposed fabricated meat.

Cost data

One packer had developed data which showed savings of \$11 to \$45 per carcass through use of its form of fabricated meat over carcasses. Other packers and grocery officials told us that they had not developed data showing cost advantages or disadvantages.

1/ Daniel Minks and William C. Stringer, "The Influence of Aging Beef in Vacuum," Department of Food Science and Nutrition, University of Missouri.

2/ R.H. Rea, G.C. Smith, and Z.L. Carpenter, "Protective Packaging Materials for Fresh Shipments," Texas Agricultural Experiment Station, Department of Animal Science, and K.E. Hoke, Transportation and Facilities Research Division, Agricultural Research Service, USDA.

the least expensive system occurred when retail cuts were centrally fabricated from carcass quarters. Some other systems' costs over the least expensive were as follows.

	<u>Range per retail pound</u>
	(cents)
Carcasses centrally fabricated to subprimals	3.8 to 5.6
Carcasses centrally fabricated to primals	4.3 to 6.0
Carcasses delivered to store by packer	4.5 to 6.0
Packer-boxed primals delivered direct to store:	
Round-trip delivery of 250 miles	5.3 to 6.8
Round-trip delivery of 2,000 miles	3.8 to 5.3

The study did not determine a cost range for packer-boxed subprimals delivered to the store. Except for the least expensive system, the study did not show a conclusive advantage for other systems over direct carcass delivery to retail stores. The study showed, however, that the unit cost of packer-fabricated meats dropped as the transportation distance increased. Thus there would appear to be a cost advantage to purchasing packer-fabricated meats as opposed to carcasses when the transportation distance exceeded an optimum point from packer to retail store.

Earlier studies also concluded that central carcass fabrication into retail cuts before distribution to retail stores was the most feasible and/or economical beef distribution method.

CONTRACT CLAUSES RESTRICTING HOURS OF OPERATION

Chicago and Cleveland area union/management contract clauses in effect at the time of our review restricted hours during which meats could be sold. The Chicago area contract specified that the meat market in a grocery store would only operate from

"* * * 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above."

Chicago grocery officials said that this clause impeded the marketing of certain meats in the Chicago area. They said that, because of the restriction, many customers bought fish, chicken, and other non-red meat during the restricted hours because they could not buy fresh beef, pork, lamb, and veal.

The restriction was lifted in April 1977.

The Cleveland contract, covering Cuyahoga County, restricted the operating hours of entire stores. The contract states:

"Regular workdays in Cuyahoga County shall be as follows:

Monday through Thursday - 9:00 a.m.
to 6:00 p.m.

Friday and Saturday - 8:00 a.m. to
6:00 p.m."

A Cleveland grocery official told us that this restriction served as an impediment to marketing meat, as well as all grocery products, because the store hours were condensed; therefore, customer service time was reduced.

FEDERAL ACTION ON RESTRICTIVE PRACTICES

Food industry officials in some localities said that the union/management agreements (1) restricted their freedom in choosing the method they preferred in their meat operation, (2) restrained trade, and (3) could affect meat prices paid by consumers.

Federal Trade Commission (FTC) officials told us that primary Federal jurisdiction for meat merchandising activities rested with USDA from the farm through the wholesaler, and with the FTC beyond the wholesaler. They said, however, that the Department of Justice had ongoing activities relating to union restrictions and possible restraint of trade and, therefore, all such matters were generally referred to Justice. A Justice official told us that the Department was

considering whether these restrictions possibly violated antitrust statutes.

OBSERVATIONS BY NATIONAL
UNION OFFICIALS

Officials of the Amalgamated Meat Cutters and Butcher Workmen of North America told us that the existence of what some might describe as "impediments" is characteristic of any collective bargaining agreement which had been worked out by an employer and a union, because the agreement in itself is an impediment to the exercise of absolute management rights.

Union officials also said that the union always had been proud of its general policy on automation or technological change and had not sought to block such development or to hold back the application of human knowledge. They pointed out, however, that the union had a direct responsibility to protect workers against the disruptive impacts of automation. For this purpose, the union had worked out contract provisions protecting wage rates, assuring job security wherever possible, and allowing for the transfer of workers from old to new operations without loss of rights and benefits. The union officials felt that, in so protecting workers against personal losses that would otherwise result from technological change, the union policy had served sound social goals and aided in the total pattern of national progress.

The union officials also said that Bureau of Labor Statistics (BLS) data showed that beef prices in Chicago and St. Louis--the cities where the union/management agreements required the use of carcass meat--have averaged significantly below prices in Detroit and Cleveland, where no contract restrictions existed on the use of fabricated meat. They also pointed out that BLS data showed that meat prices in cities on the East Coast, ranging from Boston through New York, Philadelphia, and Washington (where fabricated meat was allowed) were higher than in the Chicago and St. Louis areas.

We have not included comparative meat prices in this report because, according to BLS, the data it publishes is not designed for place-to-place comparisons. A disclaimer

to this effect is included in each BLS report. Also, BLS officials caution that such comparisons are not entirely valid. We recognize that meat prices vary among cities and that numerous factors may cause these variances. Such factors probably would include marketing policies, pricing policies, profit objectives, transportation costs, local wage rates, local taxes and licensing fees, trim specifications, and the type and amount of handling.

SUMMARY

The use of clauses in union/management agreements to restrict the form or hours in which meat may be marketed is not widespread and, according to some observers, is on the decline. Nevertheless, in areas covered by restrictive clauses, the purchase and sale of meat in certain forms and during certain hours was impeded. Whether these restrictions possibly violate antitrust statutes was under consideration by the Department of Justice.

Some merchants preferred to use systems other than delivery of carcasses to the retail store because of improved product quality, sanitation, and more efficient labor use. However, the cost advantages or disadvantages of fabricated meats have not been precisely established. Independent studies indicated that central fabricating facilities operated by major food chains which fabricated retail cuts from carcasses offered the lowest cost per pound and, hence, an opportunity to reduce consumer prices. Preparing retail cuts at a central fabricating facility, however, was not being used to any extent by the food industry, and it will require negotiation and union approval if it is to be implemented.

TABLE 1

SUMMARY OF RESTRICTIONS TO MARKETING PLANT-PROCESSED MEAT
DUE TO LABOR/MANAGEMENT AGREEMENTS AS OF AUGUST 1976

City	Restrictions on packer fabricated meat		Can a grocery operate a central cutting facility?
	Beef products restricted	Other products restricted	
Atlanta	None	None	Yes
Baltimore	None	None	Yes, but the union must be notified in advance, and no layoffs can occur.
Boston	None	None	Yes
Chicago	All boxed and vacuum-packaged primals and subprimals from outside the local jurisdiction.	Lamb and veal in boxed primal and subprimal	Yes, but only if adjacent to store.
Cleveland	None	None	Yes, but the union must be notified, and no full-time employee can be displaced.
Denver	Boned primals and subprimals	Lamb and veal same as beef and pre-priced offal items, such as sweetbreads and liver	Yes, but the union must be the bargaining agent for employees at new facility.
Des Moines	None	None	Yes
Detroit	None	None	Yes, but work must be done by local union employees.
Houston	None	None	Yes, but work must be done by local union employees.
Joplin/ Springfield	None, except that, if boxed beef is brought in, employees are protected.	None	Yes, but any employee who might be laid off must be offered employment at the facility.
Kansas City	All vacuum-packaged primals except tenderloin and briskets; all subprimals; exception if practiced prior to 10/3/65 or if brought from central cutting facility.	Precut chicken	Yes, if done by employees covered by the agreement.
Madison	All primals and subprimals, except that a retailer can get these cuts in if he negotiates the change with the union; also no full-time employee will be displaced or reduced. a/	Lamb and veal, same as beef	Yes, but no full-time employee can be displaced or reduced.
Milwaukee	All primals and subprimals except that a retailer, if proposing to bring these cuts in, must negotiate the change with the union.	Precut chicken; lamb and veal, same as beef	Yes, but can only reduce to primals.
Minneapolis/ St. Paul	All subprimals in both cities except for special sales up to three times a year for 1 week at a time. Minneapolis--all primals except split, chimed, neck off chuck, chimed 7 inch rib, round, full loin bone-in, bone-in foreshank, and bone-in brisket. St Paul--all primals except four basic cuts plus one additional cut on the chuck and one additional cut on the round. a/	Beef restrictions apply to lamb and veal in both cities.	Yes, but wages, etc., are subject to negotiation, and work must be done by local union members.

APPENDIX I

APPENDIX I

City	Restrictions on packer fabricated meat		Can a grocery operate a central cutting facility?
	Beef products restricted	Other products restricted	
New Orleans	None	None	Yes
New York City	None	None	Yes
Northern California	Some (See p. 5.)	Lamb and veal, same as beef	Yes, but the union must be notified and negotiations undertaken.
Northern Wisconsin	All primals and subprimals, except that a retailer can get these cuts in if he first negotiates the change with the union. <u>a/</u>	Lamb and veal, same as beef	Yes, but the union must be notified in advance and conditions must be negotiated.
Omaha	All primals and subprimals, not sold prior to 5/4/70 except those used for testing the program, supplementing store sales or when carcass not available. Also a store can initiate a new change by negotiating conditions, etc.	Lamb and veal, same as beef	Yes, if done by members of the bargaining unit. Also, rates and working conditions must be negotiated.
Philadelphia	None	None	Yes, but the union must be notified in advance and no union members' jobs can be eliminated.
Phoenix	None	None	Yes, but local union employees must be offered employment at the facility.
Pittsburgh	None	None	Yes, but local union employees must be employed at the facility.
Salt Lake City	None	None	Yes
Southern California	None	None	Yes, but the union must be notified and negotiations undertaken.
St. Louis	All boxed and vacuum-packaged primals, trim beyond packer trim, and all subprimals. Grandfather clause for anything prepared and packed off premises prior to 10/2/50. <u>a/</u>	Lamb and veal, same as beef	No, unless done prior to 10/2/50.

a/Restriction also applies to centrally fabricated meat.

COMMERCIAL BRIBERY INTHE MEAT INDUSTRY

Officials of the Department of Agriculture's Packers and Stockyards Administration (PSA) have advised the Congress during appropriations hearings that commercial bribery in the meat industry is widespread and, when it occurs, it eliminates competition in meat sales. Bribery is effected in various ways by meat packers, including (1) making payoffs to merchant buyers for buying their meat and (2) making payments for advertising or promotional programs which exceed the value of the services provided and which accrue to the personal benefit of a merchant buyer. In some cases, dummy brokerage firms are used to conceal bribery payments.

According to PSA, packers making payoffs to meat buyers have a captive account as the buyer is not free to purchase from other packers who are competing honestly on the basis of price, service, or quality. Bribery payments add to marketing costs and result in either lower prices for livestock producers or higher meat prices for consumers.

PSA has some power to impose sanctions for commercial bribery offenses, and it can refer bribery-related cases involving false records or possible income tax evasion to the Department of Justice or to the Internal Revenue Service (IRS), respectively. However, these actions have not been fully effective in dealing with commercial bribery offenses.

Paying, handling, or taking a bribe does not specifically violate current Federal criminal statutes, except where commercial bribery is illegal under a State law, it may also be a violation of 18 U.S.C. 1952 (1970) when a person travels in or uses the facilities of interstate commerce to further the unlawful activity. This provision, however, fails to uniformly prohibit all commercial bribery, because illegality depends on the existence of a State statute and the scope of its application.

Some U.S. attorneys we interviewed felt that making commercial bribery a Federal crime and providing for minimum prison sentences for all parties to a bribe would be a more

effective way of curtailing bribery activities. House bill 2311 (95th Cong., 1st Sess.), which would revise title 18 of the U.S. Code, proposes making commercial bribery a Federal crime.

PACKERS AND STOCKYARDS ACT
OF 1921, AS AMENDED

PSA is responsible for enforcing the provisions of the Packers and Stockyards Act of 1921, as amended (7 U.S.C. 181 *et seq.*). The act's primary objective is to assist in maintaining fair and competitive practices in marketing livestock, meat, and poultry subject to the act so that producers will realize the true market value of their product and consumers will be protected against unfair practices that adversely affect retail prices. Section 202 of the act prohibits the following actions, one or more of which would be involved in a bribery-related offense.

- Engaging in an unfair, discriminatory, or deceptive practice
- Subjecting competitors to undue and unreasonable prejudice or disadvantages
- Engaging in acts with the effect of restricting competition

About 5,500 packers and about \$30 billion in meat transactions annually are subject to the act's provisions. Meat is the largest dollar volume product PSA supervises. PSA's functions are carried out by a headquarters staff of about 60, and 13 area offices with a total staff of about 160.

AGENCY ACTIVITIES

One of PSA's principal activities is investigating meat packer-merchandising and merchant-buying practices to ensure that prices are established by fair and competitive marketing practices. PSA's supervision program is essentially passive. PSA does not periodically or systematically review the meat packers' activities specifically to disclose commercial bribery. Most investigations result from complaints received from a variety of sources, including other packers, employees of packers or merchants, and

merchants. PSA also works with store officials in identifying meat buyers who participate in unfair practices. On receiving a complaint, PSA investigates to determine if meat transactions between a packer and a chain store involve any prohibited practices.

When a violation is substantiated, PSA issues a formal complaint against the packer, requiring a reply to the charges. A hearing date is established if the packer wishes to present oral arguments. If PSA's case is upheld following the packer's reply or hearing, a USDA administrative law judge issues an order directing the packer to cease and desist to prevent recurrence of the improper practices. Recent amendments to the act (Public Law 94-410, Sept. 13, 1976, 90 Stat. 1249) authorize the Secretary of Agriculture to impose a fine not to exceed \$10,000 when the cease and desist order is issued. Previously, the Secretary could not impose a fine when the cease and desist order was issued.

PSA may receive complaints, make investigations, and issue cease and desist orders on a variety of prohibited practices. During this review, we concentrated solely on PSA's efforts involving bribery-related offenses.

According to PSA, it conducted 35 investigations of packer activities concerning alleged bribery offenses during the 2 years ended June 30, 1976. These investigations resulted in PSA issuing formal complaints against four packers for bribery-related offenses. Of the remaining 31 cases, 20 were dismissed because of a lack of evidence, and 11 were awaiting final action as of March 1977.

Of the four formal complaints issued during the 2-year period, three had been settled by the packers agreeing to administrative orders to cease and desist from continuing the improper practices. The other case was pending final action as of March 1977.

DISPOSITION OF FORMAL COMPLAINTS

During the 12-year period 1964 through 1975, PSA issued formal complaints for bribery-related offenses against 21 different meat packers. All were charged with engaging in unfair, discriminatory, or deceptive practices; 13 were charged with subjecting competitors to undue and unreasonable

prejudice or disadvantage; and 12 were charged with engaging in acts with the effect of restricting competition.

In 16 of the 21 cases, the packers agreed to administrative orders to cease and desist from continuing the improper practices. In two cases the packers requested formal hearings which concluded with USDA decisions against the packers and issuance of cease and desist orders. As of March 1977, two cases were pending final action before an order would be issued. In the remaining case, the packer had failed to respond to the formal complaint, and a decision and order to cease and desist was issued without input from the packer.

Seven of the 21 packers were also charged with violating section 401 of the act--a general provision that requires a packer to keep accounts and records which fully and correctly disclose all transactions involved in his meat business. If this is not done, the Secretary may prescribe the manner and form in which accounts and records shall be kept. Failure to follow such procedures subjects the packer, upon conviction, to a fine and/or imprisonment. Of the seven packers charged with violating section 401, six were ordered to keep full and correct records; the remaining case was still pending final action as of March 1977. The manner and form in which records should be kept had not been prescribed by PSA in any of the seven cases.

AGENCY FOLLOW-UP SYSTEM ON VIOLATIONS NEEDS TO BE STRENGTHENED

PSA's follow-up system on packers who had been issued orders to cease and desist from continuing improper practices was inadequate to ensure compliance with the orders. PSA's follow-up procedures required that it forward a special report to the packer requesting information on what action the packer had taken to comply with the order. The procedures stipulated that this request should be forwarded within 90 days after issuing the order. The packer was allowed 60 days to reply. This follow-up procedure had existed since March 1970 and applied to 8 of the 21 cases we reviewed.

PSA had not forwarded the special report request to the packer within 90 days in any of the eight cases. In six cases the requests were forwarded 1 to 4 weeks after the 90 days elapsed; in another case the request was not sent until over 3 months after the 90 days elapsed. In the remaining case,

PSA could not locate follow-up correspondence on compliance action. All packer responses had been returned within 60 days of PSA's requests.

PSA, however, did not have an adequate system for verifying that corrective action, if any, had been actually taken by the packer. It relied on (1) a special report from the packer which contained assurances that it was complying with the order and (2) complaints from outside sources alleging that the packer was violating the order.

Although PSA's special report request asked the packer to list detailed steps taken to achieve compliance with the order, PSA accepted some broad generalizations that would be difficult to substantiate as a claim to compliance. For example, a reply from one packer said:

"The Company has continued to comply with the Packers and Stockyards' rules and regulations since the incident in question was alleged to have happened. Our Sales Department are all aware of this settlement entered in to with the Packers and Stockyards Administration and are aware of Packers and Stockyards regulations concerning sales by packers."

This packer had been served with a formal complaint for making payments to meat buyers of a customer under the guise of brokerage payments when in fact no brokerage services were performed. The packer agreed to a consent order which stipulated that the packer shall not make payments to anyone for purposes of acquiring, maintaining, or expanding a customer's account unless lawful brokerage services are rendered.

Another packer was served with a complaint for making improper brokerage payments and consented to an order to cease and desist from continuing the improper actions. The packer's reply, which PSA accepted, said:

"* * * we are a small company operating from one office and that we have not paid, are not paying and do not anticipate paying brokerage fees unless there is actually a brokers service involved."

Once a reply had been received, PSA did not conduct a compliance check of the packer's activities unless a complaint

was received alleging that the order was being violated. PSA's follow-up records showed that it had not received any complaints and, therefore, had not taken any follow-up action on the eight packers following their replies. PSA employees had not visited any of the eight packers to verify that compliance actions, as stated in the packers' replies, had been adhered to or even implemented.

In two of the eight cases that had occurred since March 1970, the packers were also charged with violating section 401 of the act for maintaining improper records and were ordered by USDA to keep records that fully and correctly disclosed their transactions. The manner and form in which the records should be kept were not prescribed, and PSA had not visited either of the packers to determine if proper recordkeeping procedures had actually been implemented even though PSA records showed that one packer concealed over \$118,000 in illegal inducements by preparing over 300 false or fictitious credit memorandums.

LACK OF CRIMINAL PENALTIES
FOR BRIBERY VIOLATIONS

Except for a cease and desist order violation, there are no criminal penalties for packers and individuals engaging in actions prohibited by the Packers and Stockyards Act. The only sanctions the act provides for those engaging in bribery-related actions are issuance of cease and desist orders and, since the September 1976 amendments, possible civil penalty assessments not to exceed \$10,000 for each violation. However, if any violation involves preparation of false records, the packer or individuals can be prosecuted under section 10 of the Federal Trade Commission (FTC) Act (15 U.S.C. 50) through referral of the case to the Justice Department. Upon conviction, the court can impose a \$1,000 to \$5,000 fine and/or a prison sentence not to exceed 3 years.

Also, the names of individuals receiving bribes can be referred to IRS for investigation and possible prosecution for tax evasion. And, where State law prohibits commercial bribery, a person may violate 18 U.S.C. 1952 (1970) when traveling in or using interstate commerce facilities to further such activity.

Violation of a cease and desist order

It is a criminal offense under the Packers and Stockyards Act to violate a cease and desist order. The court can impose a \$500 to \$10,000 fine and/or a 6-month to 5-year prison sentence for each day the packer violates the order.

In 1 of the 19 bribery-related cases for which a cease and desist order had been issued, the packer was convicted for violating the order. PSA investigated a rival packer's complaint that the packer was violating a 1965 cease and desist order and forwarded the case to the Justice Department for prosecution. In 1969 the packer was convicted of two counts of violating the order and was fined \$15,000. PSA had not identified any cease and desist order violations in the remaining 18 cases.

False records violations

USDA's Office of the General Counsel is responsible for referring apparent false records cases to the Justice Department. The General Counsel forwards the case directly to the U.S. attorney in whose jurisdiction the offense occurred. If the General Counsel recommends prosecution, a proposed indictment is included with the referral. Regardless of a recommendation, the final decision to accept or decline prosecution rests with the U.S. attorney.

Although a General Counsel official's review of case files had indicated probable false records violations were involved in 12 of the 21 bribery-related cases we reviewed, none of the packers or principals in these cases have yet been criminally prosecuted. The General Counsel had referred 2 of the 12 cases to U.S. attorneys.

In one referral, two meat buyers for a wholesale distributor, who established a dummy brokerage firm, were alleged to have caused false records to be maintained. The General Counsel prepared a false records case against them and forwarded it to a U.S. attorney with a recommendation for prosecution. However, the General Counsel recalled the case in December 1975 to develop additional information to prosecute them under 18 U.S.C. 1952 for interstate mail use in a fraudulent scheme which, upon conviction, imposes a stronger criminal penalty than a false records conviction. The case had not been returned to the U.S. attorney as of April 1977.

In addition, four other cases involving similar charges were being prepared by the General Counsel for forwarding to U.S. attorneys.

As of April 1977 the other case referred by the General Counsel was under review by the U.S. attorney to determine if the recommended prosecution would be pursued.

For five of the remaining six cases, the Office of the General Counsel advised us in a September 24, 1976, letter that "* * * many Department records pertaining to the cases have been destroyed in accordance with routine agency records disposal schedules." It said that, consequently, it could not determine conclusively whether the records had contained sufficient evidence for referral to the Department of Justice. A General Counsel official advised us in April 1977 that the General Counsel planned to refer the remaining case to the U.S. attorney, but not to recommend prosecution.

General Counsel officials are not encouraged by the Justice Department's record in prosecuting false records cases. The Office of the General Counsel told us in September 1976:

"* * * It has been our experience that the U.S. attorney offices do not, as a rule, find such false records cases to have 'prosecutorial appeal.' During the period commencing in 1965 and continuing to the present date, we have referred over 160 false records cases to various U.S. attorneys. Only 11 have been successfully prosecuted. Based upon this experience, we do not consider prosecution for false records to be a particularly effective enforcement tool."

General Counsel officials said that criminal pursuit of a packer for false records was not necessary if the packer had already been sanctioned with a cease and desist order. They said that the illegal act was estopped by the order and, if such order was violated, a felony was committed that could easily be proved. The packer is then subject to a fine and/or imprisonment. Also, they said that proof beyond a reasonable doubt was not necessary to impose an administrative sanction, whereas it would be in a criminal false records proceeding.

U.S. attorneys' comments

We discussed with U.S. attorneys in four cities seven false records cases which had been referred to them by USDA's Office of the General Counsel; cease and desist orders had been issued in all but one case. Because three cases concerned livestock dealers, additional administrative sanctions had been imposed precluding them from dealing in livestock transactions for specified periods ranging from 7 to 60 days.

In six of the seven cases, the U.S. attorneys declined to prosecute, even though an apparent violation of the law had occurred in five of the cases and the evidence would have likely supported a conviction. Reasons given for declining false records cases included: (1) lack of prosecutorial appeal (that is, they involved unexciting, nonviolent crimes), (2) the time and cost involved, (3) difficulty in proving violations, (4) high caseloads, and (5) the need to assign priority. Also, one U.S. attorney said the fines imposed would have likely ranged from \$500 to \$1,000. Accordingly, two U.S. attorneys said PSA's administrative action is just as effective and can be imposed quickly.

Referrals to IRS

PSA had no formal procedure for either referring names of individuals receiving bribes to IRS for possible income tax evasion prosecution or determining the final disposition of referrals.

During bribery investigations, PSA employees may uncover questionable payments to individuals beyond their normal salaries. When this occurs, the employees may refer the individuals' names to IRS as possible candidates for audit. These referrals are made on an informal basis and generally at the area office level with no recording of the referral action or its eventual disposition. Because of this informality, we could not determine how many referrals had been made.

We contacted 3 of PSA's 13 area offices to determine if any IRS referrals had been made; none had a record of such referrals. One area office supervisor could not recall making any recent referrals to IRS and said that he was unaware of any formal procedure to be followed. A staff member in

another area office said he had made one referral; however, he was unaware of any action taken by IRS.

In the third office, a staff member said he had made two recent referrals to IRS and had maintained informal contact with IRS regarding disposition of the cases. According to this staff member, one referral, involving payment of about \$12,000 in bribes to a meat buyer, was declined by IRS because the investigation cost would have exceeded the potential recovery. He said that the other referral, involving about \$74,000 in bribery payments to a meat buyer, was under IRS investigation.

PSA officials agreed there was a need for a formal procedure for referring bribery-related cases to IRS.

Prosecution for income tax evasion
may not serve as an effective deterrent

In New York City, 11 indictments were handed down against 18 individuals and 1 company as a result of Department of Justice investigations disclosing bribes and payoffs involving meat packers, middlemen, and meat buyers for retail stores. The Grand Jury charges included income tax evasion directed at the 18 individuals. One defendant's testimony was a critical factor in convicting 11 of the others. He received a 1-year prison term and paid a \$5,000 fine. Six of the other 11 individuals convicted received combined prison terms totaling 19 months and 5 days. The other 5 individuals received suspended prison sentences, probation, or fines ranging from \$1,000 to \$10,000.

The attorney-in-charge of the Justice Department's New York Organized Crime and Racketeering Strike Force said he believed that the punishment in this case was not an effective deterrent to preclude the principals from again taking bribes. He pointed out that a meat buyer for one food chain had accepted cash kickbacks of \$43,062 over a 3-year period from officials and employees of various wholesale suppliers in return for meat product purchases. The unpaid taxes for the 3 years amounted to \$16,858. The defendant pled guilty and received a sentence of 3 years unsupervised probation and a \$7,500 fine. The attorney-in-charge said the individual allegedly has since been promoted to vice president in the food chain. He believed that the only effective way to curtail

bribery activities would be to specify determinate prison sentences in the Federal statutes.

IRS referrals to PSA

PSA officials stated that a procedure was needed whereby IRS would advise PSA when IRS income tax investigations disclose bribery matters involving meat packing firms. Currently, there is no procedure under which IRS would furnish these leads to PSA. In one instance, PSA became aware of a case involving bribery of an individual by a meat packing firm through a news release relating to the individual's conviction for income tax evasion. PSA subsequently pursued this case and issued a cease and desist order against the meat packer.

An IRS official told us that, under present law, IRS can only disclose information on possible bribery activities of meat packing firms if a case reaches litigation and becomes a matter of public record. The official also said that, under current procedures, IRS referred any violation of Federal criminal law to the Department of Justice under provisions of section 6103(i)(3) of the Internal Revenue Code.

The IRS official said that, if a law making commercial bribery a Federal crime were enacted, IRS would be able to refer to the Secretary of Agriculture any alleged violations of the law involving meat packing firms that come to its attention provided the information was obtained from sources other than (1) the taxpayer, (2) the taxpayer's return, books, or records, or (3) the taxpayer's representative.

Commercial bribery as a Federal crime

Receiving a bribe is not illegal under the Packers and Stockyards Act, and commercial bribery is not otherwise specifically prohibited by Federal criminal statutes. Where State law prohibits commercial bribery, a person may violate 18 U.S.C. 1952 (1970) when traveling in or using interstate commerce facilities (including the mails) to further or otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of such activities. Some States, such as Kansas, Colorado, and Texas, have laws against bribery. A General Counsel official

estimated that less than 50 percent of the States have laws governing commercial bribery offenses.

Because commercial bribery is illegal under 18 U.S.C. 1952 only when it is illegal under a particular State's law, an act may be legal when committed in one State and illegal in another. Further, because State statutes may vary as to the parties to whom they apply, the application of 18 U.S.C. 1952 may not be uniform among the States having commercial bribery statutes.

According to the Department of Justice, in appropriate cases of well-developed and pervasive commercial bribery schemes, the conduct may be prosecutable under such existing Federal criminal statutes as those dealing with mail and wire fraud--18 U.S.C. 1341 and 1343--and the second paragraph of the National Stolen Property Act, 18 U.S.C. 2314. A USDA General Counsel official, however, pointed out that these statutes required fraud as an element of the case and that only a small number, if any, of the PSA commercial bribery cases could be prosecuted under these statutes.

Some U.S. attorneys we interviewed believed that a more effective way to curtail bribery activities would be to make commercial bribery a Federal crime and provide for minimum prison sentences for all parties to the bribe. Federal narcotic statutes are structured like this. In this regard, H.R. 2311 (95th Cong., 1st Sess.) would revise title 18 of the U.S. Code to make commercial bribery illegal if committed by someone traveling in or using the facilities of interstate commerce to plan, promote, manage, execute, consummate, or conceal the offense, or to distribute the proceeds of the offense.

It would be illegal for a person covered by the bill (1) to offer, give, or agree to give an agent or fiduciary of another person or (2) as an agent or fiduciary, to solicit, demand, accept, or agree to accept from another person, who is not his employer, principal, or beneficiary, anything of value for or because of the recipient's conduct in any transaction or matter concerning the affairs of the employer, principal, or beneficiary. Other proposed revisions would extend liability to organizations or corporations ratifying such acts as well as accomplices and provide for maximum (but not minimum) sentences for commercial bribery.

In this regard, the Department of Justice said that it did not favor establishing mandatory minimum sentences for white collar crimes. It said that experience indicated that such sentences do not increase deterrence. Justice also said it was considering proposals for imposing sentences, such as Senate bill 181 now before the Congress. This bill would establish a sentencing commission to develop guidelines for the courts to follow in imposing sentences in all types of offenses. Presumably, the guidelines would also consider the need for prison sentences to act as deterrents to white collar crimes.

1976 AMENDMENTS TO THE PACKERS AND STOCKYARDS ACT

The September 13, 1976, amendments to the Packers and Stockyards Act expanded the definition of those subject to the act to include brokers, dealers, and distributors marketing meats and meat food products and livestock products. They did not, however, provide PSA with jurisdiction over meat buyers accepting bribes.

Before the amendments were enacted, middlemen were not subject to the provisions of the act. If they had been involved in a packer violation, it was necessary to subpoena them and their records before PSA could make an examination. Under the new amendments, PSA has direct access to the records of middlemen involved in meat transactions between a packer and a merchant.

The amendments also authorize the Secretary to issue cease and desist orders to middlemen and impose a fine up to \$10,000 to coincide with the order. PSA and General Counsel officials believe that these amendments will help prevent circumvention of the law by middlemen and permit sufficient recourse against those who attempt such circumvention.

CONCLUSIONS

PSA's enforcement of a cease and desist order, as well as initial identification of violations that lead to the order, has been left almost entirely to chance. PSA's dependence on outside complaints as the principal means of triggering action is a passive approach to fulfilling its responsibilities. Also, the agency's follow-up system on cease and desist

orders has been inadequate for identifying further violation of or compliance with the orders. With the Packers and Stockyards Act providing only limited power to sanction packers or individuals, it is imperative that PSA's follow-up system be sufficiently strengthened to ensure adequate enforcement of the law's intent. This was not being accomplished.

Also, PSA should have a formal procedure for referring the names of individuals receiving bribery payments to IRS for possible income tax evasion prosecution and for determining the final disposition of referrals.

In addition, IRS should advise PSA of action taken on bribery cases referred to it by PSA when such cases reach litigation and become a matter of public record. IRS should also advise PSA of bribery matters involving meat packing firms that come to its attention in the course of income tax investigations when the case reaches litigation and becomes a matter of public record. Further, if legislation is enacted making commercial bribery a Federal crime, IRS should inform the Secretary of Agriculture (under section 6103(i)(3) of the Internal Revenue Code) of any alleged violations of the law involving meat packing firms which may come to its attention in the course of income tax investigations when the information is obtained from sources other than the taxpayer; the taxpayer's return, books, or records; or the taxpayer's representative.

The September 1976 amendments empower PSA to issue cease and desist orders to additional principals but, unless an adequate follow-up system on violations is established and false records violations are more vigorously pursued, the new amendments will neither prevent circumvention of the law nor allow sufficient recourse against those who attempt to violate the law.

As indicated by some U.S. attorneys we interviewed, a more effective way to curtail bribery activities would be to make commercial bribery a Federal crime and to provide for minimum prison sentences for all parties to the bribe. Presently, individuals paying, handling, or accepting bribes are not specifically violating Federal criminal statutes, except where 18 U.S.C. 152 (1970) applies to commercial bribery cases illegal under State laws. Also, a commercial bribery case may in some instances, if all appropriate

elements are present, be prosecutable under 18 U.S.C. 1341, 1343, or 2314.

House bill 2311, now before the Congress, would make commercial bribery a Federal crime. It does not, however, provide for minimum prison sentences and the Department of Justice does not favor such sentences for white collar crimes. Senate bill 181, now before the Congress, proposes establishment of a sentencing commission to develop guidelines for the courts to follow in imposing sentences in all types of offenses.

RECOMMENDATIONS TO THE SECRETARY
OF AGRICULTURE

We recommend that, to provide increased assurance of packer compliance with a cease and desist order, PSA's follow-up procedure include a timely assessment of the adequacy of the packer's planned corrective action as stated in the special report submitted by the packer to PSA. To be effective this assessment should include a postaudit of the packer's activities or a site visit to determine if corrective action has in fact been implemented.

So that all possible legal action may be taken against those that violate the Packers and Stockyards Act, we also recommend that PSA formalize procedures for referring to IRS the names of individuals receiving bribery payments, and for documenting such referrals and their final disposition.

RECOMMENDATIONS TO THE SECRETARY
OF THE TREASURY

We recommend that the Secretary have IRS advise PSA of the action taken on bribery cases referred by PSA, when such cases reach litigation and become a matter of public record.

We also recommend that the Secretary have IRS advise PSA of bribery matters involving meat packing firms that come to its attention in the course of income tax investigations, when a case reaches litigation and becomes a matter of public record.

Further, if legislation is enacted making commercial bribery a Federal crime, we recommend that the Secretary have IRS

inform the Secretary of Agriculture (under section 6103(i)(3) of the Internal Revenue Code) of any alleged violations of the law involving meat packing firms which may come to its attention in the course of income tax investigations when the information is obtained from sources other than the taxpayer; the taxpayer's return, books, or records; or the taxpayer's representative.

AGENCY COMMENTS AND OUR EVALUATION

PSA concurred in our recommendations and outlined the actions it took, effective March 23, 1977, to implement them. These actions consisted of

- strengthening the agency's assessment of corrective actions by packers to assure compliance with cease and desist orders,
- formalizing procedures for referring information on bribery payments to IRS,
- clarifying the agency's follow-up procedure to require that a special report request be sent to a packer within 90 days from the date a cease and desist order is issued; the request requires a response to specific questions about the corrective action the firm takes to comply with the order.

These actions, if properly implemented, should improve PSA's administration of the Packers and Stockyards Act and increase assurance that packers who do not comply with the act are more appropriately dealt with.

Also, PSA agreed that stronger penalties should be imposed for bribery offenses and said that it would review the Packers and Stockyards Act to determine if it should be amended to provide criminal penalties for individuals paying and receiving bribes as well as the firms employing these individuals.

On March 8, 1977, we submitted this appendix to the Secretary of the Treasury for review and comment. After further discussions with PSA and IRS officials, we revised certain portions pertaining to IRS and resubmitted the appendix to the Secretary of the Treasury, requesting comments

APPENDIX II

APPENDIX II

by May 2, 1977. At the time the final report was prepared, we had not received comments on the revised appendix. Therefore, the report is being issued without the comments.

ALLEGED FIXING OF MEAT PRICES

Several civil suits filed by cattle producers alleging the manipulation and fixing of meat prices by certain slaughterhouses and principal food chains in the United States are pending in U.S. district courts. Among other things, the plaintiffs allege that a private publication--the primary information source for establishing wholesale meat prices--is being manipulated to artificially (1) depress prices paid to producers and (2) increase prices paid to meat packers and, hence, by consumers. The plaintiffs contend these actions violate antitrust statutes. As of April 1977, the cases had not gone to trial.

MEAT PRICE REPORTING SERVICES

Two private publications, "The Yellow Sheet" and "The Meat Sheet," and the Department of Agriculture's market reporting service are the principal meat price reporting services in the United States. "The Yellow Sheet," more formally known as the National Provisioner Daily Market and News Service, is published 5 days a week by the National Provisioner, a privately owned firm in Chicago, Illinois. It has been quoting meat prices since about 1927 and has an estimated circulation of 15,000. Nearly all wholesale meat transactions are based on "The Yellow Sheet" quotations.

"The Yellow Sheet" shows wholesale prices for such items as beef carcasses, primal beef cuts, beef variety meats, and fresh pork cuts. It does not show sales volume or type; i.e., packer to packer or packer to processor. The daily prices quoted are based on open market sales identified by the National Provisioner through telephone calls to and from sellers, buyers, and brokers. Industry sources and other price reporting services estimate that "The Yellow Sheet" daily price quotations are based on only about 5 percent of all daily wholesale meat transactions.

"The Meat Sheet," a Fairchild Publication, is also published 5 days a week in Elmhurst, Illinois. It was begun in 1974. It shows the daily volume along with high, low, and closing prices. It also distinguishes between packer-to-packer and packer-to-processor sales of beef carcasses. Its circulation as of June 1976 was estimated at 700. "The Meat Sheet" is believed to be of minor influence in setting wholesale meat prices.

USDA's free weekly publication, "Market News," gives weekly prices of livestock and meat. Daily prices are also made available via such means as radio, newspapers, and leased wire services. USDA staff members gather information at six offices across the country. They identify and verify sales transactions by contacting buyers, sellers, and brokers. According to USDA, the "Market News" is oriented toward and used extensively by cattle producers. Packer and grocery officials indicated that they made little use of the USDA service.

MAJOR FOOD CHAINS ALLEGED TO ACT
IN MONOPOLY WHEN PURCHASING MEAT

On December 1, 1975, the Meat Price Investigators Association, representing cattle producers in 14 States, filed a civil suit ^{1/} against 10 national food chains, the National Provisioner ("The Yellow Sheet"), and the National Association of Food Chains, charging unlawful combination and conspiracy in unreasonable restraint of interstate trade and commerce in cattle and fresh, frozen, and processed beef, and unlawful combination and conspiracy to monopolize such trade and commerce in violation of antitrust statutes. The following are some specific charges:

- The defendants utilize market dominance and economic power to depress and maintain, at artificially low and constant levels, the farm-wholesale price margin or spread when the wholesale-retail margin or spread is or has been experiencing constant increases and unexplained, noncost-justified, abrupt rises as occurred in 1969 and 1973.
- The defendants geographically segment the market for fresh, frozen, and processed beef, and allocate territories to the dominant retail food chains in which to exercise price leadership in the purchase and sale of such beef.
- The defendants eliminate price competition for fresh, frozen, and processed beef by employing a system of price leadership whereby certain food chains and other

^{1/} Civil Action 3-76-1238 filed with the U.S. District Court in Dallas, Texas.

co-conspirators at other times and places set prices by accepting bids from packers 1 day in advance of all other retail food chains which thereafter follow the price established by the dominant firms.

--The defendants eliminate price competition for fresh, frozen, and processed beef by employing "The Yellow Sheet," published by the National Provisioner, as a device to communicate the prices paid in the different areas of the United States and thereby stabilize prices throughout the United States.

--The defendants manipulate "The Yellow Sheet" information-gathering methods so that the publication reflects artificially low and inaccurate prices paid for beef carcasses and parts thereof.

This case has been consolidated with 12 similar suits 1/ under multidistrict litigation in the U.S. District Court in

- 1/ Civil Action 3-75-0702, Pony Creek Cattle Company, Inc., et al. v. A&P et al.
 Civil Action 3-76-1237, R. Kirk Agee et al. v. Safeway Stores et al.
 Civil Action 3-76-1244, Richard S. Lowe et al. v. Safeway Stores et al.
 Civil Action 3-76-1248, A.L. Black et al. v. Acme Markets, Inc., et al.
 Civil Action 3-76-1253, Chaparral Cattle Corp. et al. v. Safeway Stores et al.
 Civil Action 3-76-1254, Burke Petersen et al. v. Safeway Stores et al.
 Civil Action 3-76-1255, James F. Boccardo et al. v. Safeway Stores et al.
 Civil Action 3-76-1470, John O. Varian et al. v. Safeway Stores et al.
 Civil Action 3-76-1361, Ronald Becker et al. v. Safeway Stores et al.
 Civil Action 3-77-0360, Ronald Becker et al. v. Safeway Stores et al.
 Civil Action 3-77-0361, Meat Price Investigators Association et al. v. Safeway Stores et al.
 Civil Action 3-77-0362, Little Ranch Co., Inc., et al. v. National Association of Food Chains.
 All actions are under the jurisdiction of the U.S. District Court in Dallas Texas, as MDL 248.

Dallas. As of April 1977, the cases were still in the discovery stage and a court official estimated that it will be at least a year before the individual cases will be returned to the district courts for trial.

ALLEGED PRICE FIXING
BY SLAUGHTERHOUSES

On August 10, 1976, the Meat Price Investigators Association filed a civil suit 1/ against four slaughterhouses charging them with conspiracy to fix live-cattle and carcass-beef prices by agreeing to quote substantially the same bids for cattle, allocating territories in which to buy cattle, boycotting some markets, buying the business or output of potential competitors, and gaining and using inside information from major buyers.

The suit contends that the slaughterhouses conspired, among other things, to manipulate live-cattle and beef-futures prices, to manipulate the wholesale beef prices reported in "The Yellow Sheet," and to fraudulently conceal their actions. Meat industry sources allege that price manipulations occur in "The Yellow Sheet" as follows:

--A slaughterhouse may have numerous carload contracts to deliver cattle at "The Yellow Sheet" price at the close of business on Thursday. On Thursday afternoon, when the market is lingering around Wednesday's closing price of 63 cents a pound, the slaughterhouse approaches another slaughterhouse and asks to buy two carloads of beef to fill an alleged shortage. They agree on a price of 65 cents. This is then reported to "The Yellow Sheet" which reports a closing transaction of 65 cents. Thus, the two carload purchase (a carload contains about 40,000 pounds) raises the price 2 cents a pound which will be used by the slaughterhouse as the price for the numerous carloads it is to deliver at Thursday's close. If this happened, the sales price of each carload would be increased by \$800.

1/ Civil Action 76-252-2, Meat Price Investigators Association et al. v. Iowa Beef Processors, Inc., et al. Filed with the U.S. District Court in Des Moines, Iowa.

--A slaughterhouse and a processor want a 15-carload transaction at 60 cents a pound, but the slaughterhouse, with heavy orders scheduled to be sold that day at "The Yellow Sheet" price which is 62 cents, does not want to lower the market just before the close. So the slaughterhouse sells 10 carloads at 59 cents and the remaining 5 carloads at 62 cents. The money exchanged is the same as if all 15 carloads had been sold at 60 cents. However, "The Yellow Sheet" price stays up because "The Yellow Sheet" can be told that the last price was 62 cents.

--A slaughterhouse will sell meat to a processor at lower than "The Yellow Sheet" price, but only on the condition that the processor does not report the lower price to "The Yellow Sheet."

The attorneys representing the Meat Price Investigators Association believe slaughterhouses should be licensed, and mandatory reporting of wholesale meat transactions, including price and quantity, should be made to a central point. This data should be available to all parties, including producers. Also, they believe it should be a felony if transactions are not reported or are reported inaccurately.

The defendants have answered the allegations with a general denial. As of April 1977, however, the case had not gone to trial.

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