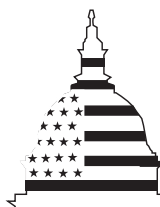


September 2000

PACKERS AND STOCKYARDS PROGRAMS

Actions Needed to Improve Investigations of Competitive Practices



G A O

Accountability * Integrity * Reliability

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Abbreviations

DOJ	Department of Justice
FTC	Federal Trade Commission
GAO	General Accounting Office
GIPSA	Grain Inspection, Packers and Stockyards Administration
OGC	Office of General Counsel (USDA)
OIG	Office of Inspector General (USDA)
USDA	U.S. Department of Agriculture



B-284827

September 21, 2000

The Honorable Richard G. Lugar
Chairman
The Honorable Tom Harkin
Ranking Minority Member
Committee on Agriculture,
Nutrition, and Forestry
United States Senate

The Honorable Larry Combest
Chairman
The Honorable Charles W. Stenholm
Ranking Minority Member
Committee on Agriculture
House of Representatives

The Honorable Charles E. Grassley
Chairman, Subcommittee on Administrative
Oversight and the Courts
Committee on the Judiciary
United States Senate

The production and marketing of cattle and hogs were U.S. agriculture's first and seventh largest businesses in 1998 with cash receipts of \$33.7 billion and \$9.4 billion, respectively. The responsibilities of the U.S. Department of Agriculture (USDA) under the Packers and Stockyards Act for monitoring the cattle and hog industries, and halting unfair and anticompetitive practices in the marketing of cattle and hogs, are assigned to the Grain Inspection, Packers and Stockyards Administration (GIPSA).¹ USDA's Office of General Counsel (OGC) also has a role in enforcing the act and, among other activities, represents the Department in administrative and court proceedings addressing alleged violations of the act.

¹The act (7 U.S.C. 181 *et seq.*) also covers (1) other livestock, such as sheep and goats, and poultry and (2) the protection of industry participants by, among other things, ensuring that sellers are paid promptly and that the animals are weighed accurately. This report focuses primarily on the agency's efforts to address competition-related concerns involving cattle and hogs.

Cattle and hog producers have raised concerns about changes in their industries that affect competition. For example, they have pointed out that as mergers have occurred among meatpacking companies, there have been fewer bidders for livestock and some meatpacking plants have closed; that as livestock have increasingly been marketed through contracts, the volume of livestock sold through competitive open market bidding has decreased; and that meatpacking companies have been increasing their control over livestock production and marketing. GIPSA, the Department of Justice (DOJ), and the Federal Trade Commission (FTC) have monitored developments in these industries.² In recognition of producers' concerns about these and other agricultural industries, DOJ appointed a Special Counsel on Agriculture within its Antitrust Division in January 2000. In addition, the Congress passed the Livestock Mandatory Reporting Act of 1999 to ensure, among other things, better disclosure of livestock prices. Also, bills have been introduced in the Congress to provide additional oversight of agricultural industries by USDA and to better ensure competitive agricultural markets.³ On the other hand, meatpacking company officials point out that livestock price fluctuations have resulted from changes in the supply of livestock and the demand for meat products, that producers often request private contracts with value-added features, that their industry is regulated and monitored and mergers have been reviewed by DOJ, and that GIPSA has not found anticompetitive activities.

In 1997, USDA's Office of Inspector General (OIG) reviewed GIPSA's efforts to investigate competitive practices. The OIG reported that GIPSA had a credible record of investigating claims of fraud and unfair business dealings, such as false weighing and failing to pay for livestock. However, the OIG stated that GIPSA (1) did not have the capability to perform effective anticompetitive practice investigations and (2) faced formidable obstacles to become effective in performing such investigations because it had not been organized, operated, or staffed for this purpose. The OIG recommended extensive improvements within GIPSA or, alternatively,

²In 1996, GIPSA published the results of several years of effort to examine cattle and hog market issues by GIPSA itself; university researchers; and advisers from DOJ, FTC, the Commodity Futures Trading Commission, and USDA's Economic Research Service. GIPSA did not find anticompetitive activity but did call for continued monitoring of the industry. More recently, in 1999, GIPSA, DOJ, and FTC, under the direction of the National Economic Council, reviewed the sharp decreases in hog market prices and, among other things, commented that the industry should continue to be monitored for anticompetitive activity.

³For example, S. 2252, S. 2411, and H.R. 4339, 106th Congress 2nd session include, among other things, authority for USDA to review mergers.

transferring this responsibility to DOJ or FTC. In response, GIPSA completed a major restructuring of its headquarters and field offices in 1999 and has hired staff to strengthen its investigations of alleged anticompetitive practices.

Because of continued concerns about whether GIPSA is taking sufficient action to protect competition in the livestock markets, Senator Charles E. Grassley, Chairman, Subcommittee on Administrative Oversight and the Courts, Senate Committee on the Judiciary, requested that we review USDA's efforts to implement the Packers and Stockyards Act. Subsequently, USDA's appropriation act for fiscal year 2000 required us to analyze USDA's authority to ensure competition in the marketing of hogs. In response, this report discusses (1) the number and status of investigations conducted by GIPSA in response to complaints and concerns about anticompetitive activity involving the marketing of cattle and hogs and (2) factors that affect GIPSA's ability to investigate concerns about anticompetitive practices. In addition, appendix I contains information on GIPSA's authority under the Packers and Stockyards Act to address concerns about anticompetitive and unfair practices in the cattle and hog markets.

Results in Brief

From October 1, 1997, through December 31, 1999, GIPSA investigated 74 allegations or concerns about anticompetitive activity involving cattle or hogs. Thirty-six of these investigations were in direct response to specific complaints about anticompetitive activity, and 38 were initiated by GIPSA. At the end of March 2000, 57 of these investigations had been completed and the remaining 17 were ongoing. GIPSA identified a total of five alleged violations of the Packers and Stockyards Act. These alleged violations involved acts by one or a few companies in such areas as deceptive pricing.

Two principal factors detract from GIPSA's ability to investigate concerns about anticompetitive practices in the cattle and hog markets. First, the agency's investigations are planned and conducted primarily by economists without the formal involvement of attorneys from USDA's OGC. In contrast, DOJ and FTC have teams of attorneys and economists to perform investigations of anticompetitive practices; attorneys lead the investigations from the outset so that a legal perspective is focused on assessing potential violations of law. Also, as GIPSA has built up its staff to include 18 economists to investigate competitive concerns about cattle and hog markets, the number of OGC attorneys assigned to GIPSA's cases overall has decreased since 1998 from eight to five because of budget constraints, according to USDA's General Counsel. In addition, most of the

18 economists conducting GIPSA's investigations were hired since 1998 and have limited experience with investigative work related to competition. Second, GIPSA's investigative methods were not designed for addressing complex anticompetitive practice concerns—they were designed for the trade practice and financial issues that the agency has emphasized for years. In comparison to DOJ and FTC, GIPSA does not require investigations to be (1) planned and developed on the basis of how a company's actions may have violated the law and (2) periodically reviewed as they progress by senior officials with anticompetitive practice experience.

We are recommending that USDA improve its capability to investigate allegations of anticompetitive practices by having integrated teams of attorneys and economists perform GIPSA's investigative work, improving the planning and review of these investigations, and consulting with DOJ and FTC on the design of program improvements. USDA concurred with our report and is initiating actions to implement our recommendations.

Background

Under the Packers and Stockyards Act, GIPSA is responsible for providing financial protection for participants in livestock transactions and halting unfair and anticompetitive practices. GIPSA addresses its financial and trade practice responsibilities by regulating livestock buyers' business practices to ensure, among other things, that sellers are paid promptly for their animals and that the animals are weighed accurately. GIPSA addresses concerns about competition by investigating complaints and concerns about anticompetitive activities⁴ and by analyzing data on the structure and operations of the livestock, poultry, and meatpacking industries. Overall, these functions of GIPSA are referred to as its *Packers and Stockyards Programs*.

DOJ, FTC, and USDA have signed a memorandum of understanding to cooperate on monitoring competitive conditions in agriculture. In general, DOJ and FTC are responsible for enforcing federal antitrust laws that protect the marketplace from practices that adversely affect competition. DOJ is responsible for enforcing the Sherman Act, and FTC has responsibility for the Federal Trade Commission Act. DOJ and FTC also share responsibilities under the Clayton Act, including

⁴GIPSA defines "anticompetitive practices" as those including antitrust types of violations and other unfair practices affecting competition.

responsibility for reviewing proposed mergers. USDA's responsibilities under the Packers and Stockyards Act were, in part, based on and go further than the Sherman Act in addressing unfair practices and aim to protect buyers and sellers of livestock. FTC also has a specific responsibility under the Packers and Stockyards Act to address anticompetitive and unfair practices in retail sales of meat and meat products. FTC does not, however, have jurisdiction over the livestock or wholesale meat industries.

In the past, cattle were usually sold by producers at stockyards through a bidding process to meat-processing firms, which are generally referred to as *packers*. In recent years, the process has changed such that packers usually purchase the animals at feedlots, where they are fed for a period of time before being offered for sale. Also, rather than being sold through open market bidding, cattle are now increasingly sold through contracts between producers and/or feedlot managers and packers.

The process is different for hogs. In the past, hog producers generally sold hogs through the spot market, delivering them either to a packing plant or to a centralized facility where the animals were sold through a bidding process. Now, most hogs are sold under contracts in which packers and producers coordinate production methods and delivery schedules, and less information about prices has been publicly available.

Concerns about competition in the livestock industries have varied over time. For example, in the earlier part of the 20th century, collusive practices by five large meatpacking companies resulted in their prosecution, a consent decree with these packers, and the passage of the Packers and Stockyards Act in 1921. Concerns about competition then generally subsided for many years until resurfacing over the last decade, when a small number of cattle and hog packers grew to control large shares of their respective livestock markets. For example, four firms account for over 80 percent of the steers and heifers slaughtered. As a result, producers are concerned that continued concentration, due to mergers and acquisitions that have taken place in the industry, has affected and will affect their ability to market animals and reduce selling prices. Appendix II further discusses the act's history and the current conditions of and concerns about the cattle and hog industries.

In 1998, GIPSA started a major reorganization of the Packers and Stockyards Programs primarily to enhance its capability to address concerns about anticompetitive activity. At the headquarters level, the

reorganization included establishing the Office of Policy/Litigation Support with separate branch offices to oversee the agency's competition, financial, and trade practice work. At the field level, the number of regional offices was reduced from 11 to 3: Offices are now in Atlanta, Georgia, to lead competition, financial, and trade practice work involving poultry; in Denver, Colorado, to lead work involving cattle; and in Des Moines, Iowa, to lead work involving hogs. During the reorganization, GIPSA experienced substantial employee changes: Over 40 staff relocated, and 44 staff left the agency. Also, the agency hired 67 new employees from April 1998 through July 2000.

GIPSA's Packers and Stockyards Programs are funded through an annual appropriation. In fiscal year 1999, GIPSA used 153 staff years and had obligations totaling slightly more than \$16 million on these programs, including, according to GIPSA's officials, about \$2 million on relocation activities. (In comparison, GIPSA used 587 staff years and \$45.6 million of appropriated funds and user fees that year for work related to grain inspections.) According to information that GIPSA provided us with on its Packers and Stockyards Programs for fiscal year 1999, which includes the period when GIPSA was completing its reorganization and hiring new staff, about 30.4 percent of its staff time was used on financial work; 23.6 percent on trade practice work; 13.2 percent on competition work; and 32.8 percent on administrative activities, information resource management functions, and other activities.

GIPSA's Investigations on Competition in the Cattle and Hog Industries

GIPSA conducted 74 investigations involving concerns about competition in the cattle and hog markets from October 1, 1997, through December 31, 1999; alleged violations were identified in 5 cases. These alleged violations involved acts by specific meatpacking companies, such as deceptive pricing, rather than industrywide practices. During this period, GIPSA also conducted various other examinations that were designed primarily to develop information about the cattle and hog markets, including how prices for animals are determined. Specifically, a major examination of cattle buying in Texas was completed in 1999; another involving the procurement of hogs in four states in the Western Cornbelt was completed in 1998. Neither found violations of the Packers and Stockyards Act. In addition, at the time of our review, GIPSA had entered into cooperative agreements with university researchers to conduct three studies of livestock-marketing issues to obtain more complete information on the operation of the cattle and hog markets and had plans for other efforts to expand its knowledge of these markets.

Few Instances of Anticompetitive Activity Have Been Identified

GIPSA has found few instances in which meatpacking companies or other parties involved in the marketing of cattle or hogs engaged in anticompetitive practices. Specifically, 74 investigations involving allegations of or concerns about anticompetitive actions were ongoing at the start of fiscal year 1998 or were started during fiscal years 1998-99 and the first quarter of fiscal year 2000. Thirty-six of these investigations were in direct response to specific complaints about anticompetitive actions; the other 38 cases were initiated by GIPSA. As table 1 shows, the agency reported anticompetitive actions in 5 cases and no such actions in 57 cases.⁵

Table 1: Results of GIPSA’s Investigations of Allegations of Anticompetitive Actions From the Start of Fiscal Year 1998 Through the First Quarter of Fiscal 2000

Alleged violator and type of animal	Number of investigations	Status of investigation		Did GIPSA find anticompetitive action?	
		Open	Closed	Yes	No
Meatpacking company					
Cattle	39	11	28	3	27
Hogs	12	6	6	2	7
Subtotal ^a	51	17	34	5	34
Other ^b					
Cattle	21	0	21	0	21
Hogs	2	0	2	0	2
Subtotal	23	0	23	0	23
Total					
Cattle	60	11	49	3	48
Hogs	14	6	8	2	9
Total	74	17	57	5	57

Note: The information on the status of investigations and whether GIPSA found anticompetitive actions is as of the end of March 2000.

^aThe total number of cases that had or did not have anticompetitive actions exceeds the total number of closed cases because, for example, some cases that did not have violations were open for informational purposes at GIPSA’s headquarters when we were conducting our review.

⁵We did not evaluate the effectiveness of GIPSA’s efforts and findings in these cases.

^bIncludes livestock markets, dealers, and others who buy or sell livestock on commission.

Source: GAO's analysis of information obtained from GIPSA's complaint/investigation automated system, the agency's files and records, and the agency's officials.

Each of the five cases in which GIPSA reported competition-related problems involved meatpacking companies; three of these cases remained open at the time of our review. In summary, GIPSA reported that some companies had engaged in improper pricing or bidding practices involving the acquisition of animals or had inadequate records covering purchases. For example, in a case involving a major company, GIPSA alleges that the firm engaged in deceptive practices by changing to its advantage the method used to calculate the price paid for hogs and then failing to notify producers of the change. A hearing on this case by a USDA Administrative Law Judge was started in July 2000 and is scheduled to reconvene in September 2000. Appendix III summarizes two other cases in which GIPSA found that anticompetitive actions had occurred.

Thirty-four of the 57 cases in which GIPSA did not find anticompetitive activities involved allegations that meatpacking companies had acted wrongfully. Twenty-three cases involved allegations that other parties, such as livestock markets, dealers, and others who buy or sell livestock on commission, had acted improperly. The following illustrates a case in which GIPSA received and investigated a complaint but did not find evidence to support anticompetitive practices. GIPSA initiated an investigation in August 1999 after receiving a complaint from a livestock market that buyers for two meatpacking companies were colluding by taking turns when bidding for cattle. The agency reviewed documentation covering purchases by the buyers at the market and did not find evidence to support the allegation. The investigation was closed in October 1999. Appendix III summarizes two additional cases that GIPSA closed after finding no evidence of violations of the act.

In addition to the 3 open cases referred to above in which the agency alleges competition problems, GIPSA had 14 ongoing investigations at the end of March 2000, each of which involved meatpacking companies. For example, GIPSA initiated an investigation in April 1999 after a major company (1) closed a plant where hogs were slaughtered and (2) purchased, but did not reopen, a hog-slaughtering plant that another company had closed. The purpose of GIPSA's investigation is to determine if these actions restricted competition. GIPSA initiated another investigation in June 1999 after receiving a complaint that some major companies conspired to pay low prices for cattle after a state passed a law requiring the reporting of prices. Furthermore, some of GIPSA's ongoing

investigations are designed to obtain information on the competitive implications of various methods that major meatpacking companies use for acquiring animals, including certain contractual arrangements and pricing methods for acquiring cattle.

There were also two investigations closed during the period covered by our review that the agency's field staff said needed further work, which was not done. Specifically, in January 1997, the agency started an investigation after receiving complaints that a major meatpacking company had apportioned territory among cattle dealers to avoid competition. GIPSA decided to halt the investigation in July 1998 until its reorganization was completed and an economist could be assigned to the effort. GIPSA officials told us in May 2000 that this investigation had not been restarted and there were no plans to do so because the agency's Denver staff had been working on other efforts. In another case, which started in October 1997, the agency was investigating a livestock auction market to determine if there were competition problems. When this case was closed in November 1997, the agency's field staff said that only a few buyers were purchasing cattle at the market and that an investigation of a local meatpacking company was needed. As of May 2000, the agency had not followed up on this suggestion, and had no plans to do so. In August 2000, GIPSA officials added that these efforts were not pursued further because of the agency's priorities.

Other Efforts Have Focused Primarily on Market Conditions and Have Not Found Competition Problems

Two major efforts were started by GIPSA prior to fiscal year 1998 and were completed before January 2000; each was designed primarily to develop information on the operation of the livestock markets, including how prices for cattle and hogs are determined. Neither identified violations of the act. Specifically, one examined the procurement of cattle at four plants in Texas.⁶ The initial result of this effort was statistical information on cattle procurements and prices. Subsequently, the data that had been collected were analyzed to determine if cattle owned or acquired through contracts by meatpacking companies (*captive supplies*) had an adverse impact on the prices paid for cattle bought on the spot market. This analysis was performed by two university economists and resulted in a finding that while differences existed in the prices paid for cattle acquired through captive supply and the spot market, the data did not show that reducing captive supply or increasing spot market purchases would

⁶GIPSA reported the results of this examination of cattle pricing in a paper entitled *Investigation of Fed Cattle Procurement in the Texas Panhandle* (Dec. 28, 1999).

increase the spot market price. The second effort involved the procurement of hogs at 12 plants in four states (Iowa, Minnesota, Nebraska, and South Dakota).⁷ In reporting on its results, GIPSA said that the sales prices reported to USDA for hogs were generally lower than the actual prices paid to producers and that hogs sold by smaller sellers tended to be of lower quality and received lower prices. Appendix III contains a more detailed description of these efforts.

Furthermore, to obtain more complete information on the competitive conditions in the cattle and hog markets, GIPSA has cooperative agreements with university professors to conduct analytical research on various livestock competition issues. For example, at the time of our review, a professor with Texas A&M University was performing a follow-up to GIPSA's examination of cattle procurement in Texas; the study involves using an analytical approach that was not used in the initial effort. A second ongoing study involves professors from the University of Wyoming who are using simulations to analyze the possibility of collusive behavior in livestock auction markets; the purpose of the study is to compile information on bidding practices in a controlled setting to gain insights on possible bidding behavior in actual markets. A third ongoing study involves researchers from Utah State University who are using modeling to assess the possible use of market power by cattle packers.

GIPSA also has plans for other efforts to expand its knowledge about the cattle and hog markets. For example, the agency plans to develop economic models to provide a framework for analyzing and explaining packers' use of various procurement and pricing arrangements and for identifying price and other market impacts that may indicate improper behavior. The agency also will be conducting statistical analyses of information on hog prices, which are reported by USDA's Agricultural Marketing Service on the basis of reports submitted by packers, to determine if publicly reported prices accurately reflect what packers paid and if inaccuracies are due to packers' erroneous submissions.

⁷GIPSA reported the results of this examination of hog pricing in a paper entitled *Western Cornbelt Hog Procurement Investigation* (Oct. 8, 1998).

Factors Affecting GIPSA's Capability to Fully Investigate Concerns About Competition

GIPSA relies on USDA's OGC attorneys for legal advice, and OGC reviews the results of GIPSA's investigations to determine if violations of law might have occurred. However, OGC attorneys usually do not participate at the start or throughout the agency's investigations. OGC attorneys are not assigned until GIPSA has performed an investigation and forwarded a developed case file to them for review. In addition, GIPSA's investigative processes and practices were adopted to guide the financial and trade practice work that it has performed for years, rather than the competition-related concerns that it is also now addressing. Furthermore, GIPSA's processes and practices for complex competition-related investigations are less developed than those in place in DOJ and FTC, where antitrust and anticompetitive practice investigations have been performed for decades.

Attorneys' Participation in Investigations

DOJ and FTC assign attorneys to lead and conduct investigations of alleged unfair and anticompetitive business practices, and economists are routinely assigned as an integral part of the investigation teams. These agencies use this approach so that a legal perspective is brought to bear on the interpretation of law, the development of evidence, and the preparation of cases for presentation in administrative and judicial proceedings. GIPSA's investigations, however, are led and conducted by economists or other technical specialists, who perform the agency's anticompetition investigations without a USDA OGC attorney being assigned from the outset. OGC attorneys become involved after a GIPSA investigation is completed and a case report is forwarded for review and further action. OGC officials said that they do provide GIPSA with informal assistance and respond to inquiries about cases, but this assistance has been limited and has declined along with the number of OGC attorneys assigned to assist GIPSA.

In its February 1997 report, USDA's OIG highlighted the importance of having attorneys participate in GIPSA's investigations of complex anticompetitive practices. The OIG reported that only 4 of 84 investigations of anticompetitive practices from 1994 through 1996 had been referred to OGC for review because (1) the investigations had been conducted by staff without appropriate backgrounds or training, (2) attorneys from OGC were not involved in the investigations, and (3) there was a climate of noncooperation between various branches of GIPSA that were then responsible for the investigations. The OIG concluded that GIPSA had difficulty developing sufficient evidence to prove that an anticompetitive practice had occurred. Overall, the OIG reported that GIPSA faced

formidable obstacles to become effective because it was not organized, operated, or staffed for this type of work. The OIG stated that GIPSA should employ an approach similar to that used by DOJ and FTC, and integrate attorneys and economists from the beginning of the investigative process. The OIG recommended that USDA either make extensive program improvements within GIPSA or that the responsibility for performing anticompetitive practice investigations be transferred to another agency, such as DOJ or FTC.

GIPSA agreed with the OIG's report and has made improvements. Nevertheless, as table 2 indicates, the integration of legal and economic resources from the outset of investigations has not been achieved, and other related recommendations need further attention.

Table 2: GIPSA's Implementation of the Recommendations Made by USDA's OIG and GAO's Analysis of the Actions Taken

OIG's recommendation	Action taken in response to recommendation	GAO's analysis of actions taken by GIPSA
1. Reorganize GIPSA's headquarters and regional offices.	In 1998, GIPSA started to reorganize its headquarters and field offices. It established branches for leading its competition, trade practice, and financial work. Regional offices were reduced from 11 to 3; Atlanta began leading poultry industry work, Denver began leading cattle industry work, and Des Moines began leading hog industry work.	GIPSA's reorganization concentrates its resources on major industries and issues.
2. Assess staff's qualifications and hire staff with legal, economic, and statistical backgrounds.	As of July 2000, GIPSA had staffed its competition investigation units in Denver and Des Moines with 9 economists each; about 15 of these economists were hired since 1998. In addition, GIPSA has hired four attorneys as legal specialists for its Denver and Des Moines offices to assist with its investigations. GIPSA also hired additional marketing specialists and auditors for trade practice and financial investigative work to replace staff lost during the restructuring of its field offices. GIPSA based its hiring levels primarily on its budget and the number of vacancies that resulted from reorganization.	GIPSA's additional staff improve its organization. A detailed assessment of staffing levels was not performed, and USDA has requested a budget increase for additional GIPSA staff because of its workload. The legal specialist position that GIPSA developed appears to be more limited than anticipated because OGC informed GIPSA that the legal specialists are not authorized to provide legal advice. In addition, OGC's attorneys are not integrated into GIPSA's investigations, and OGC's assistance has declined since 1998 because of staff attrition. Consequently, GIPSA has insufficient legal assistance for its investigations.

(Continued From Previous Page)

OIG's recommendation	Action taken in response to recommendation	GAO's analysis of actions taken by GIPSA
3. Integrate economists into the investigations.	The competition units in GIPSA's regional offices have been staffed by economists who perform investigations.	Economists have been hired. GIPSA managers are pleased with the new talents that have been brought into the agency but recognize that time is needed for the economists to gain experience with investigation work. However, managers and staff of competition units in the regional offices reported that they have received insufficient expert advice about methods of investigation and interpretation of the law. GIPSA and OGC have started to develop specialized training and contacted FTC to obtain advice on alternative techniques for gaining access to company records.
4. Develop procedures for GIPSA to consult with OGC.	Procedures have not been developed. Some informal assistance has been provided.	OGC has made efforts to provide additional consultation. However, the number of OGC staff assigned has decreased. As of May 2000, five attorneys were available to assist GIPSA, as well as other USDA programs.
5. Obtain research assistance from USDA's Economic Research Service.	USDA's Economic Research Service has continued to report on concentration issues.	The reports of USDA's Economic Research Service have addressed industry trends but do not analyze the actions of individual companies.
6. Hire a manager qualified in anticompetitive practice investigations or obtain DOJ's or FTC's assistance in GIPSA's reorganization.	The GIPSA Deputy Administrator for Packers and Stockyards position was vacant for about 1 year until it was filled in May 2000 by a USDA OGC attorney with GIPSA case experience. Also, in 1997, GIPSA hired a former DOJ economist to analyze and make recommendations on its reorganization plan.	The appointment of an OGC attorney as GIPSA's Acting Deputy Administrator should be helpful. During its reorganization, GIPSA did not have a manager qualified in anticompetitive practice investigations. Also, GIPSA did not consult directly with DOJ or FTC on its reorganization, structure, or operations.

GIPSA and OGC officials agree that OGC should be more involved in the agency's investigations of anticompetitive practices. GIPSA and OGC have attempted to work more closely and OGC has provided additional consultation. Nevertheless, according to GIPSA and OGC officials, OGC's participation has been less than what is needed because relatively few OGC attorneys were assigned to GIPSA's casework prior to the reorganization and the number of attorneys has decreased since then. From November 1998 through May 2000, the number of OGC attorneys who were available to be assigned to GIPSA's casework decreased from eight to five. Also, these attorneys are not all assigned full-time to GIPSA's financial, trade practice, and competition cases; some are assigned to responsibilities in other USDA areas as well. OGC officials told us that at least six full-time attorneys are needed for GIPSA's casework and the agency's reorganization plan called for up to eight attorneys.

To illustrate OGC's workload on one of its large cases in recent years, the Assistant General Counsel of the Trade Practices Division said that after GIPSA investigated a major meatpacking company for an alleged anticompetitive practice, the full-time attention of two attorneys for over a year was needed to prepare the case for a judicial hearing. In addition, several other attorneys assisted the lead attorney for over 2 months in the preparation of the exhibits and witnesses to be presented at the hearing on the case. At DOJ and FTC, one or more attorneys are assigned to anticompetitive practice investigations, which, in some cases, may require more than a year to complete.

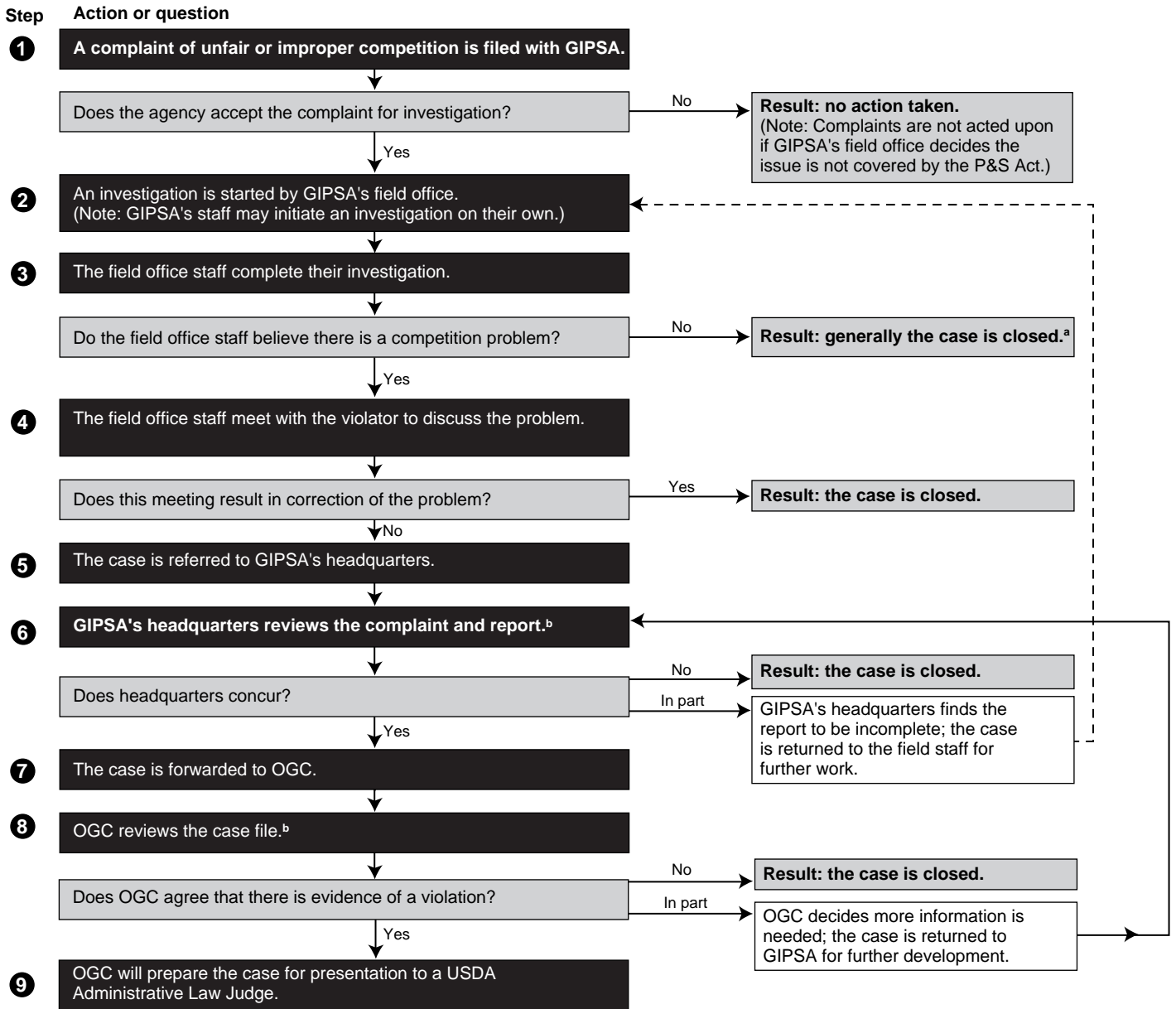
In addition, the legal specialist position that GIPSA designed for assisting its staff on legal issues appears to be more limited than GIPSA anticipated. Questions about the role of legal specialists surfaced after GIPSA hired a few attorneys as legal specialists. USDA's General Counsel informed GIPSA that (1) its legal specialists can assist on investigations but that they are not lawyers for GIPSA and cannot give legal opinions even if they have law degrees and (2) only OGC's lawyers are authorized to provide legal services in support of all USDA activities. Also, the legal specialists in GIPSA's field offices are not supervised by attorneys. In July 2000, GIPSA's Acting Deputy Administrator for Packers and Stockyards agreed that these conditions are a management concern and said that the role of the legal specialists within GIPSA was under review.

GIPSA has also had some difficulty recruiting economists with certain skills that are helpful in competition-related investigations. For its Denver and Des Moines offices, GIPSA has tried to recruit up to four economists with doctoral degrees in industrial organization economics and econometrics—two areas of expertise used in antitrust investigative work by DOJ and FTC. The grade levels that GIPSA authorized for its economists (up to GS-11) are similar to some of GIPSA's other field staff grade levels but are not competitive with the grade levels that DOJ, FTC, and other USDA offices authorize for economists (up to GS-15). Consequently, GIPSA officials said that as of July 2000, they had hired only one of these specialists for their field offices and that the absence of these skills limits the agency's capability to address highly complex industry practices. GIPSA officials recognized that recruiting could be improved by offering competitive grade levels.

Processes and Practices for Anticompetitive Practice Investigations

GIPSA's investigative processes and practices were designed for addressing financial and trade practice complaints. In contrast, DOJ and FTC have processes and practices specifically designed for guiding investigations of competition-related issues. DOJ and FTC emphasize establishing the theory of each case and the elements that will prove a case. At each stage of an investigation, including selecting the case, planning, and conducting the investigation, there are reviews by senior officials—who are attorneys and economists—which focus on developing sound cases. Within GIPSA, investigation work is led by regional staff with minimal oversight; headquarters officials generally do not require reviews until investigation cases are developed. We identified nine steps in the process for handling concerns about anticompetitive practices; GIPSA's headquarters reviews the case at the sixth step, and OGC is not involved until the eighth step, as shown in figure 1.

Figure 1: GIPSA's Process for Handling Concerns About Anticompetitive Practices



Legend: P&S Act = Packers and Stockyards Act

Note: There are no time criteria for completing any step in this process, except for step six, in which the initial review by GIPSA's headquarters is generally to be completed within 30 days.

^aIn some instances, the field office sends a case file to GIPSA's headquarters for review for informational purposes. When this happens, the case remains open until the agency's headquarters completes its review.

^bStep six is generally the first time that GIPSA's headquarters becomes involved in a case, and step eight is generally the first time that OGC becomes involved.

Source: GAO's analysis based on discussions with GIPSA officials.

GIPSA's investigation guidance manual was last revised in 1996, prior to the agency's reorganization to develop anticompetitive practice investigation capabilities. The manual covers GIPSA's responsibilities for ensuring the prompt payment for livestock and fair trade practices in livestock transactions, such as those that apply to the grading and weighing of livestock, misrepresentation in sales, and bidding irregularities. DOJ's and FTC's operating manuals, however, were specifically designed for addressing concerns about competition. Several differences between DOJ's, FTC's, and GIPSA's guidance manuals are described as follows.

Case Selection

DOJ and FTC provide internal guidance on case selection. For example, DOJ's manual contains guidance on the information and conditions necessary for approving a preliminary inquiry as well as a full investigation. A preliminary inquiry may be approved if there is sufficient evidence of a violation, if the amount of commerce is substantial, and if sufficient resources are available. GIPSA's manual does not discuss case selection, and the agency attempts to respond to all complaints that are received.

Investigation Planning and Approval

DOJ and FTC require their attorneys, assisted by economists, to establish a theory explaining how a company's (or companies') behavior may be a violation of the law. DOJ's premise in planning is that the staff's theory of the case should be well defined from the outset of an investigation and that the theory of the case and an outline of the evidence should be refined as the case proceeds. The case theory and evidence are reviewed by senior officials after a preliminary inquiry, prior to approving an investigation, and then periodically as the factual underpinnings of the case come into focus as the investigation proceeds. The plan is to consider all the evidence that may be needed to determine if there is a violation. The theory of the case and an outline of proof are revised through the course of an investigation.

GIPSA's manual does not set forth the contents of an investigative plan, the information needed to obtain approval of an investigation, or the frequency of reviews. According to GIPSA's headquarters and OGC officials, regional staff informally discuss some plans for investigations with them, but the agency does not have specific requirements for approving an investigation or an investigation plan. These conditions were reflected in the comments

of GIPSA's regional office managers and economists, who said that they often have questions about how to interpret the law and how best to scope and perform investigations. Also, OGC officials told us that the anticompetitive practice cases that GIPSA had forwarded often had weaknesses that needed to be addressed before they could determine whether a violation had occurred. Both OGC and GIPSA officials said that OGC's reviews of GIPSA's cases have led to disagreements over the act's interpretation and the sufficiency of the evidence. These issues have been difficult to resolve, according to GIPSA and OGC officials, even, in a few cases, through high-level departmental meetings.

Conducting Investigations

DOJ and FTC have guidance on many aspects of investigative work pertaining to antitrust and competition concerns. For example, DOJ provides guidance on proceeding with a civil or a criminal investigation; obtaining evidence through compulsory processes; consultation with economists; how and by whom cases should be developed, reviewed, and approved; settlement options; and the hiring of experts for presentations in court. In contrast, GIPSA's investigation manual contains detailed checklists of documentation to be obtained for specific types of financial and trade practice investigations, such as those involving the failure of a buyer to pay for livestock; a packer operating when insolvent or without a required bond; a dealer providing payoffs, rebates, and kickbacks; false weighing; bait-and-switch selling; and price discrimination.

GIPSA officials told us that their program guidance and operating methods are not designed for complex competition-related investigations. They said that they would consider adding reviews of investigations in progress and develop guidance that addresses this area of responsibility. They also said that they would like to reform the agency's work processes, including how GIPSA interacts with OGC. GIPSA's Acting Deputy Administrator of the Packers and Stockyards Programs said that she would work to ensure improvement in the relationship of GIPSA and OGC. GIPSA officials further said that the agency could benefit from periodically consulting with DOJ and FTC as GIPSA develops its program.

In addition, DOJ and FTC go beyond law enforcement efforts and promote competition by providing information and conducting other activities, such as issuing merger guidelines. Also, FTC's Bureau of Economics has published documents, such as a 1999 report on the pharmaceutical industry, that analyze industries undergoing dynamic change with possible competitive problems.⁸ The report on the pharmaceutical industry was intended to inform the industry's participants, regulators, and the Congress of the industry's competitive issues and possible antitrust concerns. The report also identified a need to evaluate alternative efficiency explanations for market practices before challenging any of the competition issues in the pharmaceutical industry.

GIPSA also has conducted educational outreach efforts after major examinations as part of its efforts to respond to specific complaints, and through its Web site and annual reports. In addition, GIPSA has held and participated in numerous town hall meetings and conferences with producers and state and industry officials. Even so, GIPSA officials agreed that their efforts have room for improvement. GIPSA's last reports providing an overview of competitive conditions in the cattle and hog industries were issued in 1996. GIPSA officials recognized that it would be helpful if producers had a more current understanding of the Packers and Stockyards Act and how the act applies to market activities. They also agreed that GIPSA could report on market activities and identify those that may raise concerns about fairness and competition, as FTC has done.

Conclusions

GIPSA has strengthened its program since 1997 by reorganizing to focus on specific livestock industries. Also, GIPSA's economists, with some experience and guidance, will enable the agency to be more effective in its investigations of complicated market issues. However, several problems detract from GIPSA's effectiveness: USDA's OGC attorneys are not involved in the investigative process; GIPSA's traditional process is not suited for anticompetitive practice investigations; GIPSA's guidance does not address complex anticompetitive practices; and there are a few staffing issues to resolve. Presently, GIPSA is better positioned for performing economic analyses than fully developing the complete cases needed to prove that anticompetitive practices have occurred.

⁸*The Pharmaceutical Industry: A Discussion of Competitive and Antitrust Issues in an Environment of Change*, FTC Bureau of Economics Staff Report (Mar. 1999).

GIPSA's program has additional steps to take to become more effective and efficient in performing investigations. One step forward would be to integrate OGC's attorneys into GIPSA's investigative teams. A teamwork approach has been used at DOJ and FTC and would also be beneficial in GIPSA's investigations. Another step would be for GIPSA to adopt a more systematic approach. An approach similar to DOJ's and FTC's would start with a preliminary phase to develop a theory of the alleged violation and a plan of investigation. At this stage, senior officials within GIPSA and OGC would approve the initial theory of the case, the plan, and the commitment of resources. Thereafter, periodic reviews would be held at major decision points. If GIPSA and OGC officials consult with DOJ and FTC officials, they may obtain suggestions about how to promote teamwork on investigations and ideas about how to shape a program suited for GIPSA's and OGC's workload and organizational structures. In addition, the role of GIPSA's legal specialists could be strengthened if they have the leadership and supervision of OGC's attorneys, and GIPSA may also be able to improve its recruitment of economic specialists.

We noted that DOJ, FTC, and GIPSA have been involved in monitoring the industry and have taken producers' concerns into account. We believe, however, that GIPSA and USDA's OGC need to continue improving their investigative capabilities and processes. These improvements will reflect a more vigilant and skillful federal presence, as well as instill greater confidence that concerns about the industry will be investigated fairly and diligently.

GIPSA also has an important role in periodically keeping the industry and the Congress informed about its monitoring of livestock markets. Since GIPSA's last major report in 1996, there have been further dynamic changes in the cattle and hog markets. These changes involve integration within the industry and changes in market operations and production margins. GIPSA could further help shape the understanding and views of industry participants by reporting again on such changes and by providing its perspective on issues involving competition.

Recommendations

To improve GIPSA's investigations of concerns about anticompetitive practices, we recommend that the Secretary of Agriculture do the following:

- Develop a teamwork approach for investigations with GIPSA's economists and OGC's attorneys working together to identify violations

of the law. Also, improve GIPSA's investigation processes and practices by adopting methods and guidance similar to DOJ's and FTC's for selecting, planning, conducting, and reviewing investigations. In doing so, consult with the Attorney General and the Chairman of the Federal Trade Commission on investigation management, operations, and case development processes.

- Determine the number of OGC attorneys that are needed for USDA's OGC to participate in GIPSA's investigations and, as needed, assign attorneys to lead or participate in these investigations. Also, provide for senior GIPSA and OGC officials to review the progress of investigations at main decision points and provide feedback, guidance, and approval of investigations as they progress. In addition, ensure that legal specialists are used effectively by providing them with leadership and supervision by USDA's OGC attorneys and ensure GIPSA has the economic talents it requires by considering whether to modify the GS grade structure for GIPSA's economists.

We also recommend that the Administrator, GIPSA, provide industry participants and the Congress with clarifications of GIPSA's views on competitive activities by reporting publicly on changing business practices in the cattle and hog industries and identifying market operations or activities that appear to raise concerns under the Packers and Stockyards Act.

Agency Comments

We provided USDA with a draft of this report for review and comment. USDA concurred with our report and recommendations. USDA's comments discussed actions that GIPSA and OGC are taking or planning to take to improve investigations of anticompetitive practices. Specifically, USDA said, among other things, that it (1) will seek to formalize consultations between GIPSA and OGC on complex investigations of anticompetitive practices, and integrate OGC's attorneys into GIPSA's investigative teams early in the investigative process; (2) will adopt relevant portions of the procedures used by DOJ and FTC for planning, developing, implementing, and reviewing investigations; and (3) anticipates developing a tiered review process for investigations in which routine investigations are subject to oversight by GIPSA's headquarters and complex investigations are subject to review and approval by GIPSA's headquarters and OGC. USDA's comments are contained in appendix V. In addition, USDA officials provided technical suggestions for clarifying the report, which we incorporated as appropriate.

Furthermore, we provided officials in DOJ's Antitrust Division and FTC's Bureau of Competition, Bureau of Economics, and Office of the General Counsel with a draft of this report for review. These officials suggested various technical corrections and clarifications, which we made as appropriate.

Scope and Methodology

We performed our review of GIPSA's efforts to address questions involving competition in the marketing of cattle and hogs from September 1999 through August 2000 in accordance with generally accepted government auditing standards. Our scope and methodology are discussed in appendix IV.

We are sending copies of this report to the appropriate Senate and House committees; interested Members of Congress; the Honorable Dan Glickman, Secretary of Agriculture; Mr. James R. Baker, Administrator, GIPSA; the Honorable Janet Reno, Attorney General; the Honorable Robert Pitofsky, Chairman, Federal Trade Commission; the Honorable Jacob J. Lew, Director, Office of Management and Budget; and other interested parties. We will also make copies available to others upon request.

Please call me at (202) 512-5138 if you or your staff have any questions about this report. Key contributors to this report are listed in appendix VI.



Lawrence J. Dyckman
Director, Food and
Agriculture Issues

GIPSA's Authority to Address Unfair and Anticompetitive Activities in the Livestock Industries

This appendix contains information on the authority of the U.S. Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) to address unfair and anticompetitive activity in the cattle and hog industries.

The Congress passed the Packers and Stockyards Act in response to concerns that, among other things, the marketing of livestock presented special problems that could not be adequately addressed by the existing federal antitrust laws. The provisions of the Packers and Stockyards Act were based, in part, on prior antitrust statutes, including the Sherman Act and the Federal Trade Commission Act. According to its legislative history, the Packers and Stockyards Act went beyond prior federal antitrust laws and aimed to safeguard both the interests of the public and elements of the industry from the producer to the consumer without destroying any unit of it.¹

USDA has authority under the Packers and Stockyards Act, which has been delegated to GIPSA, to initiate administrative actions to halt unfair and anticompetitive practices by packers² in livestock marketing and meatpacking.³ 7 U.S.C. § 192 and 193 (2000).⁴ Also, GIPSA can issue regulations to address what it regards as an unlawful activity. 7 U.S.C. § 228 (2000). However, GIPSA is not authorized to prescribe by regulation the price that packers may charge or the terms of packers and producers contracts. Also, the act does not confer on the Secretary of Agriculture the authority to directly regulate packers' prices, discounts, or sales methods.⁵

¹61 Cong. Rec. 1805 (1921); H. Rep. 77, 67th Cong. 1st sess., at 2 (1921).

²The act defines the term "packer" to include any person who in commerce (1) buys livestock for slaughter; (2) manufactures or prepares meat products for sale or shipment; or (3) markets meat, meat products, or livestock products in an unmanufactured form as a wholesale broker, dealer, or distributor.

³Such practices by live poultry dealers are also unlawful under 7 U.S.C. § 192, but 7 U.S.C. § 193 does not authorize the Secretary to bring administrative actions against such dealers. Injured parties may sue dealers under 7 U.S.C. § 209.

⁴Under the Packers and Stockyards Act, the Federal Trade Commission is responsible for halting such practices with respect to retail sales of meat and meat products, 7 U.S.C. § 227(b) (2000). Also, section 5(a)(2) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(2) (2000), exempts from the Commission's authority any activity assigned to USDA under the Packers and Stockyards Act.

⁵*Swift v. Wallace*, 105 F.2d 848, 853 (7th Cir. 1939).

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More specifically, GIPSA investigates complaints and initiates actions to halt various practices by packers that it has reason to believe are violations of the Packers and Stockyards Act. The act prohibits packers from engaging in or using any unfair, unjustly discriminatory, or deceptive practice or device, or making or giving any undue or unreasonable preference or advantage to another party.⁶ To be unlawful, the act requires that a practice be unfair or unduly discriminatory. The act does not define “unfair practices” and consequently what is unfair must be determined by regulation or on a case-by-case basis. In interpreting these rules, GIPSA and the courts must apply “a rule of reason.”⁷

GIPSA's implementing regulations provide some examples of unfair business (trade) practices by packers, such as inaccurate weighing of livestock, 9 C.F.R. § 201.71 (2000), and erroneous reporting of the price paid for animals, 9 C.F.R. § 201.53 (2000). The regulations also provide some examples of unfair practices affecting competition, such as a packer's ownership interest in a market agency, 9 C.F.R. § 201.67 (2000), and a restriction of competition between a packer and a dealer, 9 C.F.R. § 201.70 (2000). To prove that a practice is unfair, GIPSA must show that the packer intended to injure another party (predatory intent) or that its action caused injury (e.g., injury to competitors) or is likely to do so.⁸ Recently, the 8th Circuit Court of Appeals has found certain contracting practices not to be violations of the act. In a 1995 decision, for example, the 8th Circuit Court of Appeals concluded that a live poultry grower was not entitled to the same kind of contract as offered by the dealer to other poultry growers.⁹ The court noted that the act was not designed to upset the traditional principles of freedom of contract. This case was also referred to in the following example involving cattle. In a 1999 decision, the 8th Circuit Court of Appeals concluded that a packer's contracting arrangement with a group of

⁶It is also unlawful under the act for any stockyard owner, market agency, or dealer to engage in any unfair, unjustly discriminatory, or deceptive practice in connection with, among other things, the marketing, buying, or selling of livestock on a commission basis. The Secretary of Agriculture may, pursuant to a complaint or on his own initiative, bring an administrative action to halt such practices. 7 U.S.C. § 213 (2000).

⁷*Armor & Co. v. United States*, 402 F.2d 712, 717 (7th Cir. 1968).

⁸*Armor*, 402 F.2d at 717; *De Jong Packing v. USDA*, 618 F.2d 1329, 1336-1337 (9th Cir. 1980); *Daniels v. United States*, 242 F.2d 39, 42 (7th Cir. 1957), *cert. denied*, 354 U.S. 939, *reh'g denied*, 355 U.S. 852 (1957); *IBP v. Glickman*, 187 F. 3rd 974, 977 (8th Cir. 1999).

⁹*Jackson v. Swift Eckrich, Inc.*, 53 F. 3rd 1452, 1458 (8th Cir. 1995).

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producers to obtain cattle by matching the highest bid made by others (right of first refusal) was not unlawful.¹⁰

The Packers and Stockyards Act makes unlawful packer anticompetitive practices that are antitrust-type actions, such as a packer's activities that manipulate or control prices, restrain trade, apportion territory, or create a monopoly. To prove that such an activity has occurred under the act, GIPSA, in most instances, must show that the purpose of the packer's action or its actual effect was to carry out the prohibited activity. GIPSA may also choose to treat any of such activities as an unfair practice, which may be easier to prove than a violation of these antitrust-type provisions.

Although mergers are a frequent concern because they can reduce competition, the Packers and Stockyards Act does not provide USDA with premerger review authority of packers. However, GIPSA may initiate administrative actions to halt unfair and anticompetitive practices of a company formed by a merger. Both the Department of Justice (DOJ) and the Federal Trade Commission (FTC) review business mergers under the Clayton Act, as amended, and decide which of them will review a proposed merger. Given FTC's statutory limited jurisdiction regarding the livestock and meatpacking industries, DOJ has taken the lead on these issues in recent years. GIPSA has assisted in these reviews by providing information, if requested, about the markets and companies that are involved in proposed mergers.

Some of GIPSA's responsibilities are similar to those of DOJ and FTC. For example, as previously indicated, GIPSA has authority to address antitrust-type violations under the Packers and Stockyards Act. DOJ addresses monopoly and restraint of trade issues under the Sherman Act. GIPSA officials said that when they identify an activity that appears to be criminal or a violation of antitrust law, after consultation with USDA's Office of General Counsel (OGC), USDA may consult with DOJ on whether the case should be forwarded to DOJ for action.

Also, while GIPSA addresses unfair practices in livestock industries, FTC addresses unfair or deceptive acts or practices, and unfair methods of competition in other industries. By addressing acts that are anticompetitive or deceptive, FTC seeks to ensure that markets function competitively and free of undue restrictions.¹¹ Furthermore, while DOJ's antitrust actions and

¹⁰*IBP*, 187 F.3rd at 977.

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FTC's unfair practice cases focus, to a large extent, on protecting competition and consumers, GIPSA's actions are aimed at obtaining fair treatment for producers. As previously noted, the Packers and Stockyards Act provides FTC with authority only over the retail sales of meat and meat products.

To address violations by packers, the Packers and Stockyards Act sets up an administrative enforcement process to enable USDA to take action when evidence of an unlawful activity is found. Specifically, when GIPSA finds and develops evidence to show that a packer may have engaged in an anticompetitive or unfair practice, the case is referred to USDA's OGC for review and action. If USDA's OGC concurs that there is sufficient evidence to show that a packer has violated or is violating the act, or its activities are likely to cause competitive injury, OGC prepares and GIPSA may file a complaint.

The packer has a right to a hearing, which is held before a USDA administrative law judge. If, after reviewing the evidence presented by GIPSA and the packer, the administrative law judge decides that there has been a violation of the act, a cease and desist order may be issued and a civil fine may be levied. An administrative law judge's decision can be appealed to USDA's Judicial Officer, who acts on behalf of the Secretary of Agriculture. The packers, but not USDA, may file a further appeal to a Federal Circuit Court of Appeals. Also, any person may sue in federal district court to recover damages caused by any packer's violation of the Packers and Stockyards Act or any cease and desist order of the Secretary of Agriculture (7 U.S.C. 209).

In recent years, some groups have expressed concern that GIPSA has not taken full advantage of the authority that the Packers and Stockyards Act provides. For example, a 21-member advisory committee to the Secretary of Agriculture reported in 1996 that the Secretary has a mandate under the act to address packers' abuses of market power before harm is done or can

¹¹FTC may challenge alleged unfair methods of competition, including unfair methods of competition that would violate the Sherman Act through an administrative proceeding, as it does with unfair or deceptive practices. The basic consumer protection provision of the Federal Trade Commission Act is section 5(a), which provides that unfair or deceptive acts or practices in or affecting commerce are unlawful. 15 U.S.C. § 45(a) (2000). Unfair practices under section 5(a) are defined to mean those that cause or are likely to cause substantial injury to consumers and that are not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n) (2000).

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be documented by studies. Furthermore, the committee stated that this mandate is to be proactive to (1) induce healthy competition rather than to react to unhealthy competition and (2) assure fair trade practices and not merely to prevent unfair practices. The Western Organization of Resource Councils, a grassroots farm organization, presented a similar viewpoint when it petitioned USDA in October 1996 to issue rules prohibiting meatpacking companies from owning or procuring cattle through contracts (captive supplies) unless the purchases occur through spot market bidding. The view of USDA's OGC is that the Packers and Stockyards Act provides authority to halt a practice when GIPSA can demonstrate that a violation of the act's provisions has occurred or is likely to occur. USDA's OGC has also reported that to prohibit the activities of packers through regulation or administrative action requires GIPSA to develop evidence that the packers either intend to harm producers or there is a likelihood that the activity has resulted or will result in competitive injury or injury to competition.

In the petition of the Western Organization of Resource Councils, the organization said that packers' ownership of cattle and use of captive supplies resulted in decreased prices paid to producers. The organization also said that these practices unjustly discriminate against some producers and provide unreasonable preferences to others. USDA published the petition in the *Federal Register* in January 1997 and requested public comments. In August 1997, GIPSA reported on its review of the petition and the public comments it had received. GIPSA reported that there was no compelling evidence to suggest that (1) anything other than basic economic conditions determined the general price levels in the cattle market and (2) captive supplies resulted in lower cattle prices. GIPSA concluded that the rules suggested by the Western Organization of Resource Councils were not warranted. Nevertheless, there has not yet been a final ruling on the organization's petition, and on July 28, 2000, USDA announced that it will hold further public forums on the petition of the Western Organization of Resource Councils.

Overview of Past and Current Conditions Affecting Competition in the Livestock Industries

This appendix contains a brief description of the development of the Packers and Stockyards Act and an overview of concerns about concentration and competitive activities involving the livestock industries.

Historical Perspective on Competition Concerns

In a 1918 report, FTC concluded that five large packing firms had monopolistic control over the livestock industry. FTC found that five large packing firms of the era—“the big five”—dominated the industry by (1) owning and controlling public stockyards, (2) owning transportation and distribution networks, (3) slaughtering approximately two-thirds of all livestock, and (4) possessing financial interests in market outlets and retail stores. Thereafter, DOJ filed a criminal antitrust suit against the packers that resulted in a 1920 consent decree enjoining the firms from engaging in the retailing of meat, groceries, and livestock by-products. The consent decree also directed the firms to divest their financial interests in public stockyards, railroad terminals, and market outlets. In addition, the Packers and Stockyards Act was passed in 1921 to make unlawful various activities of packers, which had been reported on by FTC, and to authorize USDA to regulate activity at stockyards.

Subsequently, the conditions that gave rise to the passage of the Packers and Stockyards Act ended, including the control by meatpacking companies of railroad terminals, major stockyards, and market outlets. The meatpacking industry became less concentrated, and a larger number of buyers better assured competition for the available livestock. Therefore, USDA focused its efforts under the act on overseeing the fairness and promptness of livestock transactions and the financial protection of market participants.

Current Conditions

Because of mergers and acquisitions in recent decades, the meatpacking industry has again become concentrated. For example, four firms account for over 80 percent of steer and heifer slaughter. In 1991, we reported that USDA’s monitoring of the livestock industry had not kept pace with the changes in concentration and market structure and that USDA needed to improve its monitoring of the industry’s activities. In 1996, GIPSA reported that concentration as well as vertical integration—where the meatpackers own the hogs—and coordination in the industry had reduced the role of public markets, where terms of a trade are visible to all; that past studies were inconclusive about whether the industry remained competitive; and that the industry should continue to be monitored.

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In 1996, an advisory committee to the Secretary of Agriculture reviewed concerns about livestock markets and recommended, among other things, (1) increased monitoring of conditions in the cattle and hog markets, (2) enforcement of antitrust and regulatory policy, and (3) a review of GIPSA's enforcement practices. The Secretary then asked USDA's Office of Inspector General (OIG) to report on the act and GIPSA's program, which the OIG did as discussed earlier in this report.

In the increasingly concentrated livestock industries, the number of producers has declined, and there is increasing coordination of production from the producer to the meatpacker. Hog production, in particular, has been revolutionized with the adoption of large production buildings, special diets, and other specialized production techniques. With both cattle and hogs, there has been an increasing use of contracts or other private agreements for buying and selling and less reliance on spot markets to set prices. These changes have been driven in part by industrywide efforts to control costs and raise the quality and consistency of the industry's products. Since these changes have occurred over a relatively short time frame, they have affected producers and firms at each level of these industries.

Hog production has shifted to fewer larger producers. By the end of 1999, about 2,000 hog farms produced almost half of all hogs. About 98,000 farms were producing hogs in 1999—down from about 300,000 hog-producing farms 10 years previously. Also, farms marketing 5,000 or more hogs per year increased their share of hogs sold from 28 percent in 1988 to 63 percent in 1997. In addition, the size of meatpacking plants has increased, and the largest four meatpacking firms slaughtered about 56 percent of all hogs in 1998—up from 32 percent in 1985. Hogs are also now more often sold through contracts in which meatpacking firms and producers coordinate production methods and delivery schedules. The selling price of these hogs has usually been based on the spot market price, but these prices have not been publicly disclosed. As contractual marketing arrangements and vertical integration have increased, spot market sales have fallen to 26 percent of all hogs produced and will likely fall further.¹ Consequently, the hog industry is discussing pricing mechanisms to serve as alternatives to spot market pricing.

¹The reasons for the increased use of contractual marketing arrangements and vertical integration are discussed in *Pork Industry: USDA's Reported Prices Have Not Reflected Actual Sales* (GAO/RCED-00-26, Dec. 14, 1999).

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In view of hog production's increasing industrialization and the packing industry's increasing concentration, many hog producers have expressed concerns about packing firms' procurement practices. For example, some producers believe that packers may be using their market power to depress spot market prices or otherwise manipulate the spot market to their benefit. In addition, some producers contend that the declining proportion of hogs sold in the spot market and the resulting decline in publicly disclosed price information make it difficult for producers to determine a fair price. Also, the 1996 USDA-chartered advisory committee concluded that improved transparency in price and other sales information is critical to both buyers and sellers for the efficient functioning of market systems and for evaluating whether markets are competitive. Many producers also have concerns that the contractual marketing agreements that packers have offered to some large producers are not offered to all producers and that contracts often have inequitable terms.

Structural changes in the beef industry have also occurred but more slowly than in the hog industry. Concentration among beef-packing firms is relatively high, and four companies controlled 81 percent of steer and heifer slaughter in 1998—up from 72 percent in 1990 and 36 percent in 1980. Large meatpacking plants slaughtering over half a million steers and heifers a year handle 80 percent of the fed-beef slaughter—up from about 16 percent in 1977. On the cattle production side, the number of cattle feedlots declined from 190,000 in 1987 to 111,000 in 1997. About 200 large commercial feedlots accounted for more than half of the 28 million to 29 million steers and heifers sold to meatpackers, which is more than double the percentage of 20 years ago. Also, an increasing percentage of cattle are not sold on the spot market, and their selling price has not been publicly disclosed. In 1997, about 19 percent of the feedlot cattle slaughtered by the largest packers were not sold on the spot market. These cattle (captive supplies) either are committed to a packer more than 2 weeks prior to slaughter through a private marketing agreement or are owned by a packer.

Like some hog producers, some cattle producers believe that packers are using their market power at the expense of producers. These producers believe that increasing concentration among packing firms and captive supplies reduces competition among packers in the purchase of feedlot cattle and thereby reduces the price that packers pay for cattle.

Packers say that spot market prices are determined by supply and demand—not packers' market power—and that this is consistently supported by economic studies. Furthermore, packers maintain that their

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contractual marketing arrangements with producers are, in some instances, requested by producers themselves; are motivated by consumer demand for high-quality meat products; often contain value-based pricing; help keep their plants operating at full capacity; and are not an effort to exploit producers. Studies of the cattle and hog markets have shown that changes in supply and demand are a substantial influence on prices.²

In response to producers' concerns, the Livestock Mandatory Reporting Act of 1999 was passed as a part of USDA's appropriation act for fiscal year 2000. The act requires medium and large hog-slaughtering plants to report to USDA the details—such as the prices, volumes, and terms of sale—of all transactions involving purchases of hogs. Also, USDA is required to publish detailed reports on hog purchases and slaughter and must maintain an electronic library on hog-marketing contracts offered by packers. In addition, the requirements for medium and large beef packing plants include reporting prices to USDA on all cattle purchases, including non-spot-market purchases and boxed-beef sales. The act requires USDA to publish the data on beef at regular intervals—some of it several times per day. USDA plans to implement the mandatory price-reporting law in mid-to-late summer 2000.

²For example, in December 1999, we reported that hog prices plummeted in 1998, principally because supply exceeded slaughter capacity. (See GAO/RCED-00-26, Dec. 14, 1999). Also, a report that reviews studies on changes in the beef industry and cattle pricing is contained in *Status, Conflicts, Issues, Opportunities, and Needs in the U.S. Beef Industry*, Purcell, W.D., Research Institute on Livestock Pricing, Virginia Polytechnic Institute and State University (May 1999).

Additional Information on the Results of GIPSA's Investigations

This appendix contains additional cases that were the subject of GIPSA's investigations of anticompetitive practices. Also, a more detailed discussion of the agency's two examinations to obtain information about the competitive conditions in the cattle and hog markets is provided.

Examples of Cases in Which GIPSA Reported There Were Competition Problems

GIPSA reported that it found competition-related problems in five cases involving meatpacking companies; three of these cases were open at the time of our review. One of these open cases is discussed in the body of the report; the following summarizes the other two open cases:

- In a case involving a major company, GIPSA alleges that the firm engaged in anticompetitive and deceptive practices by retaliating against a cattle feedlot. Specifically, the company would not bid on or purchase cattle at the feedlot. The feedlot's manager had complained to GIPSA that the company's action was in retaliation for an article he had written about its marketing system. This ongoing case is scheduled for a hearing before a USDA Administrative Law Judge in March 2001.
- In an ongoing case involving multiple major companies, GIPSA said there were deficiencies in the records pertaining to the acquisition of hogs. Specifically, the agency identified problems with the companies' procurement records involving spot market purchases, forward contracting, and marketing agreements. GIPSA officials told us that the companies were notified of the deficiencies and that some, but not all, had taken action to correct their record keeping. The officials also said that the agency is developing a proposed regulation to address record-keeping requirements.

Examples of Cases in Which GIPSA Reported There Were No Competition Problems

The following cases illustrate some of the complaints that GIPSA received and investigated but did not find evidence to support anticompetitive practices. One example is provided in the body of the report; the following is a summary of two additional cases:

- GIPSA received a complaint in September 1998 alleging that buyers for two meatpacking companies were conspiring at livestock markets to depress cattle prices and to force the complainant out of the market for slaughter bulls and cows. According to GIPSA's field office officials, the start of an investigation in response to this allegation was delayed because of a lack of resources. Subsequently, an investigation was

conducted, the agency did not find evidence to support the allegation, and the case was closed in September 1999.

- Another review was initiated in June 1999 after GIPSA received a complaint that major meatpacking companies were refusing to buy cattle through an Internet marketing system. The agency's field office closed the case in August 1999 when it decided that the system was a marketing tool not covered by the Packers and Stockyards Act.

GIPSA's Texas Panhandle and Western Cornbelt Procurement Examinations

Two major efforts were completed by GIPSA in recent years; one in 1999 involving an examination of cattle buying in Texas and the second in 1998 involving an examination of the procurement of hogs in the Western Cornbelt. Each examination was designed primarily to develop information about the competitive conditions in the livestock markets, including how prices for cattle and hogs are determined. A discussion of each effort follows:

Texas Panhandle Cattle Procurement

GIPSA initiated an examination in mid-1996 involving the procurement of cattle at four plants in the Texas Panhandle, which are operated by the top three meatpacking companies in the country. The overall objective was to obtain an understanding of the competitive conditions in the cattle market in that area, including information on the methods used to acquire and determine the price of cattle. In conducting this examination, GIPSA compiled extensive data on cattle procurements at the four plants from February 6, 1995, through May 18, 1996; interviewed feedlot managers and cattle sellers; and reviewed the pricing formulas used by the three companies. In an April 1997 report, GIPSA presented a series of tables, charts, and maps showing comparative and contrasting statistical information that it had obtained and tabulated. The report was silent on anticompetitive practices in the Texas cattle market.

Subsequently, the data collected during the examination were used to determine if the companies were manipulating prices. To accomplish this objective, GIPSA entered cooperative agreements in March 1998 with economists from two universities to conduct an econometric analysis of the Texas cattle data to determine if marketing agreements and other contracting methods used for procuring cattle (captive supplies) had an adverse impact on the prices paid for cattle on the spot market. According to GIPSA, the researchers said in a November 1998 draft report that the data showed some difference between the price paid for cattle acquired through captive supplies compared with the price paid for spot market

purchases. The researchers also said that their statistical analysis did not support the notion that reducing captive supply purchases or increasing spot market purchases would result in an increase in the spot price. This was because, for example, feedyard managers control when cattle are delivered under captive supply arrangements and the captive supply price is set the week before the cattle are delivered. GIPSA then entered into cooperative agreements with seven other outside authorities to review its Texas cattle study and to "peer review" the analysis of the two economists. In 1999, the peer reviewers reported to GIPSA that they generally agreed with its study, but they raised questions about the overall scope of the effort, the data collection process, and the descriptive analysis of the data. The reviewers also generally agreed with the analysis of the university economists but raised questions about how the analysis could have been improved. Thereafter, the researchers incorporated the comments of the peer reviewers in a final report, which reiterated the findings of their draft report. GIPSA was provided with the final report in November 1999, and the agency announced its results in December 1999.

Western Cornbelt Hog Procurement

GIPSA also initiated an effort in 1996 involving the procurement of hogs at 12 plants in 4 states (Iowa, Minnesota, Nebraska, and South Dakota) operated by 4 of the largest meatpacking companies in the country. GIPSA's work was aimed at understanding the contractual arrangements between packers and producers and the relationship between the quality of hogs, seller size, and price. GIPSA's Chief of the Competition Branch told us that the overall objective was to determine how packing companies set prices for hogs and not to address any specific complaints regarding prices. During its work, GIPSA compiled extensive data on hog procurements at each plant during January 1996. The agency's field offices submitted detailed reports on each plant to GIPSA's headquarters from August 1996 through January 1997. In reporting its results in late 1998, GIPSA identified two areas of concern: (1) the sales prices reported to USDA did not reflect the actual prices paid to producers and (2) price variations exist between various groups of sellers. Specifically, GIPSA found that the reported prices were generally lower than the prices actually paid for hogs and that the hogs sold by smaller sellers tended to be of lower quality and received lower prices.

Objectives, Scope, and Methodology

This appendix contains information on our objectives, scope, and methodology in conducting this review. Concerned about concentration and anticompetitive practices in the cattle and hog markets, Senator Charles E. Grassley, as Chairman of the Subcommittee on Administrative Oversight and the Courts, Senate Committee on the Judiciary, asked us to review GIPSA's efforts to enforce the competition provisions in the Packers and Stockyards Act. Shortly thereafter, section 934 of USDA's appropriation act for fiscal year 2000 (P.L. 106-78, Oct. 22, 1999) mandated that we analyze and report to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry on USDA's ability to ensure free competition in the marketing of hogs. In response, after discussing the request and the mandate with staff of Senator Grassley and majority and minority staff of the House and Senate agriculture committees, we reviewed (1) the number and status of investigations conducted by GIPSA in response to complaints and concerns about anticompetitive activity involving the marketing of cattle and hogs and (2) factors that affect GIPSA's ability to investigate concerns about anticompetitive practices. In addition, we reviewed GIPSA's authority under the Packers and Stockyards Act to address concerns about anticompetitive and unfair practices in the cattle and hog markets.

To compile background information on GIPSA and the issues surrounding competition in the cattle and hog industries, we interviewed agency officials, including GIPSA's Administrator, Acting Deputy Administrator of the Packers and Stockyards Programs, Director of the Office of Policy/Litigation Support, Chief of the Competition Branch, and supervisors and various staff in the Denver and Des Moines offices. We interviewed USDA's Associate General Counsel, Regulatory and Marketing, and the Assistant General Counsel of the Trade Practices Division. We discussed our findings and recommendations with USDA's General Counsel. We also interviewed officials of four meatpacking companies, including a few of the largest meatpackers; representatives of livestock producer groups and farm organizations; agricultural economists; and state office officials.

We reviewed GIPSA's annual reports and other materials that it has published on the Packers and Stockyards Programs; those parts of USDA's 1997 strategic plan involving GIPSA's packers and stockyards program, the fiscal year 1999 performance report, and the revised performance plans for fiscal years 2000 and 2001; and reports issued by USDA's Economic Research Service involving competition in the meatpacking industry. We also reviewed USDA's *Budget Explanatory Notes for Committee on*

Appropriations for fiscal years 1999 through 2001. Furthermore, we reviewed prior reports addressing GIPSA's involvement in competition matters that were issued by USDA's OIG and by us.

Our analysis of the investigations conducted by GIPSA in response to allegations of anticompetitive activities or initiated by the agency covered cases that were ongoing at the start of fiscal year 1998 and those that started in fiscal 1998, 1999, and the first quarter of fiscal 2000. We used GIPSA's complaint/investigation summary log, which is the agency's record system for identifying competition cases. Agency officials also provided us with log records for trade practice cases that they indicated had competition implications. We reviewed each case to determine, for example, the type of livestock involved; whether a meatpacking company or another party, such as a livestock market, was alleged to have acted improperly; the alleged anticompetitive practice and whether GIPSA found evidence to support the allegation; and the length of time the cases were ongoing. To ensure that we had a clear understanding of the cases, we discussed many of them with GIPSA's Chief of the Competition Branch and regional staff in the Denver and Des Moines offices. Furthermore, we excluded from our analysis those cases that did not involve cattle or hogs, such as those involving poultry and lambs, and those that involved financial, trade, or other practices but not competition. Also, we did not evaluate the effectiveness of GIPSA's investigations. To report on the status of the agency's open cases, we used the end of the second quarter of fiscal year 2000 as the cutoff date.

We also included various other major efforts by GIPSA covering, for example, the procurement of feeder cattle in Texas and hogs in four Western Cornbelt states, which the agency reported on during 1999 and 1998, respectively. These efforts were designed primarily to develop information about the competitive conditions of markets and the pricing of cattle and hogs. In addition, we reviewed GIPSA's documentation covering studies of livestock-marketing issues being conducted by university researchers and the agency's plans for future investigative efforts.

To identify factors that limit GIPSA's ability to investigate concerns about anticompetitive practices, we interviewed officials at GIPSA's headquarters and at its regional offices in Denver, Colorado, and Des Moines, Iowa; USDA's OGC and OIG; DOJ; and FTC. We also discussed GIPSA's efforts to address anticompetitive practices with, for example, representatives of livestock producer groups and farm organizations. We reviewed USDA's OIG report of 1997 on GIPSA's effectiveness in investigating

anticompetitive activities and analyzed the actions taken by the agency in response to the report's recommendations, including the agency's 1997 reorganization plan. We reviewed various closed GIPSA case files in Denver, Des Moines, and GIPSA's headquarters to gain a perspective on the agency's investigations and discussed GIPSA's investigation planning, practices, and performance with regional and headquarters officials. We reviewed and compared the operating manuals that GIPSA, DOJ, and FTC use as guidance in conducting competition-related investigations and the budget requests of GIPSA and USDA's OGC for fiscal years 1999 through 2001.

To review GIPSA's authority to address concerns about unfair and anticompetitive practices in the cattle and hog markets, we reviewed the Packers and Stockyards Act; the act's legislative history, including the events that led to its enactment in 1921; the agency's implementing regulations and internal memoranda; and relevant past cases, court decisions, and law review articles. We reviewed the records of congressional hearings on concentration and competition in agriculture. We discussed GIPSA's authority with officials at the agency's headquarters, USDA's OGC, DOJ, and FTC, and law professors. We also discussed GIPSA's authority with representatives of two grassroots farm organizations: the Organization for Competitive Markets and the Western Organization of Resource Councils. Furthermore, we reviewed the 1996 report by the advisory committee to the Secretary of Agriculture that addressed concerns in the livestock markets, the 1996 petition by the Western Organization of Resource Councils, and USDA's response to the petition.

We conducted our review from September 1999 through August 2000 in accordance with generally accepted government auditing standards.

Comments From the U.S. Department of Agriculture



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

AUG 18 2000

Mr. Lawrence J. Dyckman
Director, Food and Agriculture Issues
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Dyckman:

Thank you for the opportunity to review and comment on the General Accounting Office (GAO) draft report entitled *Packers and Stockyards Programs: Actions Needed to Improve Investigations of Competitive Practices* (GAO/RECD-00-242). We also appreciate the willingness of GAO investigators to meet with the Grain Inspection, Packers and Stockyards Administration (GIPSA) and the Office of the General Counsel (OGC) to discuss a technical review of the draft.

Overall, GIPSA and OGC concur with the recommendations provided in the report to improve GIPSA's investigations of anticompetitive practices under the Packers and Stockyards (P&S) Act. The first set of recommendations suggests that GIPSA economists and OGC attorneys develop a teamwork approach for investigations. While GIPSA already has taken steps to consult informally with OGC during early stages of complex investigations, we will seek to formalize this process to ensure that all investigative, economic, and legal issues are carefully considered before embarking on complex investigations.

We are looking at the procedures of the Antitrust Division of the Department of Justice (DOJ) and of the Federal Trade Commission (FTC) for investigation planning, development, implementation, and review. We will adopt relevant portions of those procedures to develop a written guide for GIPSA's procedures for investigation planning, development, implementation, and review. We also plan to review written internal guidance that may be available at regulatory agencies whose missions may more closely parallel the regulatory mission of GIPSA, as opposed to the law enforcement missions of DOJ and FTC. Examples of such regulatory agencies include the Commodity Futures Trading Commission, the Federal Aviation Administration, and the Federal Communications Commission.

We anticipate developing a tiered review process for investigations. Investigation plans will be developed by investigators and legal specialists in GIPSA's field offices. A screening process will be developed to approve both routine and complex investigations. Approval decisions for routine investigation plans likely will be made at the field office level, with review and oversight by GIPSA management at headquarters. For example, certain types of routine compliance reviews that follow well-established investigative procedures likely would be approved or denied at the field office level.

AN EQUAL OPPORTUNITY EMPLOYER

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Complex investigations are those that require a substantial commitment of resources, involving major firms or segments of the industry, novel economic or legal theories, or otherwise indicating substantial complexity. Plans for complex investigations will be forwarded to GIPSA headquarters for review and approval. A panel of GIPSA and OGC management personnel will review these detailed written investigative plans with a careful eye toward implications for legal issues, economic analyses, and investigative and resource issues. The panel will approve, disapprove, or return investigative plans for further development and resubmission. This type of tiered screening and review process will facilitate GIPSA's enforcement responsibilities for both routine and complex investigations. In particular, requiring a thorough review by GIPSA and OGC senior management of plans for the more complex investigations will ensure effective use of investigative resources and will facilitate successful litigation if evidence demonstrates that the P&S Act has been violated.

The second group of recommendations in the GAO report discusses the number and role of OGC attorneys in GIPSA's investigations, as well as the role of GIPSA's own legal specialists. We will increase the integration of OGC attorneys into GIPSA's investigative teams early in the investigative process. Through the screening and approval process described above, we expect that one or more OGC attorneys will be assigned to a GIPSA investigative team at the time that an investigative plan is reviewed and approved by GIPSA and OGC senior management. GIPSA may also seek to have an OGC attorney assigned to a team during the initial development of an investigative plan. The OGC attorney(s) will work closely with GIPSA economists, legal specialists, and other technical specialists to ensure that investigative plans have a sound legal basis and to address critical legal issues throughout the conduct of an investigation. If evidence leads to filing of a complaint, the integration of OGC attorneys into GIPSA's investigative teams will improve our ability to litigate a case effectively, especially if Congress appropriates the President's budget increase of \$3.7 million for GIPSA regarding P&S activities.

The GAO report notes the decline in the number of OGC attorneys available to provide legal services to GIPSA. As a result of appropriations that have been substantially less than that requested for the provision of legal services, OGC has had to reduce staffing levels. In the past 3 fiscal years, OGC has been unable to backfill positions that have resulted from attrition, and with the exception of the creation of the Civil Rights Division, OGC has been unable to maintain or increase staffing, even in critical areas, such as the Trade Practices Division, that need additional personnel. The General Counsel recognizes the high priority of the work, and the significant and increasing workload, in the Trade Practices Division. Maintaining current staffing levels and filling additional attorney positions in the Division is, and will remain, a high priority. If sufficient funds are not made available by Congress, as requested in the fiscal year 2001 budget, consideration will be given to transferring resources within OGC to better support the work of GIPSA. However, such a transfer would be difficult due to the fact that many areas of OGC are already working with reduced staffing.

GIPSA will enhance and improve the effectiveness of its own legal specialists. GIPSA's legal specialists do not act as attorneys for either GIPSA or the Department, but legal specialists serve as the front-line resource for legal advice to GIPSA on its investigations. GIPSA's legal specialists will participate in investigation planning and implementation, and will consult with OGC attorneys.

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GIPSA will work closely with OGC to provide training to GIPSA's legal specialists and guidance for GIPSA investigations. This will allow for effective use of OGC resources in litigating cases, while increasing the effectiveness of GIPSA's legal specialists in providing legal support and advice throughout the investigative process.

Finally, the GAO report recommends that GIPSA promote competition through information activities. GIPSA has a long history of meeting with the regulated industry and producers to discuss policy issues under the P&S Act. GIPSA also has a number of other initiatives to provide information about concentration and other structural change issues. GIPSA has supported analysis and public release of findings relating to competitive conditions and behavior in the meatpacking industry. Analytical results on the effects of concentration in the beef packing industry were released in 1999. Research conducted as part of the Texas Panhandle Fed-Cattle investigation also was released in 1999. These findings have contributed to the public debate about concentration and about proposed limitations on the use of captive supplies. GIPSA published a petition submitted by the Western Organization of Resource Council to solicit public input on its merits. GIPSA also released its assessment of the comments to the petition to further stimulate public dialogue on the relevant issues.

GIPSA publishes an annual statistical report on the meat packing industry. This report, based on data GIPSA obtains from packers and other firms as part of its monitoring activities, contains data on packer procurement practices, changes in plant size, concentration ratios, financial performance and other information that is widely used by persons who monitor behavior in the industry. GIPSA has helped organize sessions at USDA's annual Outlook Forum to contribute to public discussion of issues relating to concerns about concentration and other structural changes. In May 2000, GIPSA held a Millennium Conference that brought together speakers with divergent views in order to enhance public dialogue and debate on structural changes and industry concentration. GIPSA also conducts educational outreach efforts after major investigations and as part of its efforts to respond to specific complaints.

Even so, GIPSA believes that there is room for improvement. GIPSA recognizes that it would be helpful if producers had a better understanding of the P&S Act and how the P&S Act applies to market activities. GIPSA also agrees that it could report on market activities and identify those that may raise concerns about fairness and competition, as the FTC does, and GIPSA will improve its reporting efforts.

GIPSA agrees that there is value in increasing the visibility of our outreach activities. If Congress appropriates the FY 2001 budget increase, GIPSA will appoint a full-time Outreach Coordinator for Packers and Stockyards Programs. Outreach activities have increased dramatically in the last year, including 26 hog producer meetings, 3 regional conferences with State Attorneys General and State Agriculture Commissioners, and a Millennium Conference attended by 450 participants on structural changes facing livestock and grain markets in the 21st century. In addition, GIPSA will hold 12 poultry growers meetings throughout the country during the fall of 2000. Additional efforts will be made to reach the cattle and sheep industries with more timely information in 2001, as our outreach effort becomes more fully developed.

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The GAO review was conducted at a time when GIPSA was going through major changes. GIPSA is continuing to work through major investigations, such as the Texas Panhandle Fed-Cattle investigation, that were started before economists had a significant role in designing and conducting competitiveness investigations. GIPSA is continuing the process of strengthening its capacity to address competitiveness issues.

GIPSA is committed to being effective in addressing competitiveness issues, as well as trade practice and financial protection issues in the livestock, meatpacking and poultry industries. GIPSA welcomes GAO's thorough review of P&S' programs and views the recommendations as being constructive. As indicated above, GIPSA already is addressing many of GAO's concerns.

Sincerely,



Charles R. Rawls
General Counsel



Michael V. Dunn
Under Secretary
Marketing and Regulatory Programs

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