From: Fred Stokes [mailto:tfredstokes@hughes.net]
Sent: Tuesday, December 29, 2009 3:12 PM
To: ATR-Agricultural Workshops
Subject: OCM Workshop Comments

Please find OCM's comments contained in above attachment. Also included for your consideration are files pertaining to the contract poultry industry.

Kindest Regards,

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December 29, 2009

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Tom Vilsack
Secretary,
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Attorney General Holder and Secretary Vilsack:

The Organization for Competitive Markets (OCM) welcomes this opportunity to offer comments and suggestions concerning the upcoming joint DOJ/USDA workshops on competition and regulatory issues in the agriculture industry. The following is offered for your consideration.

GENERAL:

Our domestic agriculture has been in a state of decline for several decades. America, the former breadbasket to the world, has since become a net importer of food. The system of agriculture that has provided this country with abundant, reliable and affordable food and fiber has been crippled by government policy which has favored big and transnational business interests. Deregulation, lack of antitrust enforcement, unfair foreign trade and policy which promoted, "get big or get out," have brought us to an ominous situation.

Workshop # 1, March 12, 2010 – Issues of Concern to Farmers – Ankeny, Iowa

Seed:

Farmers are caught in a squeeze between their escalating input costs and declining prices for their production. Irrespective of declining crop prices, seed prices continue to increase.

***Quote from a 2008 DTN article*:**

"Even the list price on seed corn will topple the $300 per bag barrier starting this fall, up about $95 to $100 per bag, or 35 percent on average, according to Monsanto officials who met with

DTN and Progressive Farmer editors this week…For 2009, 76 percent of the company's corn sales will be triple stack, 'so we think we can get the pricing right to show farmers the benefits,' John Jansen, Monsanto's corn traits lead. 'We can pass the red-faced test from the Panhandle of Texas to McLean County, Ill.'"

For a farmer who plants 1,000 acres of these expensive corn varieties, the cost per acre will increase from $82 to $123, or a gross increase of more than $40,000.

We see increased seed costs as but one of the ill effects stemming from intense concentration and anticompetitive conduct within the transgenic seed industry.   We are reassured however, by the statement of Deputy Assistant Attorney General Phil Weiser with regards to the seed industry, that DOJ will;

"evaluate the emerging industry structure, explore whether new entrants are able to introduce innovations, and examine any practices that potentially threaten competition."

Action is urgently needed to deal with the apparent anticompetitive practices by the dominant firm and to restore choice and fair prices for farmers.

Fertilizer:

While concentration and rapid increases in fertilizer prices seem to have received less notice than the increase in seed prices, we believe the fertilizer situation portends grave danger for the future of production agriculture.   In 2008 there was a very large run-up in fertilizer prices. Of particular concern is the price increase for phosphorous and potash. Both of these mineral elements are vital to crop production and phosphorous is essential for animals as well.

Wall Street Journal, May 27, 2008

"Fertilizer prices are rising faster than those of almost any other raw material used by farmers. In April, farmers paid 65% more for fertilizer than they did a year earlier, according to the U.S. Department of Agriculture. That compares with price increases of 43% for fuel, 30% for seeds and 3.8% for chemicals such as weedkillers and insecticides over the same period, according to Agriculture Department indexes."

The transnational fertilizer industry is highly concentrated and appears to have special relief from antitrust restrictions via such measures as the 1918 Webb-Pomerene Act. The industry has experienced windfall profits since 2008 with Mosaic Fertilizer Corporation having an incredible 430% increase in profits from 2007 to 2008, and Potash Corporation of Saskatchewan chalking up an increase of 164% for the same period.

There is reason to believe that the astronomical profits are due at least in part to price fixing. Filed class actions allege that the producers of potash entered into a conspiracy to increase the price of that product. Companies named in the actions include Agrium Inc., Agrium U.S. Inc., Mosaic Company, Mosaic Crop, Nutrition L.L.C., Potash Corporation Of Saskatchewan, Inc., PCS Sales (USA), Inc., JSC Uralkali, Rue Pa Belaruskali, Rue Pa Belarusian Potash Company, BPC Chicago L.L.C., JSC Silvinit and JSC International Potash Company.

Some international price fixing cases have recently been settled. South Africa-based Sasol Chemical Industries Ltd. has agreed to pay 188.01 million rand ($22.7 million) to settle claims it participated in a cartel in the fertilizer industry.

The global reserves of phosphate and potash are finite and largely controlled by cartels who clearly will exploit their market power position. An ample and affordable supply of fertilizer is vital to the future of agriculture and the food needs of our country. We strongly urge that this issue be included in the Iowa workshop.

Market Concentration:

Like the livestock industry, market concentration and lack of competition have affected the row crop component of agriculture. With the merger of Cargill and Continental Grain, international grain trade became largely controlled by three companies: Cargill, Archer Daniels Midland and Bunge.

There is ample reason to believe that grain prices are not reflective of market fundamentals or the dynamics of a competitive marketplace. Note the statement in 1998 by Archer Daniels Midland CEO, DeWayne Andreas in 1998:

"There isn't one grain of anything in the world that is sold in a free market. Not one!"

Given the history of price fixing within the grain industry, we believe there should be an extensive review of the concentration and potential for price fixing within this industry. This should be an issue for inclusion at this workshop.

Suggested experts:

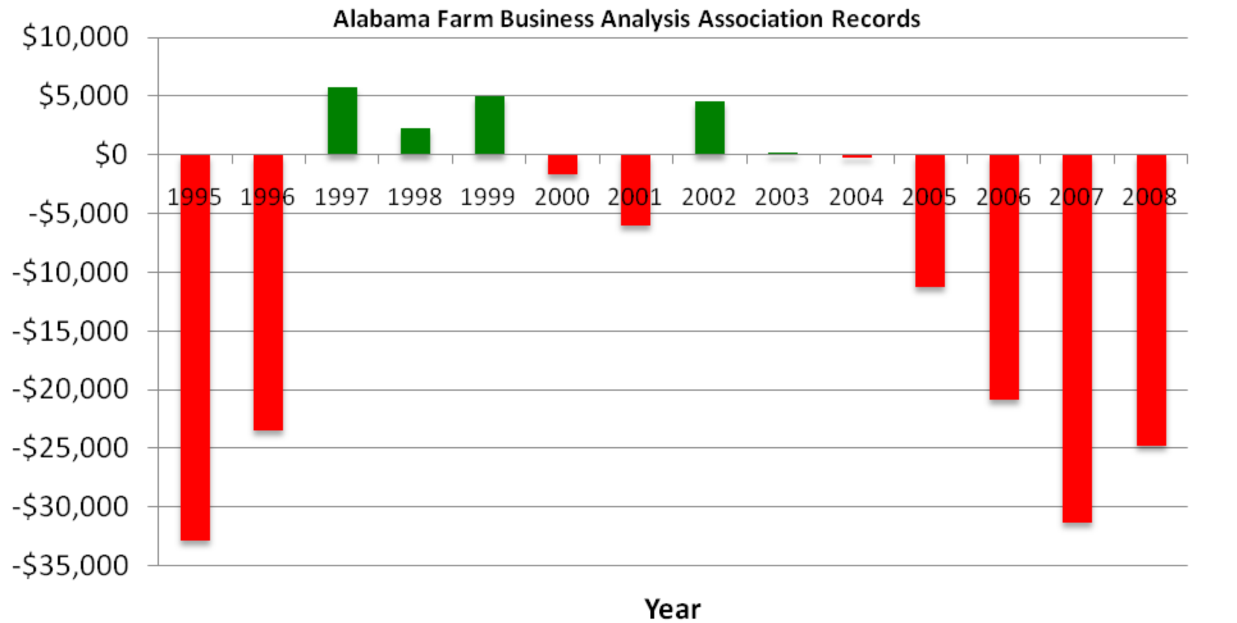
1. Dr. William Heffernan, University of Missouri
2. Dr. Diana Moss, American Antitrust Institute
3. Dr. C. Robert Taylor, Auburn University
4. Professor Kyle Stiegert, University of Wisconsin
5. Dr. Daryl Ray, University of Tennessee
6. Dr. Roger McEowen, Iowa State University
7. Dr. Neil Harl, Iowa State University

Workshop #2, May 21, 2010 – Poultry Industry – Normal, Ala.

Dr. Neil Harl of Iowa State University often says that concentration and vertical integration are a deadly combination. This “deadly combination” characterizes the American poultry industry. The allure of farming has caused many to become contract poultry growers, primarily due to availability of credit for startup and a misperception of profit potential. In some instances, producers can build poultry houses costing $1,000,000 or more without having **any** personal equity in the financing package. If the venture fails however, everything the producer owns is on the line.

When the contract poultry production concept was first initiated, producers were reasonably well compensated and treated fairly by the integrator. Over time, the typical producer became increasing exploited by the integrator. A few “pet” producers received preferential treatment and were held up by the integrator as examples of contentment and profitability. But, in general, contract poultry growers have experienced something less than the lifestyle they envisioned and returns have proven to be slim at best (see chart below prepared by Dr. C. Robert Taylor).

Fig. 1. Net Returns to Operator Management and Risk for Contract Poultry Producers, Standardized to Five Houses



AFAA records show gross contract payouts average about 10% more than regional and national averages. Thus the economic plight of the average contract grower is worse than shown in Fig 1. Due to reduced placements and grower termination, 2009 will be completely off the chart—in the red.

The *Baltimore Sun* published a powerful series of articles on the contract poultry business in 1999. Several of these articles will be attached to the electronic submission of these comments. The following is just one revelation from the pieces:

“Poultry companies hold virtually all the cards in the chicken-growing game. Sometimes they don't follow their own rules or the government's. If a grower is making trouble, companies can

silence him effectively -- with little chance of being stopped. Here's a sampling of some tactics that turned up in interviews and sworn testimony:

1 *Send the farmer weak, sickly chicks to grow.*

2 *Deliver less feed than credited, reducing his payments later. If some disappears on the side, don't investigate how that may have cost the grower money.*

3 *Ask him to put in costly new equipment that pushes him further into debt. Tell him that if he can't make the changes, he won't be able to compete effectively with his fellow farmers.*

4 *When his broilers are grown, keep them waiting at the scales, where they'll lose weight and the farmer will lose money.*

5 *Use a damaged scale to get the weight of the truck that delivered the chickens. If the weight is too high, the weight of the chickens will be lower.*

6 *When it's time to rank the farmers, remove from the competition the fellow who did especially poorly. Don't take out the guy who did really well. That way, everybody has a tougher standard to meet.*

7 *Add a clause to your contract requiring growers to resolve any disputes through arbitration, effectively nullifying the farmer's ability to sue. If the farmer doesn't want to sign that clause, tell him he'll get no more birds.*

8 *Tell growers they can't talk to each other; it spreads disease from farm to farm. If they form associations and have meetings, send somebody to sit in and report what was said.*

9 *If the grower wants to get out of the business by selling his farm, don't offer a contract to the prospective buyer. Ask for new houses instead and offer attractive guarantees to get people to build them.*

10 *Growers are banding together and planning legislation? Tell the bankers and politicians in your state that the company doesn't have to do business there. -- Kate Shatzkin and Dan Fesperman"*

The 2006 farm bill addressed the matter of compulsory binding arbitration in contracts and USDA recently promulgated rules which mitigate the leverage of poultry integrators over growers. However**,** contract growers typically have long-term mortgages on their poultry houses which can only be serviced if the integrator continues to provide them an acceptable contract. This gives the integrator tremendous power over the grower and fuels the excesses that still exist.

Suggested Experts:

1. Dr. C. Robert Taylor, Auburn University
2. Dr. William Heffernan, University of Missouri

3. Kelly Tidwell,
   Patton, Tidwell & Schroeder, LLP
   4605 Texas Blvd.
   Texarkana, Texas 75503
   kbt@texarkanalaw.com
4. Christopher Bass,
   Locke, Lord, Bissell and Liddell LLP
   2200 Ross Avenue, Suite 2200
   Dallas, Texas 75201
   cbass@lockelord.com

Workshop #3, June 7, 2010 – Dairy Industry – Madison, Wisc. NOTE: Underline this

OCM has noted the disturbing situation within the dairy industry, with farm gate milk prices being substantially less than production cost over a protracted period. While we profess no special insights into the dairy industry, we note that as in other segments of agriculture, the market is highly concentrated. We suggest that this workshop discuss market share and potential anticompetitive conduct of the dominant firms such as Dean Foods, Dairy Farmers of America (DFA) and Kraft. Perhaps there should also be discussion as to whether or not DFA has acted consistent with provisions of the Capper Volstead Act of 1922 and whether the cooperative has served the interests of dairy farmers or more narrow interests**.**

Suggested Experts:

1. Dr. Ronald **W.** Cotterill**,** University of Connecticut
2. Joaquin Contente, California Dairyman, 559.779.0526, udderguy7@aol.com

Workshop # 4, Aug. 26, 2010 – Livestock Industry – Fort Collins, Colo. (Note: Underline this)

Beef Cattle, the largest segment of U. S. Agriculture, is again experiencing a significant contraction as a result of the heavy losses by producers. The cow-calf producer and feedlot operations have been particularly hard hit. The national cow herd is at a low point, with an increased numbers of cows being slaughtered and fewer replacement heifers being held.

Independent hog producers have fallen victim to Dr. Harl's "deadly combination" (concentration and vertical integration) and have largely gone the way of the poultry industry. The few remaining independent operations are not just confronted with low market prices, but with lack of market access. The large, integrated pork companies are not affected as much by the hog market price since they sell hams, bacon and pork chops.

While our food safety system is not perfect, our domestically produced food is known here at home and throughout the world as the highest quality, most wholesome and safest available.

Country of Origin Labeling,(COOL), after being delayed for many years, is finally the implemented law of the land. However, restrictions implemented by the USDA fail to adhere to the intent of Congress. For example, beef that is produced from cattle born, raised and processed in the United States is still being labeled in retail stores as a product of United States, Canada and Mexico. American consumers have a right to accurate information regarding the food they eat and feed their children. American producers should have their superior products properly identified so as to receive proper compensation. The current practice of labeling food with multiple countries of origin fails to provide essential and accurate information to the consumer and cheats U. S. producers. This practice is a blatant violation of the intent of this legislation and another example of government action that favors the interests of big business over the interests of producers and consumers.

In 1998 the Nebraska Senate Agriculture Committee held a hearing concerning the absurdly low prices being paid for hogs while retail prices remained essentially unchanged. When a major packer representative was asked if they couldn't do a little better than $8 per CWT for hogs, his reply was, "I don't recall getting any Christmas Cards from hog producers." (This particular packer had just reported quarterly earnings that were four times normal.)

The ERS data show the percentage of the beef dollar going to the producer at 43%. On today's market, the price of a 18-24 month-old steer coming out of the feedlot more than doubles during the 7-10 days after slaughter. This situation is not only grossly unfair, it is unsustainable!

The packer has long been viewed as the culprit in this situation, but increasingly the retail share of the beef and pork dollar is coming under scrutiny. Many are coming to believe that it is the major retailer who really establishes the price that must then be divided between the other players in the production/delivery chain. This price is seldom sufficient for all to be profitable, and the packer, with his superior market power, usually gets a disproportionately greater share.

A comprehensive discussion concerning the contributions and returns for each player in the beef and pork production chain is called for. There is a need to review competition not only between players at all given levels of the production/delivery chain but also between those various levels.

Suggested Experts:

1. Dr. William D. Heffernan, University of Missouri
2. David A. Domina, Domina Law
   2425 South 144th Street
   Omaha, NE 68144
   (402) 493-4100, www.dominalaw.com
3. *Dr. C. Robert Taylor, Auburn University*
4. *Charles McVean,* McVean Trading & Investments, LLC, 850 Ridge Lake Blvd., Ste. One, Memphis, TN 38120, 800-374-1937

Workshop #5, Dec. 8, 2010 – Margins – Washington, D.C.

This concluding event is viewed by OCM as critically important to reforming those markets that affect the prices farmers and ranchers pay for their inputs and receive for their production. OCM will continue to study these market issues and expects to forward additional comments prior this final workshop.

Respectfully submitted,

President

Taking a stand, losing the farm

Taking a stand, losing the farm
In one small town, chicken farmers find out the hard way what happens when they challenge the company Series: CHICKENS: THE NEW PECKING ORDER. Second of three parts. (SERIES) [FINAL Edition]

The Sun - Baltimore, Md.

Author:	DAN FESPERMAN AND KATE SHATZKIN
Date:	Mar 1, 1999
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SEE ALSO SIDEBAR (FOR ONE TEXAS FAMILY, A LENDER SPEAKS UP)

ENTERPRISE, Ala. - In this rural town with the can-do name, the ugliness began with a showdown. In late 1995, 39 chicken farmers decided to say no to ConAgra, the nation's fifth largest poultry processor.

The farmers said the company's new contract was unfair and a ticket to the poorhouse. Local bankers agreed. Emboldened by unity and the security of their farms - which they could sell if the going got rough - the farmers refused to sign.

They might as well have challenged a tank squadron with pitchforks.

In the year that followed, ConAgra defied or intimidated nearly every institution that usually calls the shots in small-town America. The bankers surrendered. The local newspaper softened its punches. Government regulators watched but did nothing, prompting one state investigator to quit in exasperation. Real estate agents sensed a raw deal but fearfully kept their mouths shut. A leader of the Chamber of Commerce served briefly as a company spy.

So, the showdown of '95 quickly turned into the rout of '96. Of the 39 growers who first stood up to the company, 20 quickly caved in and signed the contract they despised. The other 19 tried to sell their farms, but ConAgra undermined every offer to buy.

For some that meant disaster, and the casualty list is still growing - on Jan. 7, Tom Greene became the third farmer to lose his land to foreclosure.

The saga of Enterprise is a graphic example of how U.S. chicken farmers have become serfs in a feudal system ruled by the nation's largest poultry processors. Investing hundreds of thousands of dollars in hopes of becoming independent business people, contract poultry farmers are increasingly shackled by the demands of giant corporations.

What happened in Enterprise can befall virtually any chicken farmer who challenges the system, because ConAgra achieved its extraordinary results with the most ordinary of weapons. Not only are the company's tactics commonplace in the poultry industry, they routinely go unpunished by government regulators.

"It's wrong that things like that could happen in America, that a company could have that kind of power," said SouthTrust Bank loan officer Theresa Ward, who handled mortgages for several of the holdout farmers. "I think they really set out to intentionally punish those people. ... It is a heartbreaking thing to watch people lose their farms."

Greene lost his 53 days ago - four chicken houses and 77 acres. Celia English lost 290 acres and four generations of family heritage in a 1997 foreclosure. At age 62, she now tends the public fishing lake in the town of Elba, living in a state-owned home that comes with the job.

Ed Probst and his family lost their home and farm, too, leaving for Texas with little more than their furniture.

Two other farmers sold their chicken houses at salvage prices. Four eventually signed with other poultry firms in the region, but only after their chicken houses sat empty for two years, incurring huge losses. Several of the rest are saddled with debts they'll be paying for decades for chicken houses they'll never again use.

Among the people who tried to help the farmers make a stand, only a few lawyers have remained committed to the cause. Their pending lawsuit on the farmers' behalf could be the last of its kind - ConAgra's new contract forces farmers to settle future disputes by arbitration instead.

Jim Cooper, a ConAgra vice president, said when the suit was filed, "We would never attempt to interfere with someone selling their farm."

And Blake Lovette, who recently took over as president of ConAgra Poultry, vigorously defended the company in an interview.

"This company is dedicated to doing a better job of communicating and providing growers with tools and management systems that allow them to become more comfortable with us as a company," Lovette said. "They run a very fine company {at ConAgra}. Always have. I just would not in any way paint a general picture that ConAgra has a poor reputation with its growers."

Nor does the company have any trouble attracting new growers, despite the high cost of building a chicken house. ConAgra moved quickly to replace the 19 who fell by the wayside.

Federal regulators wasted little time in moving on, too. After looking into complaints lodged by the holdout farmers, they concluded that, by their rules, ConAgra did nothing wrong.

Uniting for change

The bad blood and mistrust of 1995 had their beginnings in the 1980s, when ConAgra made an unsavory name for itself by cheating Enterprise growers on the weight of their chickens, tampering with scales in ways that cost the growers millions of dollars.

In 1994, aware of this legacy, growers began pushing for changes in the way they were treated. They took their case to the state legislature, and for a while it looked like they'd succeed.

Their goal was to pass the Alabama Agriculture Fair Practices

Act, allowing them to collectively negotiate contracts instead of signing whatever the companies demanded.

Farmers were once known more for stubborn independence than organized political activism. But ConAgra and other companies, desperate to meet a growing demand for chicken, had begun hiring growers from other walks of life, people more accustomed to speaking up for themselves when they sensed a raw deal.

Such was the case with Tom Greene and Ed Probst. Greene was a retired military officer who'd traveled the world. Probst was a state constable in Williamsport, Pa. Each bought four chicken houses in Alabama after scouting painstakingly for locations. Both were raring to go.

"I was really full of myself," said Greene, 59. "I was going to be a farmer, an entrepreneur. I read, did a lot of research before I got into this."

Thirty-one years earlier, as a young military officer, he'd seen a vision of his future as he and his wife, Ruth, cruised a highway near Enterprise. Spotting a comfy farmhouse on a fine spread of land, he'd turned to Ruth and said, "Someday we're going to have a place like that."

The Greenes took out a loan of $436,000 and decided to live mostly on his military pension until the loan was paid off. The Probsts saw the business as a means to a full-time income, and ConAgra encouraged them to, even though some poultry executives say growers can only count on a "supplemental" income.

Greene built new houses in 1989. He wanted the latest technology, and to him that meant "nipple drinkers," a neater system that makes birds peck for water a drop at a time.

ConAgra disagreed, insisting on standard trough drinkers. Greene obeyed, only to be advised 18 months later that the company was switching to nipple drinkers. He took out a second loan, for $30,000, to comply. The trough system now sits in a heap between his barns.

It was that kind of thing that persuaded Greene to help form the Alabama chapter of the National Contract Poultry Growers Association. Joining him in the organization were longtime farm families such as Randy and Wanda Buckelew, who had seven chicken houses on 10 acres plus a herd of beef cattle on an additional 165 acres near the town of Opp. They, too, had responded to ConAgra's enticement of a robust income, in hopes of sending their three children to college.

"We didn't mind the sacrifices," Wanda Buckelew said. "We were not a family that had to have great vacations or buy new furniture."

They did well, finishing first or second in the pay rankings for seven flocks in a row at one stretch. In 1994, they were the Covington County farm family of the year.

But demands for new equipment and the steep price of their loans kept shoving their poultry balance sheets into the red. That, plus frustration over their lack of control, united them with the Greenes, the Probsts and other families in the 1994 legislative fight. They journeyed upstate to Montgomery for a rally and a hearing, then lobbied lawmakers door-to-door, only to be followed at every step by representatives of the Alabama Poultry & Egg Association.

For years the association had taken their $20 in annual dues. Now it was marching with ConAgra, Tyson Foods, Wayne Farms, Perdue Farms and other companies in lobbying against the farmers. The industry message was blunt: Pass this bill and we'll leave the state.

"You might as well start putting the nails in the coffin for Tyson to continue its presence in our state," Tyson's manager for Alabama operations, Kenton R. Keith, wrote to a state representative in a typical industry letter.

The companies made formidable opponents. Tyson is the nation's largest poultry concern. But even it pales when stacked against ConAgra, a widely diversified agribusiness with annual revenues of more than $24 billion, its products ranging from Healthy Choice dinners and Hunt's ketchup to Orville Redenbacher's popcorn and Hebrew National hot dogs.

So, it wasn't hard for the industry to buttress its arguments with a sudden flush of campaign contributions. In a matter of weeks, $90,000 poured in from the poultry industry. ConAgra contributed $15,000 to the pot. A few key legislators got as much as $10,000 apiece.

The bill failed.

"When they realized how serious we were," Greene said, "they started playing hardball."

Or so he thought. The real hardball would begin in the summer of 1995.

Mixed messages

The letter on ConAgra stationery was dated July 14, 1995, and it was cordial and congratulatory. It was addressed to grower Randy Buckelew.

"Dear Randy,

"A special grower dinner has been planned for you and the other growers whose excellence in broiler management during our past fiscal year qualifies them as being in the top 10% of our broiler growers for ConAgra Poultry Company, Enterprise, Ala."

The dinner would be July 27 at the Pines Restaurant, and the invitation was signed by live operations manager Bill Gilley and broiler manager Ty Smith. They closed by saying they looked forward to "letting you know how much we appreciate your efforts."

Four days after writing the letter, Smith set in motion plans that were anything but appreciative. Former ConAgra serviceman Ricky Bagents recalled the moment:

"He sat us {service people} down at a meeting and he said, 'Do you want to improve your grow-out by 25 percent?' He said that the way to do that was to cut off your growers with the oldest houses. I {had} about 40 growers, and he wanted each of us to make a list of the 10 with the oldest houses. ... The understanding we all had was that it was a cutoff list."

The service people, who visited each of the farmers on their route about once per week, were shocked. Bagents spoke up, saying contract cutoffs "should be based on performance. {Smith} pretty much said that's not an option. And that's when I went home and cleaned out my truck. I said I can't work for a company that would treat people that way."

Smith's strategy was one of the first major moves at Enterprise under the reign of new complex manager Barney Jarreau.

Jarreau had earlier run the Dalton, Ga., complex, and a lawsuit later showed that widespread cheating of growers occurred during his tenure. But Dalton did well on the balance sheet, and ConAgra rewarded him with bonuses of $57,646 from 1989 to 1991, according to company records.

Jarreau arrived in Enterprise with all the subtlety of a blitzkrieg, Bagents recalled:

"The very first day he came in he gathered all of the salaried people together at the complex, and the first words that came out of his mouth were, 'I didn't have any friends when I came here, and I don't expect to have any when I leave.' He made you live under a threat every single minute of every day."

The Enterprise operation was due for some shaking up, Bagents allowed. Its plant and its farms had fallen behind the times. Growers the previous summer had lost 230,000 birds to heat. Jarreau figured to remedy that by signing up new houses with expensive new cooling systems, and the plan to drop older houses would clear the way. But word of the plan leaked. Then a grower secretly taped serviceman Paul Reiker discussing it further.

"Hell, it's wrong," Reiker said of the plan on the recording. "It's immoral. It's unethical. But I've got to have a job. Know what I mean?"

Suddenly faced with a hornet's nest of angry growers, Jarreau denied that the plan existed. Growers soon began hearing of another plan, one that would require expensive upgrades.

Then, fate played a hand. On. Oct. 5, Hurricane Opal roared in from the Gulf of Mexico, sweeping southern Alabama with heavy rain and 100-mph winds. ConAgra officials awakened the next morning to find that nature had gotten rid of some older chicken houses for them. But Opal wasn't quite thorough enough. So, six days later, while farmers were repairing the damage, Jarreau sent them a letter:mpetitive and therefore create a more secure future for you and ConAgra."

Jarreau followed up Oct. 20 with a notice to each grower via certified mail. A new contract was coming Nov. 1, he said, and six days later the company unveiled the specifics.

ConAgra offered the first look to representatives of local banks and farm lending organizations. The company needed them to make the hefty loans to pay for all those improvements. When the bankers saw the cost, their jaws dropped: $49,301 per chicken house. It was more than some growers had paid to have chicken houses built to begin with.

The company would raise pay as an incentive, but part of that gain would be offset by an end to some bonuses. The lenders told ConAgra that loan payments would overwhelm income, that some farmers might go under.

"We told them, '{Better equipment} is fine and dandy, but it's going to hurt as many people as it helps,' " said Ken Smith of the Federal Land Bank.

Said Max Metcalf, then with SouthTrust Bank, "That meeting was a disaster."

Farmers saw the same numbers later that day, and were equally aghast.

"You start figuring this stuff up, and they said, 'Well, there it is, if you put up a new barn, at the end of the year you will have a $1,895 profit,' " Ed Probst said. "But you couldn't get through to them. They had their minds set, they had those blinders on, and they didn't care what was ahead. They were going to go through with it."

Greene, who owed $302,000 on his four chicken houses, figured he'd have to borrow another $200,000 to make the required upgrades. Financially, it was out of the question.

Celia English would need to borrow another $200,000, too, and she owed $190,000 on her first loans.

"I knew I couldn't borrow anymore," she said.

Contract ultimatum

Money wasn't the only problem growers had with the new contract. There was also the arbitration clause. Having stopped ConAgra's earlier cheating only through a class action lawsuit, the growers now faced a future in which any grievance would be taken to arbitration.

Not only is that costly - usually about $12,000, some attorneys estimate - it also allows no collective grievances and little power to ferret out company information. In effect, they would be signing away their rights to sue.

Growers talked of a boycott, of continuing to grow birds under the old contract. Then the company set a deadline: Sign by Jan. 15, 1996, or be cut off.

Seeking a way out of the impasse, growers at an October meeting asked live production manager Ken Edwards whether they'd be able to sell their farms if they didn't sign the new contract. Or, in other words: Would ConAgra offer contracts to buyers?

No problem, Edwards told them. At a later deposition, he verified that he said so.

The boycott of the new contract began to take shape, led by the local members of the contract growers association.

In the meantime, the local press had gotten onto the story. On Nov. 19 the Enterprise Ledger ran an article by reporter Dale Maddox on opposition to the arbitration clause. It was decidedly sympathetic to the growers, and ConAgra human resources manager James Ponce de Leon picked up the phone to call Ledger publisher Mark Cullen.

Afterward, said Maddox, no longer with the paper, "We got told to cease and desist, to not do that anymore, that the company was important to the local economy and to leave them alone."

Cullen, who has also left Enterprise, didn't recall issuing such an order, but he did share a general impression that the growers were well-paid and had little to complain about. The company's longtime message of easy money was well-established around town.

"Your man in the street at that time couldn't see what the problem was," Cullen said. "He only saw it as maybe the difference between making $70,000 a year and $90,000."

The growers association called a meeting for Nov. 21. Jarreau struck back with a "press release," hand-delivered to every farm, that said the association was "attempting, for a fee, to deceive the men and women it seeks to represent." He cited ConAgra's "honesty of purpose," and said the company "has every intention of remaining a good corporate citizen."

Two weeks later, ConAgra's Ponce de Leon called a private meeting with Enterprise Mayor Johnny Henderson, Chamber of Commerce President Charlene Goolsby and city economic development officer Tim Alford. His subject: the economic damage if ConAgra were to leave the community.

He then asked Goolsby to attend the next meeting of the growers association, and he passed along her report to his bosses in a memo, noting that at one point in the meeting a farmer had warned, "Be careful what you say because ConAgra has 'spies' everywhere."

But he lamented that Goolsby had been less than perfect as a spy: "I tried to get a tape of this meeting, however, Charlene said she felt too much pressure to pull out her recorder."

The bloc dissolves

By early 1996, with the Jan. 15 contract deadline drawing near, the resolve of the growers began to crumble under the weight of debts and fears for their future. What at first seemed a solid bloc as large as 60 quickly fell to 39. A few weeks after that it was down to 19.

"Folks have got to make a living, and a lot of them just couldn't lay it out there on the line," said attorney Debbie Jared, representing some of the holdouts in their lawsuit.

The 19 who held firm soon discovered the terrible price of their resolve.

By Jan. 1, many of the 19 had put their farms up for sale, and one of them, Forest Powell, got an offer he liked. The company deemed his chicken houses fit for renovation, then scheduled an appointment at the plant for Jan. 12, where buyer Bragg Carter, a Covington County commissioner, would sign his contract to grow chickens.

That was three days before the contract deadline, meaning Powell was still officially a ConAgra grower. Besides, he still had ConAgra's chickens in his houses, his last flock under the old contract.

But when everyone arrived at the plant Jan. 12, Powell said, "They said, 'We've changed our mind, and we can't do this.' ... It was just devastating. ... I didn't even try to sell it after that. They told me that was the end of it."

Edwards, the live production manager, said later that the company canceled the deal because Powell hadn't yet signed the new contract.

By then, ConAgra had also turned down Peggy Fremd, who'd asked in November about buying or leasing English's farm. Fremd arranged her financing and made an appointment at the plant with Smith, the broiler manager. But she said Smith told her it was too late, that the company had all the growers it needed.

"I literally begged him," Fremd said. "I told him I would do anything to save {English's} farm. And he said, 'Well, we'll put you on the list {of prospective growers}.' "

She asked to see the list. "He got out a blank piece of paper and wrote my name down."

On Jan. 15, the deadline passed, and all 19 growers who'd refused to sign the contract were cut off. No more chickens were delivered to their farms. They kept trying to sell their farms, and offers were frequent. The Probsts got 16. The Greenes, the Buckelews, English and the others got plenty, too. Most of the buyers were willing to make the costly renovations the company wanted, and to sign the arbitration clause as well.

Such buyers had always been welcome in the past, local real estate agents said. And, if anything, the company was almost desperate for new growers, judging from other moves it made at the time. The sudden loss of 19 farmers, accounting for about 80 chicken houses among them, prompted ConAgra to temporarily reactivate several retired growers, including at least two with outdated equipment.

The company also was taking on buyers of other used chicken houses - houses not owned by the holdouts. On Jan. 29, Smith wrote farmer Doug Burdeshaw to tell him that the chicken houses he wanted to purchase were suitable for renovation and that he had qualified for a ConAgra contract. Burdeshaw was buying the farm of Ron Danforth, who had signed a new contract.

The company filled the rest of its sudden need by signing up new growers, the ones who supposedly placed higher on Edwards' "list."

With their poultry incomes cut off, the holdout growers began contacting the three other poultry companies with farms in the area - Perdue, Sylvest Farms and Wayne - seeking contracts for themselves or for buyers. Those companies had also lost some farms to Hurricane Opal.

All of the other companies said no.

Metcalf, who had arranged loans for several of the growers, said, "It was an unwritten thing, and they'd never admit to it, but it was the position of those other {companies} that they weren't going to take any of those houses."

Not so, the other companies say. Perdue spokesman Richard C. Auletta said in a written response that "significant cutbacks in the poultry industry" were to blame, not any sort of industry conspiracy. Officials speaking for Sylvest and Wayne said the same.

Threats to leave town

With the dissident growers in check, ConAgra moved to break the resistance of the bankers and lenders. The company called them back for a second meeting in early February. Jarreau met with them one by one, setting their appointments at intervals that kept some waiting in the hallway, and they arrived to find Jarreau accompanied by a senior vice president from ConAgra's corporate headquarters in Omaha, Neb.

The company had knocked a few items off its expensive list of required renovations, said Metcalf, the banker, "but the fact still remained that the farmer would lose money."

This time, ConAgra had a ready response for that argument. It was the same one the company had spelled out to state legislators in 1994 and to town leaders a few months earlier: Do it our way or we'll leave.

The ConAgra people mentioned other towns in other states that would be happy to have their factory. Metcalf said the bankers left with little doubt that, unless they made the numbers work and began offering loans for renovation, the company would follow up on its threat. "They didn't care what we or anybody else did or thought," he said. "This was the program they were going to have, and we were going to have to live with it."

Meanwhile, the 19 holdout growers were seeking the help of government investigators, although their expectations were low. Neither the state nor the federal agencies required to protect their interests had come through for them before.

Frank Chirico, a farm crimes investigator for the Alabama Department of Agriculture, had tried several times to look into allegations that ConAgra farmers were losing some of their chicken feed to thieves, perhaps even to company truck drivers. Every time, Chirico said, he was thwarted by higher-ups in his department. That's one reason he later quit the job.

The track record of the Grain Inspection, Packers and Stockyards Administration of the U.S. Department of Agriculture was little better. GIPSA investigators had never caught the company cheating growers through years of misweighing and hadn't followed up after the violations were disclosed by private lawsuits.

When GIPSA's regional supervisor Mike Huff visited the Buckelews from his Atlanta office, Wanda Buckelew said, "he did not have so much as a pen in his pocket, one piece of paper or a tape recorder, but he was supposed to be investigating. I wrote down notes for him on paper."

ConAgra officials speak of the agency in warmer terms.

"We're not trying to hide anything, so we do have those guys come in routinely and visit with us," said Tommy Knight, current plant manager in Enterprise. "Not only that, we know them on a first-name basis. ... It's a good check and balance for us."

'I cried all day'

Within a week of losing their contracts, the farmers began hearing from their bankers and lenders. The Buckelews were 15 months ahead on their loan payments but got a letter anyway from SouthTrust chief executive S. Craig Robinson, who wrote:ext few days so that you can explain to us how you intend on continuing to keep your notes current."

A letter also arrived from the insurance company. The policy on their chicken houses was canceled.

"We were sitting out in a lake with a great big hole in the bottom of the boat, and it was going down in a hurry," Randy Buckelew said.

Two days before their meeting at the bank, Wanda Buckelew couldn't get out of bed.

"I cried all day and could not stop," she said, "and I ended up at my doctor's office that afternoon. We'd thought we had a year {on the loan} to figure it out, at the least. And here I had a child ready for college and didn't even know if I was going to have a home for my children. And one graduating from high school the next year."

For a while they kept up with their payments. Wanda went back to teaching school full time. Randy did what he could to make their cattle business pay off better, giving up days off and often working past midnight. But by the spring of 1997 they could no longer keep the pace.

They worked out a new payment schedule for the $128,000 in debt on their seven empty chicken houses: $16,000 a year for the next 20 years.

The Probsts watched with frustration as would-be buyers of their farm sought a contract.

"They went to Wayne, they went to Sylvest and they went to ConAgra," Ed Probst said. "... I kept trying. I wanted to make sure they couldn't come to me and say, 'You didn't try hard enough.' Right up until the time we left, I was trying to get on with Wayne."

Celia English made do for a while by working as a security guard, but debt caught up with her. She was $190,000 in the hole, and in February 1998 her farm was auctioned at foreclosure.

By then, Tom Greene - still hanging onto his farm - had gotten the bad news from USDA investigators. In September 1996, nine months after the contract deadline passed, Steve Bright called from Atlanta to say he lacked sufficient evidence to forward the case to the Justice Department.

"We have nothing to show {ConAgra} did anything to block the sale of any house," Harold Davis, deputy administrator for

Packers and Stockyards programs, said in a later interview.

The growers had virtually given up on the U.S. government by then, anyway. Twelve of them had filed suit a month earlier against ConAgra for tampering with the sale of their farms.

Attorneys representing ConAgra in the case did not answer telephone calls and letters requesting an interview, and company officials won't comment on the suit.

Jarreau, the plant manager, has left ConAgra. He moved to Mississippi to work for Choctaw Maid, another poultry company. Recently he was promoted to vice president of processing. He refused to comment for this article, and ConAgra officials refused to discuss the circumstances of his departure.

Knight, the current complex manager in Enterprise, said times are better now. "Our grower morale is up big," he said.

Yet, ConAgra ranked ninth among 10 companies in "fairness ratings" in a 1996 survey of Alabama poultry growers - taken after the departure of the Enterprise holdouts. Overall, 30 percent of ConAgra growers said the company deals with them fairly, while 67 percent said they're treated unfairly.

But for the 19 growers who risked everything by taking a stand against the company's contract demands, the most bitterly ironic twist to the story may have come in March 1997. That's when Russell Bragg, Lovette's predecessor as president of ConAgra Poultry, addressed a meeting of chicken growers in Louisiana.

Bragg announced that the company's earlier ultimatum - to upgrade all older chicken houses, or else - had been rescinded. "I will not say you have to upgrade," he said to loud applause.

The belated retreat was little solace for Tom Greene as he stood at the edge of his property Jan. 7, while auctioneer Pete Horton called for bids on his four chicken houses and 77 acres.

The farm sits by Highway 27, one of those roads Greene drove down 31 years earlier when he was a young military officer foreseeing a comfortable future.

"It was going to be the fulfillment of a dream," he said.

But instead it had come to this: Greene watching with arms crossed while solemn men in ball caps quietly nodded their bids. A few gawkers from town, seated on the trunk of their Chevrolet for some lunch-hour entertainment. His wife standing quietly with her jaw set, tears in her eyes. And an auctioneer in a blue blazer and khaki pants barking out a steady patter, telling the gathering of the bright prospects that awaited the winning bidder:

"Make up your own mind," his voice boomed from two speakers. "Be your own boss. Outstanding opportunity."

Greene had heard all that before, down here in Enterprise.

[Illustration]
Credit: 1-6. Photography by John Makely : Sun Staff 7-9. EMILY HOLMES: SUN STAFF; PHOTO(S) / MAP(S) / CHART(S) /REPRODUCTION(S); Caption: 1. Lost acreage: Tom Greene walks with his grandson, Mason, 2, on the 12 acres that remain of his Alabama farm. The retired military officer lost 77 acres and four chicken houses in a foreclosure auction in January. 2. Chin up: With the ordeal finally over, Tom Greene consoles his banker Theresa Ward. For 31 years, he had dreamed of owning just such a farm. 3. Dominant industry: Feed mills owned by ConAgra and Wayne Farms dominate the landscape near downtown Enterprise, Ala., where chicken farmers tried to organize. 4. Diversified: A chicken statue marks the entrance to ConAgra's plant near Enterprise. The parent corporation has annual revenues of more than $24 billion from such brands as Healthy Choice and Hunt's. 5. Loss: Celia English stands outside one of the houses where she raised chickens until losing the farm to foreclosure. Since then, the bank has allowed the facility to fall into disrepair. With her is friend Peggy Fremd, who unsuccessfully begged company officials to let her take over English's farm. 6. Business collapse: Wanda and Randy Buckelew had hoped to send their three children to college with income from their chicken and beef farm. But the chicken business collapsed, leaving them $128,000 in debt. 7. Enterprise 8. The expenses 9. Hoping for discord

Credit: SUN STAFF

Abstract (Document Summary)

ENTERPRISE, Ala. - In this rural town with the can-do name, the ugliness began with a showdown. In late 1995, 39 chicken farmers decided to say no to ConAgra, the nation's fifth largest poultry processor.

So, the showdown of '95 quickly turned into the rout of '96. Of the 39 growers who first stood up to the company, 20 quickly caved in and signed the contract they despised. The other 19 tried to sell their farms, but ConAgra undermined every offer to buy.

"This company is dedicated to doing a better job of communicating and providing growers with tools and management systems that allow them to become more comfortable with us as a company," [Blake] Lovette said. "They run a very fine company {at ConAgra}. Always have. I just would not in any way paint a general picture that ConAgra has a poor reputation with its growers."

Unprotected and alone What happens when chicken growers who feel wronged turn to industry regulators for protection? Precious little. Series: CHICKENS: THE NEW PECKING ORDER. LAST OF THREE PARTS
[FINAL Edition]

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Document Text

When competing against his fellow chicken growers for Piedmont Poultry, farmer Lloyd West played by the rules, and for years it did nothing but cost him money.

Eventually he found out why. Some of the other farmers were cheating -- falsely reporting lower costs to make themselves look more efficient. Their paychecks rose while his went down -- and Piedmont was looking the other way. So, West and other honest farmers secretly called in investigators from the U.S. Department of Agriculture.

Had the farmers been Piedmont employees complaining about unfair wages, they could have taken their grievances to the Department of Labor. Had they been consumers worried about price-fixing, the Department of Justice might have stepped in. If the farmers had been growing cattle instead of chickens, USDA would have had the power to punish company wrongdoing.

Instead, West and his friends soon found out how alone a chicken farmer is in the wilderness of government regulation. From the moment he signs a contract, he is virtually unprotected.

In West's case, investigators confirmed that farmers were cheating. But Piedmont avoided punishment by promising that the practice would stop.

Meanwhile, in the time it took to complete the investigation, West's farm continued to do so poorly that he lost his contract and, with it, the career he loved. He eventually sold the Ramseur, N.C., farm. For all that, he couldn't find out the results of the investigation until his congressman intervened.

"Now what kind of justice is that?" he asked, still provoked to violent sobs by memories of the experience. "I loved growing those damn chickens."

What happened to West is a familiar story across 13 states, where contract chicken farmers have found it largely futile to seek redress for industry practices they say have cost them hard-earned pay and imperiled their farms.

In an eight-month investigation, The Sun found that federal investigators nearly always leave chicken growers like West to fight their battles alone.

Among the findings:

* USDA's Grain Inspection, Packers and Stockyards Administration, charged with overseeing the chicken industry's relationship with contract farmers, lacks the manpower and money to investigate allegations of cheating and other unfairness. Even after a recent expansion, it has only about seven full-time investigators to cover the nation's 30,000 chicken farmers.

* The agency lacks legal authority. It must refer cases of potential law-breaking to the Justice Department and persuade lawyers preoccupied with other crimes to look into farming infractions. That's not the case in the beef or pork industries, where the agency can take the initiative in levying fines and halting industry misconduct.

* USDA has overlooked evidence of overt cheating by large companies such as ConAgra -- evidence unearthed in private lawsuits brought by growers. In the few cases when USDA has documented wrongdoing and pursued penalties, punishment has been minor. In 1996, an investigation of a South Carolina poultry company accused of cheating at the scales and trying to cover it up resulted in the company paying $477 in court costs while

admitting no misconduct.

The situation is frustrating not only to the chicken farmers, but also to the watchdogs.

"We're still trying to get administrative authority over the poultry companies," said James R. Baker, the Stetson-wearing chief of Packers and Stockyards and a former poultry lender from the heart of Arkansas chicken country. "We have the responsibility and not the authority."

That means his investigators must find another way to accomplish their mission. They call it "voluntary compliance," a policy that leaves good corporate behavior up to the companies.

That, in turn, leaves the growers virtually at the mercy of a shrinking number of large corporations that set the rules for the ways farmers compete for pay.

In presiding over this competition, the companies control the quality of the chicks the farmers receive, their feed, what equipment farmers use and the scales on which the birds are weighed.

The companies also write the nonnegotiable contracts that strictly control every level of a farmer's operation. And, as West found out, the companies can cancel the contracts at almost any time.

Packers and Stockyards is investigating the way Salisbury-based Perdue Farms pays its growers -- in some cases, excluding some poor performers from the rankings in a way that can cost others money.

But the USDA agency rarely intervenes in this one-sided relationship as long as poultry companies can demonstrate that their actions are guided by "business decisions," fairly applied. The only exception is if a company is late with a paycheck.

In 1996, for example, Tyson canceled contracts for all its Eastern Shore growers north of U.S. 50. A Packers and Stockyards investigator acknowledged that some of those farms were efficient performers but said he was powerless to help because the company had argued that affected farmers were too far from the processing plant.

When the government has proved inattentive to their problems, growers at times have turned to the courthouse, where the discovery powers of a civil lawsuit have uncovered evidence missed by USDA. But that option is rapidly disappearing as more companies require farmers to resolve disputes through arbitration, a process that does not empower them to gather as much information or to pool their complaints.

Admissions of cheating

North Georgia chicken farmers Bud and Bonnie Hill helped awaken the industry to the power of the courthouse -- and the impotence of government enforcement -- with their 1994 lawsuit, which exposed widespread cheating by ConAgra, the nation's fifth largest poultry processor.

The Hills went into the business in 1989 looking to slow down their stressful lives in an Atlanta suburb. Bud had spent years of long hours running a Shell station, then a used-car dealership. Bonnie was a financial analyst for IBM. The expanding poultry industry was recruiting growers from their walks of life with promises of a more tranquil, rural lifestyle and a guaranteed income that could carry farmers to retirement.

The Hills liked the sound of that, so they decided to build a chicken farm on a lot they'd bought upstate, figuring to settle there for the duration. They signed with ConAgra to grow chickens, and in the beginning their birds were plump and healthy, with paychecks to match.

But after a few years, the money seemed lean by comparison. The reported weight of their birds kept falling short of their expectations. The Hills began to suspect something was going wrong once their flocks reached ConAgra's processing plant in Dalton, Ga. Company officials did little more than shrug, so the Hills decided to get to the bottom of the mystery themselves.

Other area farmers soon grew accustomed to Bud -- a tall, slender man in jeans and a flannel shirt -- appearing on their doorsteps. Despite little formal education, he became an articulate spokesman for their concerns, and he and Bonnie began building a computer database out of the long columns of figures from weigh-ins and pay settlements.

By 1993 a disturbing pattern had emerged. Their conclusion: The company was cheating farmers by underweighing their birds.

The Hills weren't the only farmers with those suspicions. USDA records show that in the same year another grower for ConAgra's Dalton plant complained to Packers and Stockyards about weight totals that kept coming up short.

Government investigators reached a similar conclusion: Something indeed was going wrong in Dalton. But it took the agency two years to address the problem, and the result was merely a letter warning ConAgra. The agency didn't ask the company to repay a single farmer, and administrators decided there wasn't enough evidence of wrongdoing to refer the case to the Justice Department.

Meanwhile, Bud Hill's concerns had caught the attention of one of his hunting buddies, an attorney named Russ Adkins. Adkins brought Dalton attorney Cynthia Johnson into the case, and they began preparing a lawsuit.

In March 1994, Hill died of cancer, five months before the lawsuit would be filed. That left it to his widow to continue the cause and run the farm.

"Other than our daughters, the one thing my husband left is a farm that he spent the last years, his last years, building," she said. "It is very dear to me. If I have to mortgage that farm to stay in this and if I'm the last person on this lawsuit, I'll be it."

But she wasn't the last. Other growers joined in, and their cases were consolidated into a class action lawsuit. The legal powers of discovery began paying rich dividends.

Former ConAgra employees and supervisors began admitting that they had, in fact, been cheating for years.

One was Tom Henderson, a supervisor who'd quit and taken a lower- paying job elsewhere rather than keep following orders to shave pounds from the weight of farmers' flocks.

Another was Roy Horner, a former ConAgra truck driver who admitted he'd regularly deducted 200 pounds from loads of birds for up to 12 years, under orders from his supervisor.

"It wasn't right. I knowed it wasn't right," Horner said in an interview. "I told them, 'Sooner or later you're going to get caught at it.' "

Eventually the boxes of evidence filled a room in Johnson's Dalton law office. Last year ConAgra settled with the Georgia farmers for $6.75 million, without admitting wrongdoing.

Meanwhile, growers for other ConAgra complexes had similar suspicions confirmed in other lawsuits alleging cheating, leading to multimillion-dollar awards for hundreds of other farmers in Alabama.

In Washington, however, regulators remained unmoved.

When confronted with the damning new allegations, government investigators decided it would take too much time and resources to review the voluminous depositions and other evidence, given that the growers already had taken action.

"There are always going to be limits on how far we are going to be able to go in proving the amount of damages," said Harold Davis, deputy administrator of Packers and Stockyards programs. "Can we afford to spend the resources looking at what the financial harm is in every case? No."

Futile attempt at redress

On Maryland's Eastern Shore, regulators barely heard when Barbara Adkins blew the whistle on Tyson Foods.

Adkins started in the poultry industry as a $1.80-an-hour clerk at the feed mill for Holly Farms Poultry. She worked hard, liked her bosses and worked her way up to executive secretary at company offices in Snow Hill. Along the way the people she worked with became like family, especially the farmers who depended on her to get the numbers right that determined their paychecks.

"She's as honest as could be," said a former boss, Perrie Waters. "A very faithful employee."

In 1989, after Adkins had been on the job 20 years, Holly Farms was bought by the nation's largest poultry company, Tyson Foods.

For a while, few things changed. But in 1991, in walked a new boss, Mark Welborn, the assistant manager for live production.

Longtime managers began retiring or were forced out. But what rankled most, Adkins said, was that Welborn began mistreating the farmers. He cursed them, threatened them and sometimes, Adkins said, he manipulated the numbers on their settlement sheets, favoring those he liked.

Adkins took her complaints, and some of her paperwork, up through Tyson's chain of command.

Nothing happened. So, as she later told a gathering of regulators, farmers and elected representatives, she decided to take her case to Packers and Stockyards. And she quit.

"Being the naive and trusting person I am," she said, "I thought, although this situation is completely beyond my control, I can turn it over to the authorities that govern this kind of wrongdoing."

Disappointing results

The agency's investigation found evidence that some growers' rankings had indeed been manipulated. But proving anything further became difficult. When Adkins told investigators which records to seek, Welborn told them the documents no longer existed.

The result: Tyson reimbursed a few growers for the money they lost -- about $700 in all -- and the agency thanked the company for its "voluntary" gesture.

USDA also put Tyson on formal notice for the future, citing "numerous instances where records were not prepared, improperly prepared or were not retained to fully document all transactions pertaining to the growout operations."

But that was all. Adkins, who'd given up her 23-year career, an $8.86-an-hour salary and six months of her life, was crestfallen. She telephoned C. James Stroud, a regional administrator for Packers and Stockyards, to demand an explanation.

According to a tape recording Adkins made of that conversation, Stroud told her he was powerless to force Tyson to produce records. Nor could he take action on her allegation that growers had been "threatened, intimidated and cussed."

"There's a lot of things, Mrs. Adkins, that are unfair, and there are a lot of things that aren't right," Stroud says on the tape, "but they're not necessarily violations of the Packers and Stockyards Act."

In an interview, Tyson spokesman Archie Schaffer called Adkins "a disgruntled employee" and said the matter is closed. Welborn, who moved to North Carolina, did not respond to a letter or phone calls from The Sun.

Davis, the Packers and Stockyards deputy administrator, said recently: "I believe we did a full and complete investigation in that case. I'm not aware that we didn't get records that we were looking for. As far as I know, we got everything we thought we had to have."

Adkins declined to be interviewed for this article. But at the gathering of regulators and farmers several years ago, she said she believed her efforts had done the growers more harm than good:

"Now they know 100 percent for sure ... they are stuck between ruthless, demanding {companies} and an agency that has sent out a message to all poultry growers that {it} will not fairly represent them or come to their aid."

Tyson's Shore growers continued to have problems after Adkins made her claims, but the government agency found no wrongdoing in those cases either. In June 1994, investigators wrote that four growers had been "victims of poor weighing practices" caused in part by a scale breakdown at the Temperanceville, Va., plant. But because the agency found no discrimination or "intentional" misweighing, it did nothing to see that farmers were compensated.

Stroud, who has retired from the agency, would not discuss the Adkins case or any other agency matter. "I'm just not willing to participate anymore in that part of my life," he said.

Up or out

In Murfreesboro, Ark., Jack Sweeden and his wife, Pat, looked forward to a good life.

They had been laborers with little education who supported themselves by logging and working in grocery stores.

Then, in 1967, the poultry industry began to boom around their town, and it seemed appealing: a business you would own at the end, if things went right. Once you made the investment, fellow farmers told them, all you needed to succeed were "a weak mind and a strong back."

The Sweedens signed with one of what was then a flock of local companies. They did well -- well enough to sell the first farm and buy a better one, with more land, within 15 years. They kept their contract, then with Lane Poultry. The chicken houses on the new place had been used when the Sweedens bought them, but they were in good enough shape to keep the couple competitive with other farmers.

Tyson bought Lane Poultry in 1986 and took on its growers. The Sweedens continued to do well for the poultry giant even though their balance sheet barely showed a profit after payments on the farm loan.

In 1990, when Tyson announced an expansion in the region, Sweeden decided he would grow along with the company. He asked Tyson about adding new houses to his two old ones.

That's when the bottom fell out of the Sweedens' dream.

"They told us if we built some new ones, we'd have to tear our old ones down," Sweeden said.

But he couldn't afford that option. He was still paying for the old houses, and construction loans would double or even triple his payments. He told Tyson thanks, but no thanks.

The ultimatum came down anyway: new houses or no houses.

So Sweeden called Packers and Stockyards.

Some growers lose their contracts because they are poor managers, but Sweeden wasn't one of them. In USDA documents, Paul Britt, Tyson's Nashville, Ark., complex manager, admitted it: The Sweedens were cut off for no other reason than that their houses were old.

"Mr. Britt stated he did not have anything against the Sweedens' performance," wrote Hal Crocker, a USDA investigator. "Having performed as well as they have with old, run-down houses indicates {the Sweedens} care and put a lot of effort in taking care of their birds."

But because Tyson said it was cutting off every grower with "old, out of date" houses who wouldn't convert completely to new ones, Crocker could find no evidence of discrimination against the Sweedens -- and no violation of the law.

The investigator trudged to the Sweedens' home to deliver the news: There was nothing he could do. Pat Sweeden remembers the way he looked while he did it: "like a whipped puppy."

The Sweedens didn't know whether to cry, break things or both.

"I didn't cry, but later on she had to go and get on blood pressure {medicine}," Jack Sweeden said, recalling the day. "It just made me mad, and I done a little cussing. We thought Packers and Stockyards could do something."

Crocker, the investigator, had thought so, too. "I really hated that," he said. "I tried. But I was told that I couldn't do anything."

Without intervention from the government, the Sweedens lost their contract. No other area company would pick it up, even though they had been second in the running for top grower of the year.

For the Sweedens, there was nothing to do but invite appraisers to look over their 30 acres and home. They finally sold the place at a bargain rate and moved to a smaller house, not far away.

Today, eight years later and now age 63, Jack Sweeden drives a garbage truck. His 59-year-old wife is a school janitor.

And the two chicken houses that once symbolized their hope for a better life?

The buyer tore them down.

[Illustration]
Photo(s); Caption: 1. Letdown: Jack and Pat Sweeden live in a mobile home not far from the 30-acre farm and house they had to sell cheaply after Tyson issued them an ultimatum: Upgrade your chicken houses or lose your contract to grow. Federal regulators ruled that the company order had not violated the law. 2. New career off the farm: Eight years after losing his livelihood as a chicken grower, Jack Sweeden, 63, earns a living as a garbage collector for the city of Murfreesboro, Ark. His wife is a school janitor. 3. What was: Lloyd West sits on the porch of his Ramseur, N.C., home, which overlooks the chicken farm he built and lost. Piedmont Poultry canceled his contract while regulators investigated his complaints of company wrongdoing. 4. ConAgra suit: Attorney Cynthia Johnson collected reams of evidence at her law office in Dalton, Ga., for the class action lawsuit that won a

$6.75 million settlement for growers. 5. Top regulator: "We're still trying to get administrative authority over the poultry companies," says James R. Baker, chief of Packers and Stockyards. "We have the responsibility and not the authority." 6. Replacing the old: New chicken houses like these dot the landscape of southwestern Arkansas. The state is a leading producer of poultry.

Credit: Sun Staff

Abstract (Document Summary)

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Winning battles but losing the political war

With deep pockets and key friends in government, companies prevail

By Kate Shatzkin and Dan Fesperman
Sun Staff

JACKSON, Miss. — After a five-year struggle, Mississippi state Rep. Bennett Malone triumphantly watch-ed as a bill he had sponsored to give poultry growers more power in their dealings with processors passed both houses of the state legislature. But when Malone looked up to the balcony and saw Don Tyson himself looking down on the vote, he knew he'd lost the war.

Days later, Gov. Kirk Fordice vetoed the Mississippi Poultry Producers Protection Act, ending a rancorous debate over whether state officials should have the power to investigate growers' complaints of unfair practices. Fordice said he considered the problems a "family squabble" that should be solved without government's help.

"As soon as we passed the bill, he walked into Fordice's office," Malone, a Democrat from poultry-rich Carthage, said of Tyson, founder of the modern version of Tyson Foods. "That tells you what we're up against."

Malone's 1996 fight is one of many that poultry growers have waged in the past eight years. Like most of the others, it wasn't successful.

As far back as the 1960s, Tyson was threatening to send company representatives to grower meetings. According to the sworn testimony of another poultry executive, Tyson said that growers who attended the meetings "would find they would have a little hard way to go."

For reasons like that, grower organizations never got off the ground before 1990, when a federal appeals court in Florida ordered Cargill Inc. to rehire Arthur Gaskins, whose contract was canceled because he headed a growers group. The next year, farmers in nine states met in Arkansas to form the National Contract Poultry Growers Association.

Four months after that meeting, a memo arrived at Tyson processing plants. "The drive to organize poultry growers is being funded and led by a network of shady characters and organizations who have a much broader agenda," wrote human resources manager Bill Jaycox.

Several companies have since forbidden growers from sharing information in their contracts — a practice federal investigators say violates growers' right to associate.

In 1994, Wayne Farms chief executive Tom Smith tried a different approach, meeting in secret with some national leaders of the growers association. Both sides felt they made headway even though they didn't always agree. Then word leaked out, and when Smith showed up for the next annual meeting of the National Broiler Council, his fellow executives let him have it.

Though the industry hasn't killed grower organizations, it usually pushes back and wins, often by threatening to leave.

In Maryland, Lewis R. Riley, a longtime politician and chicken grower from Parsonsburg, recalled that growers once asked him to sponsor a bill that would ban companies from dropping growers who had built new chicken houses for them. Riley refused. "Had Maryland passed legislation like that, we would have run the industry out of the state then," he said.

In Oklahoma, where growers have tried to pass a bill strengthening bargaining rights, a Tyson serviceman ranted to a farmer he supervised that "this new legislation is going to cause trouble." Growers complained to U.S. Department of Agriculture investigators that comments like his constituted unfair pressure, but investigators found no violations of the law.

When USDA sought comments nationally on whether to regulate how growers are paid, several companies encouraged their farmers to say no.

"Tell the USDA you don't want good producers to subsidize poor producers," said an "information sheet" that an Alabama grower for Perdue sent to USDA, writing that the company had sent it to him.

The poultry growers association similarly encouraged its members to support new regulations. In the end, the government got 3,400 letters with a range of opinions — including many letters in which growers poured out their anguish at the hands of their companies.

James R. Baker, chief of the USDA's Grain Inspection, Packers and Stockyards Administration, said he will propose a new regulation to "add integrity" to the feed-weighing system. But there is no plan to regulate pay.

"We heard so many comments from growers that the contracts are fair," Baker said.

In Mississippi, Fordice set up a committee of players in the debate who worked out a 10-point "agreement" for how to resolve problems. After three years, some growers believe problems remain, though poultry companies and state officials say the agreement has helped relationships.

"Our business in this industry is booming," said Phillip Davis, president of a People's Bank branch in Magee, Miss., which handles many poultry loans.

"Certainly, had the bill passed, it would have hurt the climate in Mississippi."

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The plucking of the American chicken farmer
From the big poultry companies comes a new twist on capitalism: Farmers put up half the money, companies get all the power.
Series: CHICKENS: THE NEW PECKING ORDER. First of three parts (SERIES)
[FINAL Edition 1]

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SEE ALSO SIDEBARS (SOME GROWERS ARE HAPPY WITH 'THE REAL GOOD MONEY') AND (VENTILATION SYSTEM ALMOST COST HIM THE FLOCK)

To Ed Probst, the poultry company's invitation sounded like the fulfillment of a dream: Come on down to Alabama and be a chicken farmer. Share the wealth. Be your own boss. Having scanned the horizon of America's poultry empire from the plains of Delmarva to the foothills of the Ozarks, Probst knew he'd need $250,000 just to get started. He'd be on call 24 hours a day. But he counted on succeeding the same way farmers had for centuries: Live off the land, pay your debts, then enjoy the fruits of independence.

So, in 1992 Probst sold his home in Pennsylvania and staked his family's future on four used chicken houses near the Alabama town of Luverne.

With his wife, Georgia, and their children pitching in, Probst began to turn around a once lackluster farm. But every year the poultry company - ConAgra - wanted more, eventually demanding that he install $200,000 worth of new equipment and sign away his right to sue if things went wrong.

Probst decided he'd had enough, and in 1996 he put his farm up for sale. He then got his last, harshest lesson: Without ConAgra's approval, his farm was virtually worthless. The company refused to offer a chicken-growing contract to any prospective buyer, and within three months the Probsts lost everything to foreclosure.

Only with the help of a collection by their Baptist church did they make it out of town, hauling their last possessions on a rented truck to a relative's house in San Angelo, Texas.

"They were toying with us, that's what they were doing," Probst said later. "They make it look good, and it's so deceiving. And once they have you, once you sign that contract, either you grow chickens for them or you don't grow them at all."

The ruination of the Probsts is an all too familiar tale among America's 30,000 contract chicken growers. Like Probst, they must invest hundreds of thousands of dollars in land and equipment just to get into the business. But once a farmer signs a contract to grow chickens, he finds himself at the bottom of a rigid pecking order, in which the poultry company controls his fortunes to the last detail.

Dictating much of that power today are the five largest companies - Tyson Foods, Gold Kist, Perdue Farms, Pilgrim's Pride and ConAgra - controlling more than half the business of this wealthy industry. Together they have transformed a barnyard byproduct into the cheap, plentiful centerpiece of the national diet.

But while the companies have been flourishing on Wall Street and extending their political reach to the White House, the growers have been increasingly beleaguered: The public denounces them as polluters whose chicken manure fouls waterways, while the poultry companies squeeze them ever tighter for profits. Formerly able to share in the bounty of an industry on the rise, they have become the land-owning serfs in an agricultural feudal system.

An eight-month Sun investigation across 13 states has found:

* A new chicken farmer today can expect an annual net income of only $8,160 - about half the poverty level for a family of four - until he has paid off the 15-year loan he took to get into the business, and even that estimate may be overly optimistic. Fewer

than half of Delmarva's chicken farmers say they're making enough to meet expenses.

* Getting into the business is more expensive than ever, requiring an investment of about $257,000. In return, a farmer is saddled with round-the-clock responsibility, daily collecting dead birds by hand during strolls through dust and ankle-deep manure. A farmer battles heat waves, power outages and outbreaks of avian disease, and his every move is controlled by the vagaries of a contract that can be canceled virtually anytime, cutting income to zero.

* A chicken farmer's first big loan is almost never his last. Companies routinely require farmers to install expensive and sometimes unproved new equipment. The additional debt means most chicken houses aren't paid for until they've reached the age when productivity - and income - generally begin to decline.

* Some companies have systematically cheated growers at the place that matters most on payday - the scales where chickens are weighed. Class action lawsuits in four states uncovered evidence that such cheating went on for years. Yet law enforcement agencies launched no criminal probes.

* The chicken farmer has virtually no one in government to help him. The lone federal agency charged with protecting his interests has missed evidence of fraud. Even when empowered to investigate, the U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration almost never produces tangible results. Despite fielding more than 1,000 complaints from chicken farmers, the agency has gone to court on their behalf only twice. The only resulting financial penalty: $477, paid by a small poultry company in South Carolina.

* The farmer's only proven defense against companies is the private lawsuit, which is rapidly being disarmed. Most poultry contracts now require farmers to sign away most rights to sue. Growers who refuse, such as Ed Probst, lose their contracts and their livelihoods.

* When chicken growers ask state legislatures for help, poultry companies almost invariably defeat them by threatening to move their plants and jobs elsewhere. The industry made similar threats in Maryland and Oklahoma when legislatures considered ways to curb pollution from chicken-manure runoff. The result: rules and penalties directed at farmers, not at companies.

* The companies have almost absolute power when growers like Probst try to sell their farms. Getting a contract to grow chickens is essential to potential buyers. Without one, a farm is virtually worthless and unsellable.

"They just gave us the runaround," said Celia English, 62, a ConAgra grower in Alabama who lost her 290-acre farm to foreclosure when the company refused to offer a contract to any prospective buyer.

"What they wanted to do is close down as many of us {older farms} as they could. ... I lost everything that I've ever had."

The relationship between chicken farmers and their companies is equal only in terms of their financial stake. Both sides put up about half of the poultry industry's capital investment.

A company's investment - in factories, hatcheries, feed mills and employees - lets it compete freely for as much as it can earn in a marketplace that has proved very profitable.

The stock of Tyson Foods Inc., the biggest of the poultry companies, is worth nearly 200 times what it was 25 years ago, and its slower growth during the past several years is attributable mostly to the company's unsuccessful forays into the fish and pork businesses. Tyson has lost money only once, in 1994, and followed that with its best year, a profit of $219 million.

A farmer's investment in land, barns and equipment, however, buys him into a more restricted competition for a pool of money that has been largely predetermined by the companies. The farmer works within an artificial economy in which the most efficient farms earn the highest pay, while lesser performers earn barely enough to survive. And at all levels, incomes have stagnated. It is a system that guarantees that some farmers will fail, even if all are vigilant and efficient.

This imbalance of power begins and ends with a farmer's contract.

A company agrees to provide a farmer with day-old chicks and enough feed, medicine and advice to keep the birds growing during the six weeks until they're ready for the slaughterhouse. The farmer agrees to provide his time and effort, giving the birds enough food and water while keeping them at the right temperature, watching for disease and culling daily casualties.

But first he must build chicken houses, generally at least two at about $128,000 apiece. Being "independent contractors," the farmers get neither a salary nor benefits. They do get a guaranteed price per pound for their birds, regardless of what happens to the prices on the open market for feed and chicken.

While this insulates them from the kinds of price shocks that recently have decimated hog farmers, none can survive for long on minimum pay, poultry economists say. Only by outperforming other chicken farmers in a flock-by-flock competition can growers hope to pay off their debts and make a living income.

The farmers compete when their birds go to the slaughterhouse. Basically, whoever produces the heaviest, healthiest chickens on the least feed gets the best rate of pay. But for every winner there's a loser, and growers who lose often enough also lose their contracts, whether they still owe money on their loans or not.

They can then try to sell their chicken houses, but if a buyer can't get a contract from a poultry company the seller can end up like Probst and English - in foreclosure.

Meanwhile, the processor simply signs up another grower and moves on, getting another new "factory" in the bargain.

Options for farmers only keep shrinking. Where there were once more than 1,000 poultry companies, about 50 remain - a core of tough, lean companies built by tough, unsparing men, such as Arthur and Frank Perdue, John and Don Tyson.

These companies say that their critics are a disgruntled minority, and that companies that cheat are the exception. Better communication, not better pay or fairer treatment, will make farmers happier, they say, and chicken farmers who don't make it simply aren't doing a good job.

Tyson spokesman Archie Schaffer is especially critical of chicken farmers who join the National Contract Poultry Growers Association, a 8-year-old growers' rights group. Every last one is a poor farmer, he said: "All of them."

In defense of paying out poverty-level incomes, executives say chicken farming was never intended to be a sole source of income, even if many farmers say that's exactly what companies led them to expect - 65 percent of Delmarva growers now call poultry their full- time business.

But ultimately the companies worry more about angering consumers than farmers, and lower payments to farmers mean lower prices at the supermarket.

"The American consumer definitely has an advantage here, and it's because the agriculture is so efficient," James A. Perdue, chief executive of Salisbury-based Perdue Farms Inc., said in an interview. "But it's a very low-margin business. ... We measure profitability in half a cent a pound."

And if the system is so awful and unfair, executives say, how come so many people are on waiting lists to build new chicken houses? Even if the pool of money for farmers is limited, farmers compete for their shares in a pure meritocracy, the companies say, a system that is quintessentially American: Whoever does best makes the most money.

Wrong, many farmers say, because key variables of success are beyond their control.

There is the varying quality of the chicks themselves - maybe you'll get a weak flock while your neighbor gets a strong one. There are the feed deliveries, weighed at the feed mill but not at your farm, leaving plenty of room for mistrust. And there is the weighing of your birds, with each delay at the farm and factory costing you poundage.

There also is the pay system, complicated and controlled by companies. For example, USDA's Packers and Stockyards has been investigating the way Perdue pays its growers - in some cases, excluding some poor performers from the rankings in a way that can cost others money.

"I got sucked into this thing thinking I had some control over my own destiny, and I don't have any," said a fuming Jerry Wunder, 52, of Westover, who has grown chickens for Perdue on his Shore farm since 1988. "I'm two years behind on my taxes. My lender threatened to foreclose on my farm. They assure you, if you work hard you can't help but be successful. But now you've got the Wal-Marting of agriculture. When I started, Frank Perdue was worth $200 million. Now he's {worth more than $800 million}, and I don't begrudge him that. But at whose expense?"

It is not the work itself that farmers dislike - in a 1997 poll of 1,344 Delmarva chicken farmers, 73.5 percent were at least somewhat satisfied with the job they'd chosen, even if fewer than half would recommend it to others. But ask them about the steps of the process and their mistrust shows: 43 percent don't trust their company's feed delivery weights, 41 percent don't trust the figures in their pay statements, 57 percent believe their company will retaliate if they raise concerns.

Other segments of the agriculture business seem to like the poultry industry's system, known as "vertical integration." Hog farming is headed toward the same start-to-finish controls. So is the beef industry. Companies dealing with more specialized grains are dabbling with variations.

"This is not just about chicken," said Randi Roth, executive director of the nonprofit Farmers' Legal Action Group in Minnesota. "This is the incubator to see if we can do this with all of agriculture."

It is impossible to say how many chicken farmers drop by the wayside each year by losing their contracts, succumbing to debt or giving up. Companies either don't keep track of such numbers or won't reveal them, and no government agency keeps tabs.

But financial reports, sworn testimony, government documents and hundreds of interviews with farmers, lenders, regulators and former company employees paint a picture at odds with the poultry industry's portrait of relative happiness and well-being. It is one in which, increasingly, growers are too indebted to quit and too weak and intimidated to fight back.

A business is born

To see how much the chicken business has changed, journey to within a few miles of where it began. Head to Bishopville, just south of the Delaware line in Maryland. The crossroads town is so enveloped by the mills, plants, labs, hatcheries and farms of the poultry industry that the local fire department tests its siren daily, lest chickens grow unaccustomed to the noise. Weekly tests caused lethal stampedes.

On Hatchery Road you'll find Jean and William Bunting. At age 67, Jean is from America's first family of poultry farming. Not only hav she and William, 69, tended chicken houses for 47 years, but her mother, Cecile Steele, started the chicken for meat business in 1923.

Eggs were the main object of the poultry business then. The meat was an expensive byproduct, a dinner-table luxury that made "a chicken in every pot" such an appealing slogan for Herbert Hoover's presidential campaign.

Steele, who lived just up the road in Ocean View, Del., got started by mistake. She ordered 50 egg layers and got 500, so she put them in a piano crate, then a shed. She scattered feed for 18 weeks, then sold them for about $600 in a year when a new Ford cost $380.

It was a providential time for a windfall. The strawberry business that had once saved Delmarva agriculture was dying, and when the Steeles ordered 1,000 more chickens and bought a new car, the neighbors took notice.

In the coming decades, so would thousands of farmers throughout the country looking for a better way to squeeze a living from thin, weary soil, including a Salisbury egg farmer named Arthur Perdue. Chickens caught on especially in the South, where poultry offered relief from the war with the boll weevil, the ravaging pest of cotton.

From there, technology and big business took charge.

Crossbreeding developed bigger and faster-growing birds. Science juiced up the feed. And in the 1950s, companies began taking control of all aspects of the operation, hatching the birds and milling the feed.

Most farmers liked the "vertical integration" because the companies absorbed the price shocks of the feed and chicken. There were hundreds of firms to choose from, and with Americans eating more chicken every year the demand for growers kept rising.

Down-home entrepreneurs such as Don Tyson, Lonnie "Bo" Pilgrim and Arthur Perdue's son, Frank, rode the wave all the way to the top.

Frank Perdue turned his father's egg and feed operations into a huge meat business that became the largest U.S. broiler company by the late 1960s. Masking a shy nature, he knocked on doors to sign up his friends and neighbors as contract growers by the dozen.

In the 1970s, he did the unthinkable - gave the anonymous chicken a brand name and a slogan. He was his own best pitchman, making fun of himself in television ads and suffering comparisons of his sharp features to a chicken's.

Twelve hundred miles away, in northwestern Arkansas, Don Tyson was building a fiefdom in Springdale, where his father, John, got started by hauling chickens on a flatbed trailer.

Tyson also stamped his name on the product, and his company outgrew Perdue's. Along the way he befriended his state's ambitious young governor, Bill Clinton. Their fortunes rose in tandem.

As the young giants of poultry grew, they shaved costs as they went, penny by penny. It never seemed to hurt growers, because for years there were plenty of competing companies to choose from. With chicken overtaking first pork and then beef as America's preferred meat, the companies always needed more farmers.

Tom Shelton, then in charge of Perdue's growers, lamented in 1974 that when he recruited Delmarva farmers he'd sometimes find representatives of four other companies waiting in the driveway when he left.

Shelton, now the head of Case Farms, speaks these days of an "overcapacity" of growers. Not only have mergers and consolidations winnowed the field of companies, but America's appetite for chicken has leveled off and exports have slumped.

As the industry grew, Cecile Steele's 14-by-14-foot coops gave way to 40-by-500-foot automated superstructures, where 28,000 birds at a time grow to twice the size of hers on half the feed in a third of the time.

About the only things that haven't kept pace with these leaps of progress, says Steele's daughter, Jean Bunting, are grower profits. Farmers now pay $5 per bird to build a chicken house, compared with $1 a bird 20 years ago, but their incomes have become the industry's most easily controllable cost.

"We haven't made a bit more money than we did 10 or 15 years ago," Bunting lamented. "I wish my mother could see what they've done to the chicken industry. They have put the farmer all the way to the bottom."

Promises beckon

Then why do so many people still want in? Why does every company boast of its waiting list of prospective growers? One reason is the cheery promotional ads and optimistic income projections that companies produce - emphasizing the gross pay, not the net.

A recent Perdue newspaper ad mentioned a possible minimum annual gross income of more than $26,500, one "you can't get from crops or livestock." A grower quoted on Tyson's World Wide Web site gushes, "This is the best job I've ever had, and I've had some good jobs."

A shorter, catchier slogan caught David Mayer's attention when he was visiting North Carolina in June 1979.

" 'Invest in part-time work for full-time pay,' " Mayer recalled reading. "I was thinking I might look into something like that."

In those days, Mayer was running three fitness centers in Richmond, Va. He was looking to sell them and move his family south. He met with a Perdue representative.

"He said to me, 'Let me tell you something. If you just put out a little effort, you're going to beat average {pay} every time,' " Mayer said. "They had a very sophisticated sales presentation - 'We're going to be in business together. As we grow, so will you.' ... He told me that if I had a chicken house, all I needed was a wheelbarrow and a pitchfork."

Mayer soon found out he also needed a tractor, a front-end loader and other expensive equipment. "Once I'd signed that promissory note," he said, "it was like Dr. Jekyll and Mr. Hyde. ... Initially it was, 'This {job} is all you need.' Then it became, 'Listen, we never intended for this to be your full-time job.' "

Now, at age 43, Mayer works under a huge burden of debt on his chicken farm in Hobgood, N.C., even though he generally finishes toward the top of the pay settlement rankings. He wonders whether he'll ever earn the independence he sought when he entered the business.

"They say they absorb all the risks," he said. "But in fact we risk everything - the farm, our homes. If the market is hurt tomorrow, it won't affect Frank Perdue's lifestyle a bit, but they might not put chickens in my house tomorrow."

Mayer's nonfarming background indicates the pressure the industry was under in the 1970s and '80s to find new growers. Their broadened recruiting began attracting a whole new breed of contractor - doctors and lawyers, business people and retired military officers.

"There were a large number of farmers who began to see this as their primary means of income," said Tom Smith, former chief executive of Wayne Farms. "In many cases, {growers} were far down the road before they realized they'd bitten off more than they could chew, and by that time they were deep in debt."

Former Maryland Secretary of Agriculture Lewis R. Riley, who grows chickens for Perdue in Parsonsburg, recalled the peak years of that period on the Eastern Shore, 12 to 15 years ago.

"There were people who came in and thought they would build three or four chicken houses and it would be the most wonderful thing in the world," Riley said. "The industry was being promoted this way by companies, that this could interpreted it as utopia."

James Rushing, live production manager for Lady Forest Farms in Mississippi, as much as admitted in a sworn deposition this year that he'd made empty promises in his sales pitch.

Reminded that he'd told a grower, whose contract was later canceled, that he'd have a contract "as long as he grew a good bird," Rushing answered, "If you buy a new car, the salesman might tell you it might last you a lifetime, but would you believe that?"

Banks and other lenders were virtually forced into a cheerleader's role in this process, especially in regions where poultry loans became a major part of their business.

So, even under the tighter economies for farmers today, "If somebody has a contract to grow chickens and they qualify, we'll loan to them, {even} knowing the farmer doesn't have a real good shake," said Don Davis, a Winder, Ga., chicken grower who also is a board member of North Georgia Farm Credit.

An insider speaks

Occasionally, someone inside the poultry industry, whether a serviceman who supervises growers or a manager in the plant offices, will talk candidly about the high-pressure nature of their business, and how, eventually, that pressure can crush the farms at the bottom of the production chain.

Ken Trew decided to talk after he got cancer. The former live haul manager at ConAgra's Dalton, Ga., plant, was a witness in the weight- cheating lawsuit by the plant's growers, and in an interview last spring he talked of the troubles he saw daily in his industry until his retirement in 1992.

Wheezing and weak, Trew would pause for long stretches between observations. He died a month after the interview.

Even when ConAgra wasn't tampering with scales or arbitrarily deducting weight from a farmer's load of chickens, Trew said, the company would let the birds sit on the trucks for hours, to lose pounds to dehydration before the weigh-in.

The trucks would "come in {from the farms} at 6 or 7 o'clock in the morning, and not weigh them until about 2 p.m.," he said. "You're talking about losing anywhere from 1,800 to 2,000 pounds per truckload, and sometimes in the summertime they'd lose more than that."

When growers would ask him if that sort of thing was going on, he'd lie for the company. "I'd say, 'I guess they're doing the best they can.' Really I never did feel good about it. I was really close to some of those growers."

Trew also talked of stressful monthly management meetings at the plant, lasting all day.

"They'd tell me, 'Do better,' every month, even though you were the best the month before, putting pressure on you all the time. And of course you'd put pressure on your own {service} people, and you'd have turnover all the "Some of them {in management} would say, 'Hey, you need to get rid of this man.' And he'd be a good grower to me and close to town. But maybe the field man didn't like him, or maybe he'd given the office manager a bad time. And maybe he'd only have two bad batches {of chickens}, and they'd say, 'Let's get rid of him.' "

Sometimes, talk would turn to the subject of the hatchery and of which farmers would get the best and worst chicks.

"A lot of times, one grower would get nothing but bad chickens," Trew said.

The only times the company took pains to place an extra good flock, he said, were when the company was delivering birds to growers for other companies, because "if you sent them a bad bunch with bad mortality, you'd have to pay {the other company} for it, but if it was just one of your growers, he took care of it."

Opponents in high places

Every now and then, a grower stands up to a poultry company. Probst did it in Alabama and paid for it with his home. In Oak City, N.C., Benny Bunting stood up to Perdue, and his case shows the levers of power that a company can pull when battling a grower.

It is a 21-year saga in which Bunting only recently discovered the ultimate price of his defiance.

Bunting, the sort of independent-minded tinkerer who builds his own equipment, does his own research and always seems to have another question for whoever happens to be his boss, signed his first Perdue contract in 1976. But by late 1981, his paychecks were suffering.

His chickens were healthy and gained weight just as fast as they were supposed to. Yet, their "feed conversion" - the rate at which chickens convert feed to weight - was below par.

He figured that the company must be misweighing his birds or his feed, and he refused to sign a new contract until Perdue got to the bottom of the problem.

Perdue cut off his contract.

He then sought the help of North Carolina Assistant Attorney General John F. Maddrey, who believed Bunting was protected by the state's Business Opportunity Sales Act. Maddrey said so in a stern letter to Perdue, demanding Bunting's reinstatement. But a few weeks later, Maddrey dropped the case.

Bunting called to find out why. "And {Maddrey} said, 'I will tell you this and deny it any other time it's ever brought up.' He said, 'When your {state} representative has lunch with my boss, and my boss comes in and says I will have no further correspondence with you or with Perdue, then I have to do what I'm told.' "

Maddrey indeed denies the conversation, but said, "I do recall Perdue retained the services of a very competent lawyer, Mr. {Stephen} Burch, who met with the upper echelons of the attorney general's office. At some point, Burch got Harrington involved."

That would be state Sen. J. J. "Monk" Harrington, who was Bunting's senator but also represented Perdue, his district's biggest employer.

"Harrington may have gotten in touch with Edmisten," Maddrey said.

That would be North Carolina Attorney General Rufus Edmisten, Maddrey's boss.

Bunting sued Perdue in December 1982 in federal court, seeking relief under, among other statutes, the Business Opportunity Sales Act. A month later, Harrington introduced a bill to exempt Perdue from the act. It passed unanimously.

Bunting's suit, meanwhile, was going nowhere. A judge threw out most of it as one year passed, then another. In the meantime, Bunting was doing some detective work. He'd heard that some Perdue feed-truck drivers had been fired a while back and wondered whether they'd been caught stealing feed - his, perhaps, which would explain his earlier slump.

In late 1985 Bunting tracked down a series of cases investigated by sheriff's deputies and Perdue's Jim McCauley, an investigator from Salisbury. Local court records show that the thefts of Perdue feed involved 10 people - including at least six Perdue employees - and stretched back to May 1982, suggesting that Perdue had begun investigating not long after Bunting complained.

Bunting's attorney, David Duffus, asked to take a deposition from McCauley. According to a witness that day, the Perdue investigator read from his notes that Bunting's feed had indeed been stolen. The feed of other growers had been stolen, too.

Perdue attorneys immediately secured a court order to keep anyone else from finding out, then settled Bunting's case two weeks later with a confidential agreement.

Bunting began growing chickens again under a contract in the name of his father, Wiley B. Bunting Sr. A Perdue service person advised him to keep the arrangement that way until later, when tensions eased.

Bunting never did switch the contract to his own name, and last year that suddenly mattered. That's when his son Jason decided to buy a neighbor's used chicken houses at a bargain price. Perdue listed the needed improvements, and the Buntings went to work, hoping to soon have a contract in hand.

Then word came down that the deal was on hold. Bunting was mystified until April 3, when a letter arrived from Perdue complex manager Rod Flagg. It was addressed to Bunting's father. There would be no contract for Jason, the letter said, nor for anybody else except him, the eldest Bunting, because, "Perdue Farms refuses to have a contractual relationship with Wiley B. {Benny} Bunting Jr. or any successors, heirs or assigns of Benny Bunting Jr."

Perdue officials say they're simply abiding by the terms of their original, confidential settlement with Bunting, according to spokesman Richard C. Auletta. That settlement barred further dealings with Bunting and his "heirs or assigns," Auletta said.

Not true, said attorney Clay Fulcher, now handling Bunting's case. The agreement only said that the company and Bunting himself would "go their separate ways." If the company can't deal with any potential heirs or assigns, he said, then how could it have continued its contract with Bunting's father?

"It looks like a blacklist to me," said Bunting, still pondering his next move.

High cost of escape

As expensive as it is to get into the business, it can be even more costly to get out.

Probst found out when he tried to sell his chicken farm in Alabama in 1996. No potential buyer could get a contract to grow chickens with any of the poultry companies in the area.

It is a problem that worries all growers who want out. Companies have become more selective than ever in choosing new growers, and almost always prefer new farms to used ones.

Drive across Delmarva today, and for every lot with a set of long gleaming chicken houses and a big tidy home there seems to be another with old or abandoned chicken houses, staved-in places with torn curtains and bowed walls, open to the breeze and the songbirds.

Jean and William Bunting have one like that, even if it's not nearly as outdated as the coop her mother, Cecile Steele, built in 1923, now a museum piece in Delaware.

Theirs, more than 30 years old, has little if any resale value. But it is free and clear of debt, meaning the Buntings can resort to chicken farming's most elemental means of escape.

"We're selling whatever anybody wants out of it," Jean said.

And then?

"We're going to burn it."

[Illustration]
PHOTO(S) / GRAPH(S) / CHART(S); Caption: 1. Ruined: Ed and Georgia Probst -- once growers for the nation's fifth-largest chicken processor, ConAgra -- lost their Alabama farm to foreclosure. "They were toying with us," Ed Probst says of the company. 2. Escape: Jean Bunting of Bishopville, chasing stragglers that dodged a trip to the slaughterhouse, is from a pioneering family of poultry farmers. Her mother began the chicken- for-meat business on an Ocean View, Del., farm a few miles north in 1923. 3. Packing: At Perdue's Salisbury hatchery, workers sort newborn chicks by gender and toss them into funnels leading to a conveyor belt and packing crates. 4. Turnaround: A worker delivers 20,000 chicks to a grower in Waco, Ga. Some newborns try to follow him back to the bus. 5. Cover: Benny Bunting and his son, Jason, pull a tarpaulin over wood shavings that will be used as litter in three houses owned by the elder Bunting's father, Wiley, in Oak City, N.C. 6. Harvest: Chicken catchers Dwight Manuel (left) and Lavaughn Jones, at the Bunting farm in Bishopville, just south of the Delaware line in Maryland, grab 6-week-old chickens for slaughter. 7. Jean Bunting, making the morning rounds through a flock of 4-week-old birds with her husband, William. Together, the Tyson growers collect dead chickens and those deemed too unhealthy to survive the two weeks until they are caught for slaughter. 8. A chick's six-week odyssey from hatchery to dinner table 9. Mistrust on the Shore; Credit:

Credit: SUN STAFF

Abstract (Document Summary)

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From: Saved by Windows Internet Explorer 8 [mailto:Saved by Windows Internet Explorer 8]
Sent: Monday, December 21, 2009 10:32 AM
Subject: The New Rules Journal - Fall 2000 - When the Farmer Makes the Rules

When the Farmer Makes the Rules

Forty years ago, two roads diverged in the chicken industry. Sick of being squeezed by processors, Canadian poultry farmers asked their local governments to construct a system that provided them with bargaining power. In the U.S., efforts to create similar systems failed. And that has made all the difference. By Brian Levy

Chicken farmers in Canada and the U.S. are anything but birds of a feather. Both raise the same product, but they do so in two different worlds. The Canadian farmer is ensured a fair, stable price and maintains complete independence from the processors that buy the chickens. The U.S. chicken farmer works for poverty wages under a rigid contract system, indebted to and dependent on the processors. Farmers do not own the chickens, and have no bargaining power to improve their situation.

These striking differences did not come about by chance. Forty years ago, Canadian chicken growers faced a situation familiar to their modern American counterparts. "Processors would play one farmer against another to get lower prices," says Peter Hepburn, who has raised chickens in Ontario since 1953. "It was pretty bad. We were paid just enough to keep us going."[1]

Canadian chicken farmers decided to take matters into their own hands. In the early 1960s they asked their provincial governments to create agricultural marketing boards that would project chicken demand and manage production, allowing farmers to earn a reasonable income. Instead of Canadian farmers fending for themselves, the boards collectively negotiated, on behalf of chicken growers, with the processing industry.

In the U.S., plans similar to this were proposed for other agricultural products. In the 1920s, in an attempt to stabilize markets, the farm cooperative marketing movement sought to organize commodity cooperatives that could control the supply of goods. But under antitrust law, cooperatives were forbidden to implement systems to control production. The movement failed. During the Kennedy administration–the same period when Canadian farmers were creating a new system–U.S. Department of Agriculture economist Willard Cochrane proposed a supply management plan for grains.[2] Fear of government intervention, lack of grassroots organizing and the promise of new government support programs defeated the proposal. Many also attacked the plan as limiting "farmer freedom." The possibility of supply management systems faded and the last chicken farmers were forced down a path paved by the processing industry, which wrote the rules in its favor.[3] Today in the chicken industry, growers have no freedom left to speak of.

Both systems of poultry production are vulnerable to the same fundamental problem of agriculture: the risky roller coaster ride of prices associated with the unregulated boom and bust cycles of over-demand and over-supply. Years of fluctuating prices are responsible for the bankrupting of farms and rural economies and make efficient long-term planning nearly impossible. For consumers, price swings bring little benefit–farmers receive so little of the retail food dollar that the cost of raw ingredients has little effect on the price of processed foods. And for all taxpayers, price instability brings millions in bailouts to farmers.

There are three basic ways of handling the price roller coaster–and three dramatically different outcomes. The first method is to do nothing. After multiple years of low prices even the most efficient smaller farms will lack the resources to survive, and the market will lead to a concentration of large farms. Politically, this "hands off" approach has led to last-minute, billion-dollar handouts to support failing farms. A second strategy is to allow or encourage the vertical integration of agriculture by larger, private interests who are able to weather the inherent instability of the market. Under this system, smaller farms contract with large processors for a guaranteed price. But what would happen if instead of vertical integration, farmers organized laterally to manage production and control pricing? In Canada, the question has been put to the test.

The Canadian System

Canadian growers organized a system that maintained their control over all aspects of their operations while giving them a choice over which processors to sell to. This system–commonly referred to as supply management–needed three components: control of chicken imports, chicken production, and chicken pricing.

Successful supply management first required restrictions on imports. In the 1960s Canada's provinces individually established an early form of supply controls. However, without provincial authority beyond provincial borders, farm products crossed from province to province, undermining the effectiveness of the marketing agencies. This became painfully apparent when various provinces started banning each other's products in order to protect their own producers. In addition, foreign imports threatened to undermine the system. To overcome these difficulties the federal government passed legislation in 1972 to create national marketing agencies to regulate internal supplies as well as imports and exports. In the following six years, national boards were also established for eggs, turkey, chicks and milk.

A second critical component to the regulation of supplies is a quota system, whereby farmers purchase a permit (quota) to produce a specified quantity of chickens. Quotas are purchased in a one-time fee that averages approximately CN$24-40 per bird, depending on the province. Legally, quotas are retained by the marketing boards, which reserve the right to make small adjustments (typically +/- 2-3 percent a year) or issue new quota as markets expand. Quotas are bought and sold in an open market in each province; they may also be willed or passed on. To avoid speculation, all quotas must be used by the owner within one year. With quota in hand, farmers are free to sell their chicken to processing plants at the negotiated prices.

In recent years the management of chicken supplies has devolved into a bottom-up process driven by provincial marketing boards. The boards serve as a liaison between processors and farmers, making sure processors get the products they need and that farmers get a fair price. Every eight weeks, provincial marketing boards consult with processors to determine what their markets need. Any special products needed by the processors are determined between growers and processors during procurement. Supplies are also established for export markets. All estimates are then forwarded to the national marketing board–the Chicken Farmers of Canada (CFC)–which then approves a countrywide quota subdivided for each provincial marketing board. The CFC board of directors has 14 members, 10 of whom are farmers (the other four are from the food-service and processing industry). With quotas approved by the CFC, the provincial boards then allocate the quota to individual producers and negotiate chicken prices with the processors several weeks before the next production cycle. If provinces overproduce, each provincial commodity board pays damages to the CFC production over the yearly provincial allocation. If provinces underproduce, they risk losing market share the next time quotas are set. To cover administrative costs, the CFC assesses levies on all chickens, which are then collected by the provincial boards. Consequently the administration of the supply management system is self-financed, and chicken producers receive no government subsidies.

The entire Canadian system is monitored by the National Farm Products Council (NFPC), an organization that requires that farmers themselves have majority voting rights. The NFPC oversees the CFC and serves as a bridge between the federal and provincial governments, marketing boards, producers, processors, retailers and consumers. The NFPC is primarily responsible for Federal-Provincial Agreements (FPAs) that define in detail how the supply management system will operate.

The immediate result of the highly managed Canadian supply management system is to maintain farmers' autonomy over production. In comparison to the U.S., the effects on farm structure and farmers' incomes are equally significant.

The American System

In 1950, 95 percent of U.S. broiler production remained independent. Just 10 years later, 90 percent of the industry was under contracts. Today, virtually all U.S. chicken is grown by farmers under contract.[4] Any remaining chickens are raised on farms owned and operated by the processors, or by smaller independents providing chicken to local markets.

Under production contracts, an individual company called an "integrator" performs all or most production aspects. Farmers are dependent on integrators for the basic inputs they need to produce chicken. Integrators place chickens on farms and provide technical expertise, feed, medication and other supplies. They maintain ownership of the chickens while the farmer provides land, labor, buildings and care until the chickens reach processing size. Farmers must agree to detailed operation instructions to maintain a consistent product.[5]

Under this type of contract production system, farmers supposedly benefit by having a guaranteed market, price or access to a wider range of technologies. However, it is unclear how much farmer risks are minimized. Typically, only one processor contracts with and recruits chicken farmers within a particular vicinity. With only one processor to which to sell, growers are left in a vulnerable position. Processors may withdraw contracts at will, leaving producers with heavy liabilities (half a million dollars worth of chicken houses, etc.) and no markets. Several recent examples prove this point.

Case Farms contracted with growers for 30 new chicken farms (with 3-4 houses per farm) in North Carolina. Growers paid for and constructed the houses and had raised chickens for six months when Case pulled the contract.[6] Threatened by lawsuits from growers, Purdue Farms cancelled all of their contracts, reissuing new ones in which growers must waive their right sue.[7] Processing companies have also been widely criticized for providing substandard chickens to raise, using broken scales and making unrealistic promises of financial returns. In addition, instead of carefully managing supply, processing companies never agree to cap their production in the region in which they operate, and may encourage growth to provide additional downward pressure on prices at the end of each contract cycle.[8]

Under this system growers gain no security and they shed little responsibility. Despite the fact that the processors contract with large growers and technically own the chickens, growers remain saddled with the major environmental liability of chicken wastes. In addition, the quickly changing technologies and upgrades that are required by the production contracts often serve to keep farmers in debt indefinitely. Many growers have speculated that maintaining continual debt burdens is an effective way to guarantee future dependence on the processors. Under debt and with no way out, growers are powerless to negotiate better contracts and have too much at risk to raise their voice. In effect, "contract risk" replaces the yield and price risk they originally sought to minimize. U.S. chicken growers are left at the short end of the stick–with no independence or power, and very little real security to show for it.

Higher Farm Prices, Higher Incomes

Over the past decade, the total number of Canadian chicken farms increased 23 percent (to 2,800) as the number of all Canadian farms fell.9 In the U.S. the total number of farms selling chicken has fallen in the past decade (1987-1997) by 14 percent (to 23,000).10 This occurred as overall production was increasing dramatically in both countries. In both countries the scale of production has increased significantly, but the Canadian industry is by comparison smaller and decentralized. In Canada, the average farm raises approximately 192,000 birds a year.11 In the U.S., the average contract farm raises around 268,000 birds yearly.12 In both countries, however, farm size has been steadily increasing. Chicken farms are found all across Canada, and production roughly correlates with provincial population levels. In contrast, U.S. production continues to concentrate in a handful of Southern states. Georgia, Arkansas, Alabama, Mississippi and North Carolina currently produce more than 60 percent of all U.S. broilers.13

Under the U.S. system of vertical integration, integrators provide many of the inputs (such as feed) that farmers would otherwise purchase themselves. The fewer inputs farmers must buy, the less value they add and the lower the price they may receive. In Canada, the farmer's price reflects all the production costs and inputs. It is therefore difficult to make direct comparisons of the prices farmers receive, but figures do indicate that U.S. farmers have dramatically decreased margins in which to make a profit. In the U.S., contract chicken growers typically receive US$ .036 to .043 cents per pound of chicken returned to the processing plant, or about US$ .20 to .25 per chicken. Small bonus incentives are given to growers who achieve lower production costs.14 In Canada in the past decade, farmers received from CN$ .52 to.57 per pound (US$ .40 to .48 per pound).15 Both systems have succeeded in providing a stable price to growers, but only one is equitable. When these prices are translated to income, the differences are significant.

U.S. broiler farms with sales over $50,000 had average net cash income (revenues minus expenses) of $32,602 in 1995. In the same year, the average net cash income for Canadian poultry growers with revenues over CN$50,000 was US$53,980.16 Once depreciation of assets (chicken houses, etc.) is factored in, the real take-home pay for both Canadian and U.S. farmers decreases even further–average net farm income for U.S. broiler farms in 1995 stood at about $16,000; for Canadian growers, the figure was approximately US$27,000.17 With lower incomes, U.S. chicken growers must look elsewhere to support themselves. All U.S. chicken farming households have significant off-farm wages and salaries–even for those farmers listing poultry as "major occupation," 50 percent or more of their income came from off-farm sources.18 In Canada, chicken farms are considered a modestly profitable business, capable of supporting the farmers that run them. Understandably, the great majority of Canadian chicken growers support their system, while most American growers lament theirs.

Both systems rightly claim that they are able to exist without any direct government subsidies. U.S. chicken processors claim that although they may not have the farmers' welfare in mind, they are part of an efficient, productive system that outcompetes the Canadian industry. To assess this requires a closer look at the efficiency of the systems.

Efficiency

Critics claim that having a guaranteed market decreases the farmer's incentive to become more efficient. Both common sense and experience suggest that efficiency (output per unit input) is equal or better with stable prices. Ensured of a stable price, farmers are more willing to invest in the latest techniques and technology to improve productivity. Although quotas cap production levels, the incentive to become more efficient remains–even under a managed system, any changes farmers make to reduce costs will improve their bottom line, from decreasing feed requirements to saving energy. Just as U.S. processors have demanded the latest, most efficient techniques from their contracted farmers, Canadian farmers have kept up with the times by themselves.

Another way to measure efficiency is the amount it costs to raise a chicken. In both Canada and the U.S., feed costs are very similar. Over the past forty years, the amount of feed required to raise a pound of chicken fell in unison in both the U.S. and Canada (from approximately 2.3 to 1.9 pounds). Chicks are slightly more expensive in Canada (though 20 percent originate in the U.S.).

Historically, building and heating costs have been higher in Canada, but this is now changing as Southern processors are requiring a switch from open-air barns to climate-controlled facilities. While these factors account for slightly higher Canadian production costs, the most significant factor remains higher labor costs.[19] Under supply management, farmers simply ensure that their labor is compensated at a rate much greater than in the U.S.

Competition and Retail Pricing

Supply management is effective in increasing the farmer's overall share of the food dollar. Canadian chicken farmers received approximately 30 percent of the final sale value of their product. In the U.S., contract chicken farmers receive less than 5 percent. Marketing boards with supply management power provide farmers with a measure of independence from an increasingly few number of large processors and retailers that would otherwise squeeze farm profits.

Despite the fact that Canadian farmers receive more of the retail food dollar, the impact of the supply management system on final retail price is not direct. At every level–from farm to processor to retailer to consumer–prices are marked up, so that the farm price of chicken is a fraction of the final grocery store price.

Historically, Canadian retail level chicken prices have been higher than in the U.S. At present a Canadian broiler at the grocery store sells for CN$1.94/lb (US$1.66/lb). A similar broiler in the U.S. costs approximately $1.09/lb.[20] In Canada in 1998, farmers received CN$0.55/lb (US$0.47/lb), processors resold the same chicken for CN$1.18/lb (US$1.01/lb) to grocery stores, who placed whole chicken in their frozen food isle for CN$1.86/lb (US$1.56/lb).[21] At the same time in the U.S., contract growers received approximately US$.04/lb, processors sold finished birds to grocers at US$0.63/lb, who in turn resold whole chicken for US$1.09. Thus, although supply management is one factor in higher chicken prices in grocery stores, it accounts for only a fraction of the effect. Even with a 50 percent increase in the farm price for Canadian chicken, the price in the grocery store should increase by less than a quarter. So while Canadian retail chicken prices have grown at twice the rate of U.S. in the past two decades, higher Canadian prices have been primarily a result of increasing processor and retail margins rather than higher farm gate prices over time.[22] From 1980-1998, Canadian chicken farmers increased their prices by 33 percent (CN$.30/lb), while processors and retailers increased prices by about 56 percent each. Over the same time, U.S. processors increased prices 28 percent and retailers, 48 percent (all figures unadjusted for inflation). In both the U.S. and Canada, the chicken consumer price index (CPI) has closely paralleled overall price increases.[23] So while prices climb in both countries, they are not being raised more quickly than on any other product.[24]

The Quota Question

Despite the benefits of supply management, the system is controversial. One of the primary criticisms centers on the issue of chicken quotas. When originally issued, quotas were a windfall for farmers, rapidly increasing their equity. The downside to this wealth creation is that as quota costs rise they create a barrier for new farmers who wish to raise chicken. The problem is compounded when new chicken production is allocated exclusively to existing farmers.

The "barriers to entry" created by supply management are a significant concern. It is important to realize that any increase in the net return to farmers' operations tends to become capitalized–from price subsidies to natural causes such as population growth to successful sales promotion. While the effect is less direct than with quotas, higher farm profits always increase the value of farming resources. Despite high costs, in the past decade the Canadian chicken industry expanded as farmers bought and sold quotas.

To overcome the quota barrier, some provinces have initiated innovative programs. British Columbia abolished minimum quota requirements and began a program to encourage new entrants into chicken farming. Now anyone in the province can apply for a permit to raise up to 4,000 birds per cycle. Instead of paying for a quota, they pay CN$0.18 on each bird they raise. After 12 years of poultry farming, they are given a free title to the quota. In other provinces, farmers start with a small quota (4,000 to 5,000 birds) and gradually expand their operations. At the end of the day, the quota is more than just a barrier to entry: higher up-front costs translate into guaranteed income, equity and stability for the life of the farm. For smaller sums of money, U.S. chicken growers invest in chicken houses but gain none of the advantages that benefit their Canadian counterparts.

Another quota concern centers on the limitation of quota ownership. Historically, quota caps were established to limit the maximum size of chicken operations. However, in the past decade there has been a trend toward larger operations. Ontario (the largest chicken-producing province) abolished caps about five years ago. Other provinces, such as British Columbia, have raised the limits to a maximum of 250,000 birds per cycle (though very few growers are this large). Presently it is only the high costs of quotas that keep farmers from increasing in size. Throughout Canada, farmers are pushing to expand their profitable businesses in pursuit of higher returns and in anticipation of competition from the world market as tariffs fall. As farms increase in size, the benefits of a growing industry will be spread to fewer farmers.

Will Canadian Chickens Fly the Coop?

While the chicken barn builders in Canada remain busy, internal and external pressures on the Canadian system build. Internationally, as party to NAFTA and the WTO trade agreements, Canada is under constant pressure to lower or eliminate the quotas and tariffs that uphold the supply management system and protect chicken farmers from a flood of low-priced imports.

While price controls and production quotas have remained untouched by trade negotiations, Canada was required to convert its import quotas into tariffs under the WTO's Agreement on Agriculture (AoA). The agreement allowed tariffs to be set high enough (278 percent) that they serve a similar purpose as the original quotas, but required that they eventually fall to 238 percent by 2000. The AoA also maintained an existing NAFTA agreement allowing duty-free imports of up to 7.5 percent of Canadian production from the U.S. While no further reductions are planned, each subsequent trade round will likely call for a slow chipping away at the tariffs and an increase of duty-free import limits. Farmers view the process as the slow first step toward the elimination of supply management.

Most vocal in the challenge to Canadian tariffs is the U.S., which does not limit chicken production and constantly seeks new markets for its chicken industry, which is 16 times the size of Canada's. The Canadian tariff levels have been unsuccessfully challenged by the United States under NAFTA, though future disputes are possible.[25]

In Canada, the call to lower tariffs is joined by chicken processors and restaurants seeking cheaper chickens to process and sell.[26] Farmers wishing to expand production without quotas have also challenged the system, though the practice of agriculture supply management is routinely upheld by the Supreme Court of Canada.27 In addition, provincial tensions have been a constant throughout the history of Canada's supply management system. Provincial governments commonly complain that their production quotas are too low and threaten to leave the system. Larger provinces also feel held back under supply management: the Prince Edward Island province has 10 chicken farmers while other have thousands, yet each province is represented equally on the national boards.

Even with its flaws, the Canadian system looks like heaven to U.S. chicken farmers. In the U.S., farmers are just beginning to fight a long uphill battle. Iowa, Minnesota and a handful of other states have developed basic laws to protect farmers from unfair contracts. The Iowa Attorney General's office has written comprehensive model legislation for a "Contract Producers' Bill of Rights." Nevertheless, the power to issue and revoke contracts and to set prices remains soundly with the processors. As contract production advances to the hog and cattle industries, Canada's experience with supply management offers a compelling alternative of what is possible when the farmer makes the rules.

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Footnotes

1. Journal of Commerce, 3/30/98.

2. See Cochrane, Willard W. 1959. "Some Further Reflections on Supply Control." Journal of Farm Economics 61, No.4: 697-717; Levins, Richard A. 2000. Willard Cochrane and the American Family Farm. University of Nebraska Press.

3. In the 1980s the Harkin-Gephardt farm bill (1987) proposed a farmer referendum to establish production controls, but also failed.

4. Martinez, Steve W. "Vertical Coordination in the Pork and Broiler Industries: Implications for Pork and Chicken Products," Food and Rural Economics Division, Economic Research Service, USDA Agricultural Economic Report No. 777. p. 5-10.

5. Examples of U.S. poultry contracts.

6. Fesperman, Dan and Kate Shatzkin. "The Plucking of the American Chicken Farmer," The Sun, Feb 28, 1999.

7. The Agribusiness Examiner, Issue #80, 8/28/2000.

8. Conversation with Larry Holder, Director U.S. National Contract Poultry Growers Association, July 2000.

9. CFC 1999 Chicken Data Handbook, p. 2. While overall growth is up for the decade, growth in the past 5 years has been stagnant.

10. 1992 and 1997 Census of Agriculture, Table 20.

11. Chicken Farmers of Canada, figure for 1999. With 6.5 cycles a year, the average farm capacity is approximately 29,500 birds.

12. Perry, Janet, David Banker and Robert Green. "Broiler Farms Organization, Management, and Performance," Resource Economics Division, Economic Research Service, U.S. Department of Agriculture. Agriculture Information Bulletin No. 748. March 1999. Source: USDA 1995 Agricultural Resource Management Study. With 6.5 cycles a year, the average farm capacity is approximately 41,000 birds.

13. U.S. National Chicken Council.

14. U.S. National Contract Chicken Growers Association. Bonuses are typically 0.01 cent per pound for each 0.01 point advantage (relative to the average) that a grower achieves in production costs.

15. Chicken Farmers of Canada, using provincial board information,

in CFC's Chicken Data Handbook 1999, p. 15. Prices converted to $US using OECD purchasing power parity tables.

16. "Economic Overview of Farm Incomes: Poultry and Egg Farms," January 2000. Source: Statistics Canada, Whole Farm Database. Income data is only available for all poultry and egg farms in Canada. Prices converted to $US using OECD purchasing power parity tables. Income statistics for Canada are skewed lower because Canadian data includes farms with revenues under CN$50K (US$42016)–all of which were the least profitable. A new average was calculated based on farms in the revenue classes above CN $50K. Overall, Canadian poultry growers and milk producers (also a supply managed industry) have had the second and third highest net cash incomes by farm type in Canada in recent years.

17. Perry, Janet, David Banker and Robert Green. "ERS/USDA Broiler Farms Organization, Management, and Performance," Resource Economics Division, ERS, U.S. Department of Agriculture. Agriculture Information Bulletin No. 748. March 1999. Data from USDA 1995 Agricultural Resource Management Study. An eight-month Sun investigation across 13 states found that a new chicken farmer today can expect an annual net income of only $8,160–about half the poverty level for a family of four–until he has paid off the 15-year loan he took to get into the business. Other calculations figure $4000/year per poultry house (see numbers). Canadian figures derived from data obtained directly from Statistics Canada and the Whole Farm Database for all poultry and egg farms.

18. Ibid.

19. Conversation with Robert DeVaulk, Robert DeVaulk consulting, Canada, July 2000. Conversation with Mike Nailor of the Ontario Chicken Farmers, July 2000. The Canadian COP is a formula driven price determined by marketing boards. It includes all input costs (feed, chicks), labor, operating expenses and capital. It does not include catching or transportation fees, or the value of production quota. Changes in feed costs account for almost all of the COP fluctuations.

20. CFC Poultry Handbook, p. 17, 23. Source: Agriculture and Agri-Food Canada, USDA. Canadian prices converted to $US using OECD purchasing power parity tables.

21. Agriculture and Agri-Food Canada, in CFC Chicken Data Handbook 1999. Prices converted to $US using OECD purchasing power parity tables. Similar figures for the U.S. supply chain is

complicated by the fact that "farmgate" price figures distributed by the USDA are in effect farmer/processor prices, as this first stage of production has been integrated with the second. The only point where basic supply and demand conditions generate a publicly visible price is at the interface between the processor and retailer (or distributor). At the retail end of the supply chain, approximately half of all chicken goes through restaurants rather than grocery stores.

22. Coffin, Garth H., Robert F. Romain and Meghann Douglas, 1989. "Performance of the Canadian Poultry System Under Supply Management," Department of Agricultural Economics, McGill University and Le departement d'economie rurale, Universite Laval, p. 122-125. From 1980-1989, the study concluded that retail margins for chicken in Canada averaged 50 percent higher than those of the U.S. The retail margins were found to be the greatest single contributor to consumer price differences between Canada and the U.S.

23. "Snapshot of the Canadian Chicken Industry," Agriculture and Agri-Food Canada, 1998.

24. Ibid. There is evidence that higher Canadian poultry prices have not significantly affected consumption: the spread in chicken meat per capita consumption has increased in the past 20 years. In 1976 Americans consumed 3.3kg more than Canadians; in 1997 the figure increased to 7.7kg. However, this is a gap emerging between two dramatically rising consumption levels. Poultry per capita consumption in both Canada has more than doubled from 25.8 lbs. in 1967 to 55.5 lbs. in 1997. In comparison, U.S. consumption increased from 40 to 96 lbs. per capita over the same time period. While Canadian consumption is lower than the U.S. (2nd in per capita consumption), Canada is 6th in per capita consumption of chicken products worldwide (USDA, Statistics Canada, as cited in "Snapshot of the Canadian Poultry Industry").

25. CDA-95-2008-01: North American Free Trade Agreement Arbitration Panel Established Pursuant to Article 2008. In the Matter of Tariffs Applied by Canada to Certain U.S.-Origin Agricultural Products, Final Report (.pdf) of the Panel, December 2, 1996.

26. Under NAFTA, highly processed poultry products (those with up to 87 percent chicken content by weight, such as TV dinners) may be imported in tariff free. Canadian processors who compete with these products complain that they are disadvantaged by having to buy higher-priced raw chicken. To take the pressure off of this Canadian sector, there is a special arrangement that allows Canadian

processors to import cheaper U.S. chicken under the NAFTA's 7.5 percent duty-free import quota.

27. Most recently, Canadian supply management system was upheld in a 7 to 2 decision that confirmed the powers of the Canadian Egg Marketing Agency, which had tried to stop producers in the Northwest Territories from selling eggs in other parts of Canada without a license.

***The above story originally appeared in The New Rules*- Fall 2000**

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