Supply Control Violates Capper-Volstead

Submitted by James Maroney

I have not read all the proposals that have been submitted but the ones I have read all believe that over production is the problem and that farmers must somehow reduce production in order to raise prices. Bob Wellington agrees, and he like others proposes a mechanism for reducing production. However, the Capper Volstead Act specifically prohibits farmers from organizing to reduce production in order to affect prices.

In 1922, Congress passed the Capper-Volstead Act to mollify farmers who were denied support prices by President Calvin Coolidge's veto of the McNary-Haugen bill. The act specifically granted to farmers a limited right, in explicit violation of the Sherman anti-trust laws, to collude with one another, either individually or through their cooperatives, to fix prices. The act is broadly misunderstood and frequently challenged. To diffuse the misapprehension, USDA itself offers this insight into the act's powers and limitations:

"There are essentially two keys to understanding the meaning of the Capper-Volstead Act and its special implications for agricultural producers, associations of producers, and the general public.

"The first key appears in the act's very first sentence: "…may act together…" After passage of the act, farmers may lawfully unite to collectively market their products. Before the Capper-Volstead Act became law, farmers were prosecuted for acting together to market their products. One has only to imagine the chaos that could take place if the important key to collective action "…may act together..." were eliminated. This would be the case if the Capper-Volstead Act were repealed. It would simply mean, for example, that one egg producer could not join with another egg producer to agree on prices and fix prices at which they would sell their product to a buyer. A court could find that these two producers were eliminating competition by conferring about the price they proposed to seek from a chain-store buyer. One can appreciate how, in this modest example, the whole concept of countervailing bargaining power would be lost if Capper-Volstead were repealed.

"Also, a particular group of producers may act together not only through their own association but also by joining with other associations of producers to have a common marketing agency. Thus, it is said the Capper-Volstead Act provides limited antitrust exemption to associations of producers; such limited exemption comes about by legally permitting reduction of competition among farmers when they join and act in the marketplace, in effect, as one farmer.

"The act establishes two conditions associations of producers must meet in order to qualify for such limited exemption:

1. It must be operated for the mutual benefit of its members insofar as they are producers of agricultural products.
2. It must not deal in the products of nonmembers in an amount greater in value than such products that it handles for its members.

"In addition to the foregoing requirements, an association has a choice of conforming to one or both of the following requirements:

1. No member of an association is allowed more than one vote because of the amount of stock or membership capital owned.
2. The association does not pay dividends on stock or membership capital in excess of 8 percent per year.

"Let us assume that farmers have organized an association of producers that meets these requirements to collectively market their product. That association, as an entity engaged in business transactions, is as answerable to the antitrust laws as any other firm engaged in business transactions. Thus, if an association of producers:

1. -Engages in predatory practices
2. -Engages in price discrimination
3. -Restricts members' agricultural output
4. -Coerces competitors or customers
5. -Colludes with third parties to fix prices
6. -Conspires with third parties to fix prices
7. -Combines with other firms to substantially lessen competition
8. -Engages in boycotts

it may find itself just as subject to prosecution for being in violation of the anti-trust laws as would any other firm that engaged in such practices.

The second key to understanding Capper-Volstead is found in answering this question: What protection do consumers and the general public have against monopolization and restraint of trade? Section 2 of the act deals with the potential problem of misuse of monopoly power. It states that if an association should monopolize or restrain trade to the extent that it unduly enhanced prices of agricultural products, then legal remedies can be invoked to cause the association to "cease and desist from monopolization or restraint of trade."

What the Capper-Volstead act provides, in essence, is a mechanism that assures farmers they will get a "fair" price that is not lower than the price paid elsewhere for the same product. Why the "farmer-owned" coops (there are only 85 major milk coops remaining in the U.S., which together control 95% of the milk supply) will not organize under Capper-Volstead to cartel, as the OPEC nations do, to regulate supply in order to raise prices, is another question. The answer is that the government understands all too well the impressive power of supply control to raise prices and the Capper-Volstead Act specifically prohibits "restricting members' agricultural output" in order to achieve this purpose. The farmers can, in other words, charge as much as others for the same commodity, but they must not restrict production in order to affect price.

Yet, organic farming, which as we now know reduces supply, is not mentioned as a production restricting mechanism in the list of prohibited practices that invite federal scrutiny. Therefore, simply by transitioning to organic, farmers could de facto limit supply and raise prices without violating Capper-Volstead, without fear of lawsuits from processors and bottlers, and without court interference.

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