

Proposition 12 and U.S. Pork: Implications for the U.S. Industry and Trade

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In 2018, Californians passed a ballot measure (“Prop 12”) which regulates housing standards for certain farm animals, including breeding pigs. Although other U.S. states have similar laws, Prop 12 goes further, including banning the sale of pork that does not meet the standards. Since California accounts for about 15 percent of the U.S. pork market and 99.8 percent of the pork consumed in California originates outside the state, Prop 12 could have a large impact on pork producers across the United States. A pending lawsuit in opposition to the measure, initiated by the U.S. pork industry, awaits resolution by the U.S. Supreme Court later this year.¹ This EBOT discusses the details of California’s farm animal housing law, opposition to it, and possible implications for the U.S. industry as well as international trade.

Background on Animal Confinement. A number of states have laws that prohibit certain types of confinement housing in animal agriculture. One type, gestation stalls, are individual pens for pregnant sows that typically measure 2.5 x 6.5 feet. Under conventional production practices, a sow will spend the duration of her gestation (approximately 16.5 weeks) in one of these stalls.² Gestation stalls have been conventional practice for several decades with the main benefits cited as being: minimization of sow aggression and injury, facilitation of individualized care and feeding, and more efficient use of building and labor resources. As breeding sows typically have consecutive pregnancies, they can spend the majority of their lives in confined housing. It is for this reason that animal welfare advocates oppose gestation stalls. They also argue that the stalls do not allow sows to turn around, inhibit natural behaviors, and result in poorer health outcomes. Group housing systems—where more than one pregnant sow is housed in a large pen—are the main alternative to individual gestation stalls.

Proposition 12 and National Pork Producers Council (NPPC) v. Ross. In a 2018 referendum, 63 percent of California voters passed the Farm Animal Confinement Initiative, also known as Proposition 12 (“Prop 12”), which regulates housing standards for certain farm animals, including breeding pigs.³ While several other states have also prohibited the use of gestation stalls (see below), Prop 12 goes further to specify minimum space requirements (24 square feet per animal) and also bans commercial sales within California of uncooked, whole pork meat harvested from sows (as well as their offspring) housed in systems that do not meet these standards.⁴ In 2019, the NPPC and the American Farm Bureau Federation sued Karen Ross, the Secretary of the California Department of Food & Agriculture, claiming that Prop 12 violates the “Dormant” Commerce Clause of the Constitution, which “prevents the States from adopting protectionist measures and thus preserves a national market for goods and services.”⁵ After two lower courts upheld Prop 12, NPPC appealed the decision to the Supreme Court of the United States (SCOTUS), which agreed to hear the case during its 2022–23 term. A decision is expected by mid 2023.

Sow Housing Standards/Regulations in Other States and Countries. In addition to California, nine other states (including Arizona, Colorado, Florida, Maine, Massachusetts, Michigan, Ohio, Oregon, and Rhode

¹ Prop 12 went into effect on January 1, 2022; however, there is a stay on the enforcement of the law until July 2023, pending the ongoing litigation. The Supreme Court case is National Pork Producers Council (NPPC) v. Ross, Docket No. 21-468.

² Another type of sow housing are farrowing crates, where a sow and her piglets are housed during farrowing (i.e. giving birth) to weaning (21-28 days). Farrowing crates are not the subject of Proposition 12.

³ Prop 12 bans animal housing beyond that for pigs, including veal crates and battery cages for egg-laying hens.

⁴ Prop 12 applies to whole cuts of pork meat, such as pork chops, but does not apply to ground pork, cooked pork products, or pork mixed with other ingredients.

⁵ Tennessee Wine & Spirits Retailers Ass’n v. Thomas, 139 S. Ct. 2449, 2459 (2019).

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Island) already have laws in place requiring pork producers to phase out gestation stalls. Massachusetts has a similar law to California that prohibits the sale of meat that does not meet state standards, but implementation is on hold until SCOTUS rules on Prop 12. Together, these states represent about 6 percent of pork production. However, because Prop 12 specifies minimum space requirements, it is estimated that only 1-4 percent of the U.S. pork industry meets Prop 12 standards. At the industry level, Tyson Foods, Hormel, and Smithfield have agreed to supply their California customers with Prop 12-compliant pork while NPPC fights the measure. In the EU, UK, Switzerland, and New Zealand, regulations are in place banning or restricting the use of gestation stalls. The EU is also considering requiring that pork imports comply with EU standards as well as introducing animal welfare requirements in the framework of bilateral trade agreements. In Canada and Australia, the phasing out of gestation stalls have been industry led. In 2014, the Canadian pork industry committed to phasing out gestation stalls by 2024; however, that deadline has been pushed back to 2029. It is estimated that 30 percent of Canada's sows are gestation stall-free.

Possible Implications for Both Domestic Interstate and International Trade. California, the largest U.S. pork market, imports over 98 percent of the pork it consumes, with the majority coming from out-of-state U.S. producers.⁶ Thus, if SCOTUS upholds Prop 12, out-of-state producers seeking to supply the California market will be required to comply with the state's standards. Prop 12 could also have implications for the United States' major pork and hog import suppliers. The United States imports about 4 percent of its available pork supplies (2018–21),⁷ with Canada and the EU supplying about 85 percent of fresh or frozen pork imports.⁸ In addition, the United States imports live hogs, which are grown to market weight on U.S. hog farms and slaughtered in U.S. pork processing plants. In 2021, the U.S. imported nearly 6.7 million live hogs, with Canada supplying virtually all imports.⁹ Between 2017 and 2021, live hog imports averaged 4 percent of U.S. commercial hog slaughter (in terms of head). If Prop 12 is upheld and U.S. pork producers ultimately choose not to comply, trade flows may shift with California sourcing a larger portion of its pork from Canada or the EU, who are more likely to have supplies of compliant pork.

Sources: American Veterinary Medical Association, "[Welfare Implications of Gestation Sow Housing](#)," November 19, 2015; Bolotnikova, "[US Supreme Court to Hear Case on California's Ban](#)," October 3, 2022; Compassion in World Farming, "[Welfare Issues for Pigs](#)," accessed February 27, 2023; Constitution Annotated, "[Overview of Dormant Commerce Clause](#)," accessed January 30, 2023; European Commission, "[Communication from the Commission on 'End the Cage Age'](#)," June 30, 2021; Food Manufacturing, "[What California's Farm Animal Confinement Law Means](#)," November 29, 2021; Marchant-Forde, "[Housing and Welfare of Sows During Gestation](#)," 2010; McCracken, "[US Pork Supply Chain Locked in Limbo](#)," March 2021; Meat & Poultry, [USDA Examines Pros, Cons of Sow Housing Options](#)," May 17, 2012; Neeley, "[Prop 12 Enforcement Waits for SCOTUS](#)," December 12, 2022; Legislative Analyst's Office, "[Proposition 12](#)," November 6, 2018; Reuters, "[U.S. Pork Producer to Limit Sales in California](#)," December 17, 2021; Tennenhouse, "[What A Delay On Canada's Gestation Crate Ban Will Mean](#)," January 9, 2021; US Census Bureau, [USA Trade Online](#), accessed February 27, 2023; USDA ERS, [Meat supply and disappearance tables](#), accessed February 21, 2023; USDA, [Quick Stats](#), accessed February 21, 2023; [USITC DataWeb/Census](#), accessed February 15, 2023; Williams, "[How Will Prop 12 Affect Sow Housing?](#)" February 19, 2021.

⁶ While there is little available information regarding interstate trade, Iowa and Minnesota—two of the largest pork-producing states—are likely to be important suppliers of pork to California. During 2018-22, Canada and Europe supplied about 83 percent of California's foreign pork imports.

⁷ Includes various pork products categorized under 4-digit HTS headings: 0203, 0208, 0210, 1601, 1602.

⁸ During 2018–22, Canada (60 percent) and the EU (25 percent) supplied the majority of U.S. fresh and frozen pork imports (HTS heading 0203).

⁹ These imports are comprised of feeder/finishing hogs (99 percent), hogs for immediate slaughter (0.3 percent), as well as breeding stock (0.03 percent).

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