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CRISIS ON THE FARM: THE STATE OF COMPETITION AND PROSPECTS FOR SUSTAINABILITY IN THE NORTHEAST DAIRY INDUSTRY

HEARING

BEFORE THE

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CRISIS ON THE FARM: THE STATE OF COMPETITION AND PROSPECTS FOR SUSTAINABILITY IN THE NORTHEAST DAIRY INDUSTRY

SATURDAY, SEPTEMBER 19, 2009

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:12 a.m., St. Albans City Hall, St. Albans, Vermont, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senator Sanders.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning. We have a good gathering here. We have a number of members of Vermont legislature, and between panels I'll make sure that we acknowledge all of them who are here. I appreciate all the people for being here. Everybody has busy schedules, especially in dairy country. I know, because it's also the Jewish holidays, some members of that faith will not be able to be here. I would wish for them L'Shanah Tovah Tikatevu, for them to have a good and sweet new year. It is the year 5,770.

Also, this is something we've never seen in a Senate hearing in Washington: flowers. Howard's, the flower shop, just brought those over. So, I don't know. Is somebody here from the flower shop? They're probably back working, but I want to thank them. That is unique.

For both Assistant Attorney General Varney and Dr. Glauber, they've probably not seen that either.

I want to thank Representative Peter Welch, who was unable to be here. He's leading the charge in the dairy crisis in the House. Of course, nobody is working harder in the Senate on the dairy crisis than Senator Sanders, who's sitting here beside me. I want to thank you, Bernie, for coming and joining the Committee. A lot of people have made an effort to be here and have traveled some distance. St. Albans' mayor, Martin Manahan, I want to thank for the hospitality. I have used, over the years, this hall a number of times. Marcelle, who's sitting here, knows we get kind of accustomed to it, and it's a very, very convenient place to have.

We invite anyone who'd like to express their views on the issue who are not on the witness list, of course, to give me their testimony and it will be included in the record.

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Last Friday, Marcelle and I were here for the funeral of a very, very dear friend, Harold Howrigan. I said at that funeral that I would dedicate today's hearing in honor of Harold Howrigan and his service to the community, to our State, and to Vermont's dairy industry. One of the very few privileges you have as Chairman of a Committee is that you can dedicate the hearing to whomever you want, and I will dedicate it to Harold, a great and good man.

Now, there were certainly a lot of years in his life—85 years in all—but there is also a lot of life in those years. I'll look back with fondness at the time that I spent with Harold and Ann and all their families. I think I'd ask among the Vermonters, all those who knew Harold Howrigan, please raise your hand.

[A showing of hands.]

Chairman LEAHY. Let the record show, virtually every hand here went up.

Here in Vermont, the dairy industry is a pillar of our State's economy and our landscape, but also our culture. Dairy farmers have long contended with the volatility of milk prices, even more when they've had to adjust to changing weather. But today they're facing changes of epic proportions. Prices have fallen to lows that no one in this room thought we would ever see. The fact that the cost of production is higher than ever only compounds the problem. It has increased the gap between what it costs our farmers to produce milk and what they are paid for that milk.

In Vermont, we have lost 35 of our dairy farmers this year; last year, we lost another 19. Each one of these losses means we've lost part of who we are as Vermonters. The loss ripples through our families, through our communities, through our economy. It has been easy for many Americans to take American dairy farmers for granted. Those of us—both of us and so many here—who have spent time on dairy farms know how much work is involved. We know that the carton of milk you buy in the store does not grow on a milk tree; it is hard work that provides a highly perishable product that puts it more directly at the mercy of fluctuating markets and costs of production. We need both short-term solutions to get out of this crisis, but we need some long-term solutions to make sure we don't return to the tumultuous cycle of volatility that is now threatening farmers' very survivability.

That's the purpose of this hearing, all of the efforts that have been made to stimulate the dairy industry. The consolidation in recent years throughout the agriculture sector has had a tremendous impact on the lives and livelihoods of American farmers. It affects producers of most commodities in virtually every region of the country. It particularly affects Vermont dairy farmers. For decades, dairy farming in Vermont seemed immune from the consequences of restructuring and consolidation between cooperatives that serve as milk processors for local regional markets. National markets didn't exist.

But times have changed and now it's dramatically different today. There has been a breakdown in competition. Vermont dairy farmers are not getting their fair share of the retail price of milk, but it seems that some of the corporate processors rake in profits even as they raise prices to the consumers. This is way out of whack.

As I think about the gap between retail and farm prices, I can't help but think back to 2001 and the Dean Foods merger with Suiza Foods. That merger created the largest milk processing company, not just in this country, but in the whole world.

I continue to be disappointed at the past administration. The Justice Department and the administration allowed it to happen. Just as I feared and said 8 years ago, it seems that market dominance is translated into overwhelming power in the dairy industry. We are seeing local dairies and processing facilities bought and then closed.

We will hear firsthand testimony today about how and why Vermont dairy farmers are hurting. I think having a hearing here in St. Albans, where people don't have to spend the money to go to Washington to testify, allows us to have a record that will then be provided to every member of the Senate Judiciary Committee.

I want to build a hearing to let policymakers in Congress and the Federal agencies hear directly from the farmers. As part of that record, on behalf of Vermont's Secretary of Agriculture, Roger Allbee, who is at an official meeting of secretaries of agriculture, I will submit and have as part of the record the copy of the Vermont Milk Commission's final report. Roger has been a tremendous help and I appreciate having that.

[The report of the Vermont Milk Commission appears as a submission for the record.]

Chairman LEAHY. Now, Senator Sanders and I both realize, as I said earlier, that it's a holiday for many. We understand why some Vermonters have not been able to travel to this hearing. So I will keep the record open until September 30, and if there are others in Vermont who wish to have, on this subject, testimony submitted, we will include it.

But, first, I want to turn to Senator Sanders. You and I have discussed this so much. You should all have seen him breaking arms in the well of the Senate, getting an amendment through to help dairy farmers.

Bernie.

STATEMENT OF HON. BERNIE SANDERS, A U.S. SENATOR FROM VERMONT

Senator SANDERS. Patrick, thank you very much. I think we all remember Harold Howrigan and the great work that he has done, and I appreciate that you're holding this hearing in his honor.

We thank our guests from Washington for being here, and mostly we thank all of you. I want to thank Senator Leahy not only for holding this hearing, but for holding it right here in St. Albans, which is the heart of dairy country in the State of Vermont, and for the work that he has done for so many years, both on the Agriculture Committee and the Judiciary Committee, in fighting for Vermont's dairy farmers. Patrick, thank you very much.

Chairman LEAHY. Thank you.

Senator SANDERS. We all know why we're here. We are here today because farmers, dairy farmers in Vermont and throughout this country are receiving the lowest prices for their milk that they received in 40 years. We are here because farmers in Vermont are being driven off of the land because of these low prices.

We are here because consumers, if this trend continues, will not be able to get the fresh, quality food that they want because increasingly people are concerned about having to get food from all over the world, where food regulations are not as strong as they are in America. People want wholesome, fresh food, and that's what our farmers produce. We are here, as Senator Leahy just said, because while the price that farmers are getting for their product has plummeted, consumers have not seen much of that benefit.

The focus of our hearing today is that, while we understand all of the issues of supply and demand, while we understand the nature of the volatility of the dairy industry, which is not new, it's gone on for many years, we're here to focus on one particular issue today, and that's why we have the head of the Antitrust Division of the Department of Justice, Christine Varney, and we're very appreciative she's here. She and I chatted a couple of months ago, and I hoped that she would come to Vermont, and I'm glad she is here today. It may signal a new direction from the Department of Justice of the United States in dealing with these issues.

Here's what the bottom line is to me. As Senator Leahy indicated, what we have seen in recent years is a growing concentration of ownership in terms of the dairy industry, specifically in terms of dairy processing. My staff and I have taken a hard look at this issue. We're trying to get as good information as we can, which is sometimes harder than you may think. But this is what we believe.

According to the dairy industry press, one company, the largest milk processor in America called Dean Foods, controls approximately 90 percent of the milk market in Michigan, about 80 percent of the milk market in Massachusetts, 80 to 90 percent in Tennessee, over 80 percent in northern Alabama, over 70 percent in northern New Jersey, and in New England, about 70 percent.

In the last year, as everybody in this room knows, the farm price of milk has plummeted from close to $19 per 100-weight to just over $11 per 100-weight. Farm prices, for the farmer, are plummeting. Meanwhile, Dean Foods reported $76.2 million in profits for the first quarter of 2009, up 147 percent from the first quarter of 2008. Let me repeat that. The price that farmers have gotten has plummeted to the lowest level in 40 years, while Dean Foods has seen a 147 percent increase in their profits. Is there anybody in this room who doesn't see a connection between those two facts?

If you don't get that, let me throw a third fact at you. Over the last 5 years, while dairy farmers in the State of Vermont have struggled, in the last year while over 32 dairy farms in this State have gone out of business, the CEO of Dean Foods, a gentleman named Greg Engles, received $116 million in compensation in the last 5 years. One hundred and sixteen million for one person, profits soaring for Dean Foods, dairy farmers in Vermont and all over this country going out of business. That, my friends, is what we are here to discuss today.

Can family based dairy farmers survive when we have that degree of concentration of ownership in the industry? Now, it is no secret—and we'll discuss this in the questions—that this is an issue, in fact, that has been looked at for a number of years. Senator Leahy is one of those people who forced that discussion. But it is also, in my view, a known fact that the last administration in Washington, having investigated that issue, decided that it was a little bit too hot to handle, that maybe they didn't want to take on some of these big-money interests. We're asking Christine Varney here today to move this country in a new direction and have the courage to go where the money leads her.

So Senator Leahy, thank you very much for holding this important hearing. Let me conclude by saying that we have been working—Senator Leahy, Congressman Welch, I, and others—to try to get some short-term benefits for farmers. You know that we were able to raise milk prices maybe a little bit throughout working with the Secretary of Agriculture, Mr. Vilsak. We've got an amendment in that Senator Leahy and I worked on that also would do that. But long term, these are some of the issues that we have got to address.

So, thank you again for being here. Senator Leahy, thank you very much for holding this hearing.

Chairman LEAHY. Thank you very much.

As I mentioned, we have two extremely important witnesses from Washington. The first, is Christine Varney. She is Assistant Attorney General of the United States, but a very important Assistant Attorney General because she is in charge of the Antitrust Division. Prior to her confirmation as Assistant Attorney General, she was a partner at Hogan & Hartson's Washington, DC office, one of the most prestigious law firms in the country.

She served from 1994 to 1997 as a Commissioner at the Federal Trade Commission, working on technology-related issues. She received her Juris Doctorate from Georgetown University Law Center. I am always pleased to see somebody else who went to Georgetown Law Center. She received her MPA from Syracuse, her BA from the State University of New York University at Albany in 1977. She leads the enforcement of our Nation's antitrust laws.

I would note that she is no stranger to the Senate Judiciary Committee and she has testified on other matters before.

So, Assistant Attorney General, we're delighted to have you here. You go ahead and give your statement, please.

STATEMENT OF HON. CHRISTINE VARNEY, ASSISTANT ATTORNEY GENERAL FOR ANTITRUST, DEPARTMENT OF JUSTICE, WASHINGTON, DC

Attorney General VARNEY. Thank you so much, Mr. Chairman, and thank you, Senator Sanders.

Let me start by saying, I will come to Vermont any time you want. Your State is absolutely beautiful. The people I've been talking with are terrific, and I'm looking forward to learning more.

Let me also start on a personal note, maybe more for the people in the room. As I think you both know, I care deeply about this issue. My family in Ireland are dairy farmers. I am probably the only Assistant Attorney General in modern times who actually knows how to milk a cow, and have done it many times. I just came back from a family wedding in Ireland where, indeed, they are suffering—my family—the same constraints that we see here. I am concerned on a personal level, as well as on——

Chairman LEAHY. Excuse me. Can everybody hear Ms. Varney? I always wonder about this question when I say "if anybody in the back can't hear, please raise their hand" because you wonder how they're going to know that I asked the question.

[Laughter.]

Chairman LEAHY. But please go ahead, Ms. Varney.

Assistant Attorney General VARNEY. So I approach this from both a personal perspective, as well as the perspective of what is the best thing for our Nation, both our consumers and our farmers. I'm pleased to appear before you today and talk about the importance of competition in today's agricultural marketplace, particularly in the dairy industry. I look forward to hearing from your other witnesses, meeting with farmers, and others in Vermont's agricultural sector who can help me learn more about what is really happening in the dairy business.

The Antitrust Division is aware that there is an unprecedented economic upheaval in the dairy industry and that dairy farmers have been going out of business at a record, and intolerable, rate. We are very concerned about these developments. In my remarks today I will briefly provide the Antitrust Division's perspective on the state of the marketplace and our ongoing effort to better understand the industry and the role that public policy, including aggressive antitrust enforcement, can play to protect and promote competition.

As I said, competition issues affecting agriculture have been a priority for me since I was confirmed as the Assistant Attorney General last spring. As a reflection of that priority, we announced in August, in partnership with USDA, that we will be hosting a series of workshops to examine the state of competition in agriculture markets.

These workshops will provide us with an important opportunity to learn firsthand from those participating in these markets and for us to better understand the effects of competition and concentration in relevant sectors, including dairy, concerns about buyer power, and the economic impact of vertical integration, including contractual relationships between producers, distributors and retailers.

In these brief remarks I will take just a few minutes to discuss the state of the marketplace and some themes we will be exploring in our workshops. As I noted, two particular issues, buyer power and vertical integration, are ones we have already heard a lot about and are interested in exploring further.

Let me explain what these terms mean for us in antitrust to those of you who don't speak antitrust regularly. A number of dairy producers are concerned about the exercise of what economists call "monopsony power", or to use a more descriptive term, "buyer power". Traditional monopoly power concerns a dominant producer of goods or services that may be able to charge artificially inflated prices.

Monopsony power is the other side of the coin. When there are a number of producers in an input market and a dominant buyer of those products, like a dominant dairy processor, the buyer, under certain circumstances, may exert its power to press the prices lower than would be the case if the buying market were more competitive—that is, if sellers had more choices of where and to whom to sell their products. Consolidation among or between buyers can also lead to, or enhance, monopsony power.

In looking at dairy markets, we know that competition is frequently local or regional in nature, meaning that the nature and extent of competition-related concerns will differ across different parts of the country. Thus, national statistics can be misleading. I was very interested to hear Senator Sanders break down, on a regional and State basis, the concentration.

Parts of the dairy industry have experienced extensive consolidation in recent years, with fewer processors and, therefore, fewer buyers of dairy products. As a result of consolidation, the potential for an exercise of buyer power is increased.

We are also aware that agriculture markets, including dairy, have become more vertically integrated in the last 15 years. Vertical integration occurs when a manufacturer also participates in other parts of the supply chain, such as distribution of its products or supply of its inputs. Vertical integration frequently involves ownership at multiple stages, though it may also be achieved through contractual commitments.

Vertical relationships in dairy markets would include, for example, a processor entering into an exclusive agreement with a specific cooperative to buy raw milk. In many cases, such activities can lead to greater efficiencies and savings for consumers. Indeed, vertical integration is widespread in our modern economy. Under certain conditions, however, vertical integration may alter the incentives of parties and thereby facilitate the exercise of market power. A careful review of these arrangements is merited and is, thus, one of the areas that we will be focusing on in the Antitrust Division.

Finally, I want to say a few words about the series of workshops that we have planned with the USDA. The Department of Justice and the Department of Agriculture announced in August our plans for a series of jointly run workshops in 2010 to be held around the country to address the dynamics of competition and agriculture markets.

In the workshops, we will examine whether changes in the marketplace, including increased consolidation and vertical integration, have generated efficiencies or whether they have led to increases in monopoly or monopsony power.

We are also actively soliciting input through the end of this year from farmers, ranchers, economists, lawyers, legislators, consumer groups, and processors about their views and experiences. The Division invites all contributions to the workshop process and looks forward to active participation, hopefully from many of you in this room and from others in the State of Vermont. This hearing will serve as part of my learning process to be continued through these workshops.

Mr. Chairman, Senator Sanders, the Division recognizes there has been considerable change in agricultural markets, especially dairy. We take very seriously the concerns about the competitive consequences of those changes. At the same time, we are open to the fact that some marketplaces and technological changes may promote needed efficiencies. We intend to engage in careful and critical evaluation of the relevant market conditions, informed by input from those of you here who live this market every day. We will approach these matters in a fair and reasonable manner, and I promise you, we will take whatever action we find warranted.

Chairman LEAHY. Thank you very much.

[The prepared statement of Assistant Attorney General Varney appears as a submission for the record.]

Chairman LEAHY. What I was going to, I discussed with Senator Sanders, is we'll hear next from Dr. Glauber, and then we'll both ask questions.

Doctor, I appreciate you coming to Vermont also. We have tried to make a nice sunny day here today. Dr. Joseph Glauber is the Chief Economist. Did I pronounce your name correctly, I hope?

Dr. GLAUBER. Yes.

Chairman LEAHY. At the United States Department of Agriculture. Before he was appointed as Chief Economist in 2008, he served as Deputy Chief Economist at the Department. He held positions with the U.S. Trade Representative, the President's Council of Economic Advisors, and the USDA Economic Research Service. He is responsible for USDA's agricultural forecast and projections, but also for advising the Secretary on economic implications of alternative programs, regulations, or legislative proposals.

He received his Ph.D. in Agriculture and Economics from the University of Wisconsin, and holds an A.P. in Anthropology from the University of Chicago. I might note on a personal basis, those of us who also serve on the Senate Agriculture Committee look to those projections of yours all the time.

You can imagine, sometimes we're looking at them—and I never want to suggest that any Senator would take a parochial view—but the Midwesterners look at some aspects of it, we from the Northeast look at other aspects, and the Southwest looks at other aspects. But we all look to you as having some of the most definitive projections.

Dr. Glauber, please go ahead, sir.

STATEMENT OF DR. JOSEPH GLAUBER, CHIEF ECONOMIST, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, DC

Dr. GLAUBER. Mr. Chairman and Senator Sanders, I'd like to take this opportunity to provide you with an update on the dairy market situation, our forecast for the dairy market for next year, and the Department's response to the sharp downturn in milk and dairy product markets.

Unquestionably, the dairy industry has been one of the hardest-hit sectors in agriculture in the past year. The all-milk price averaged a record $19.21 in 2007, as drought in New Zealand and Australia lowered milk production in those two major dairy product exporting countries, and strong global economic growth boosted world dairy product prices and the value of U.S. dairy product exports to record levels. In 2008, farm level prices remained strong, with the all-milk price averaging $8.41 per 100-weight, the second-highest on record.

This spring and summer, however, producers received less than $12 per 100-weight and the milk-to-feed price ratio, one measure of the profitability of producing milk, was the lowest in over 25 years during the first half of 2009. USDA projects that the all-milk price will decline by 34 percent in calendar year 2009, to an average of $12.15 per 100-weight, the lowest average annual price received by farmers for milk since 1979.

There are many factors contributing to the decline of farm-level milk prices. The drought conditions in Australia and New Zealand that I mentioned earlier have largely abated, leading to increased milk production globally. The global recession, the melamine scare in China, and the use of export subsidies by the EU have also lowered the demand for U.S. dairy products in world markets.

At home, the economic crisis has curtailed domestic demand for dairy products, and until recently, milk product remained at historically high levels as producers responded to those high milk prices in 2007 and through the first half of 2008 by increasing the number of replacements, limiting the decline in dairy cow numbers.

Producers are responding to the current depressed market situation by reducing herd numbers. Cow numbers dropped a year ago in March 2009 and are expected to average 125,000 lower in 2009 than in 2008. Further cutbacks in cow numbers are expected, leading to lower milk production in 2010.

Currently, we expect milk production to fall by nearly 1 percent in 2010, following a 0.8 percent drop this year. Reduced production, an improved economy, and lower dairy product prices are expected to lead to a gradual increase in milk prices and improve returns later this year and into next year. USDA is currently forecasting the all-milk price to average $11.80 per 100-weight in the third quarter, and $12.90 in the fourth quarter. For all of 2010, we are projecting an all-milk price of slightly over $15.

The Consumer Price Index for dairy products peaked in August 2008. Since August of last year, the CPI for dairy products has gradually declined, and in August was down 10 percent from a year ago. Over the same period, the CPI for fluid milk fell by 18 percent and the CPI for cheese and related products dropped by 11 percent.

Nationally, the margin between the retail price of fluid milk, as reported by BLS, and the price fluid milk processors paid for milk dropped by 18 cents per gallon between August 2008 and 2009. The margin between the retail price and the price paid for milk by processors in August 2009 was also slightly less than the margin in 2007 when farm level milk prices reached their peak.

USDA has taken numerous actions to help producers through this difficult time. So far in 2009, the Farm Service Agency has provided over 1,100 direct loans to dairy producers, totaling approximately $70 million. We are also extending loan repayment terms for new loans and notifying FSA dairy borrowers of loan servicing options, such as a deferral of payments or rescheduling of their repayment terms.

As announced on July 31, USDA increased the amount paid for cheddar cheese and nonfat dry milk under the Dairy Product Price Support Program. These purchase price increases, which were in place from August 2009 through October 2009, increased the price paid for nonfat dry milk by 12 cents per pound, and the price for cheddar cheese by 18 cents per pound above the minimum purchase prices specified in the 2008 farm bill.

From August 1, 2008 to date, USDA has purchased 277 million pounds of nonfat dry milk and 4.6 million pounds of butter under the Dairy Price Support Program, much of it during late 2008 and the first half of 2009.

On March 26, 2009, the Secretary announced that approximately 200 million pounds of nonfat dry milk would be further processed or bartered for dairy products for use in domestic and international feeding programs. The nonfat dry milk is being further processed or bartered into higher value products, such as instantized nonfat dry milk, ultra-high temperature milk, cheese, and ready-to-eat milk-based soups. In addition, at least 1 million pounds of nonfat dry milk will be sold on a competitive bid basis for the production of casein.

USDA is working with the Department of State to provide foreign assistance. This assistance includes about 500,000 pounds of nonfat dry milk for use in the McGovern-Dole International Food for Education & Child Nutrition Program, and about 1 million pounds for use by the U.S. Agency for International Development, based on anticipated requests from the State Department.

The 2008 farm bill modified and reauthorized the Milk Income Loss Contract Program, which providers counter-cyclical payments to producers in times of low prices or high feed costs. In order to provide assistance as quickly as possible to dairy producers, FSA published regulations reauthorizing the milk program on December 4, 2008.

Declining milk prices caused the Boston Class 1 price to fall below $6.94 beginning in February, triggering payments under the MILC program. USDA began distributing payments in early April, and to date, over $700 million has been paid to producers under the program this year. We expect MILC payments to continue for the next several months, although we expect the payment rate to decline given the projected increase in milk prices this fall.

On May 22, we announced the reactivation of the dairy export incentive program, with allocations for the export of 68,000 metric tons of nonfat dry milk, 21,000 metric tons of butter fat, and 3,000 metric tons of cheese. These quantities reflect the maximum volume of dairy products the U.S. is allowed to export with subsidies, consistent with the U.S.'s WTO commitments.

Last, on August 25th, USDA announced that nominations would be accepted to form a new Dairy Industry Advisory Committee. The Advisory Committee will review farm milk price volatility and dairy farm profitability and provide suggestions and ideas to the Secretary on how USDA can best address these issues to meet the dairy industry's needs.

Appointed representatives will include processors and processor organizations, producer and producer organizations, handlers, consumers, representatives from academia, retailers, and State agencies involved in organic and non-organic dairy at the local, regional, national, and international levels.

This concludes my oral statement. I would be happy to answer any questions you might have.

[The prepared statement of Dr. Glauber appears as a submission for the record.]

Chairman LEAHY. Thank you. I should also note that, both with you and Ms. Varney, we will keep the record open, as I said, until the 30th. So after you've seen the transcript, if there are things you wish to add to it, you will be able to, as well as any of the other witnesses.

Chairman LEAHY. Thank you. And I should also note to both you and Ms. Varney, we will keep the record open, as I said, until the 30th. So after you have seen the transcript, if there are things you wish to add to it you will be able to, as well as any of the other witnesses.

I am looking at this chart behind this young woman with the camera. That would be you. If we might just move that out here a little bit. I do not want to interfere with the press here, but I just want you to all be able to see this, because it goes to what both of you have been talking about. This is something that every single dairy farmer here knows unfortunately all too well. It shows the Boston Class 1 prices down here at $13.51, the cost of production up here at $26.07. You can see the way those prices have gone.

I was thinking of this, Doctor, because you made reference to that, the peaks and valleys, and your Department was helpful in preparing this. Obviously, something staying like that, farmers cannot stay in business and our State of Vermont will change dramatically, as will many other parts of this country.

Ms. Varney, I have to thank you again for being here. You have one of the busiest Departments in the Department of Justice. And although I must admit, it is nice to have—I believe you are the first person to head up antitrust who's actually milked a cow.

[Laughter.]

Chairman LEAHY. Trust me, I have pointed that out to a whole lot of people. You talked about the monopsony power, or buyer power, in the dairy industry. In New England, we have a situation, as Senator Sanders has pointed out, where one distributor is responsible for the purchase of more than 70 percent of Northeast dairy production. Now, that high level of buyer concentration is that something that concerns you? I would ask you to put on your professional hat as head of Antitrust. Does that concern you?

Attorney General VARNEY. Senator, whenever you see that level of concentration in a market it is concerning. We are committed to the concept that a free market thrives on competition and competition is not very well served when you have one player in the market who controls 70 percent of the market. So, yes, that is something that we are concerned about and we look very carefully at the activity in a market when you have that kind of dominance.

Chairman LEAHY. Well, as you look at this activity if you determined that action should be taken, what tools do you have?

Attorney General VARNEY. Well, we have a number of tools. I think, going the range, we start with basic tools of learning what is happening in the marketplace. I think that is what we are trying to do here today. It is what we are going to be doing in our workshops. We escalate from there. If we believe there is activity in the marketplace that may violate the law, we have a number of investigative tools at the Department of Justice.

We, as you know, open up investigations, we issue subpoenas, we depose witnesses, and we look for the kinds of activity that may

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violate the antitrust law. And should we find evidence that there is a violation of the antitrust law, under my direction we will certainly not hesitate to prosecute and bring a case.

Chairman LEAHY. Well, you know, it is interesting. You mentioned the workshops. I have been in the Senate for a number of years. I've been there through seven different administrations. I have never known of a time when the Justice Department has held such workshops for dairy farmers. Is this something unique?

Attorney General VARNEY. I believe it is, Senator. As I said, we will be going all over the country and looking at dairies. As a matter of fact, we are planning a workshop specifically on the retail price spread to really try and get at some of the core issues that are driving that spread. I also think it is unprecedented that the Department of Agriculture and the Department of Justice have worked together on this issue.

Chairman LEAHY. I would like very much, once those workshops have been completed, if perhaps you could arrange to have your office come up and give a briefing for my office, actually for a number of the offices of those Senators in both parties who represent dairy States.

Attorney General VARNEY. I would love to do that. But I would also love to come back up here, if invited and brief you all on what we found.

Chairman LEAHY. Preferably either at the height of foliage season——

Attorney General VARNEY. In the fall.

[Laughter.]

Attorney General VARNEY. Exactly.

Senator SANDERS. We'll bring you back in mid-January, how's that?

[Laughter.]

Attorney General VARNEY. Well, I do ski, Senator so I'm okay with that.

Chairman LEAHY. You state that within the agriculture sector, the companies have become more vertically integrated over the years. We see this where the cooperatives rely wholly on one company to manufacture their milk. Is this part of the things that the antitrust division has to look at?

Attorney General VARNEY. It is certainly something you know, I want to understand because, as I said, I'm new to the structure of the dairy markets in the United States, and how we've evolved to the point where the co-ops are basically captive of one distributor. I want to understand how we got there and what kind of competition exists. Even if there is 70 percent concentration at the distributor level, how do we reinvigorate competition in that level, given the structure of the market where it is today?

Chairman LEAHY. Well, my staff on the Judiciary Committee found that in the last administration, we found allegations where there were career lawyers in the Antitrust Division, who are usually, as you know, people we—they don't take a Republican or Democratic position.

Attorney General VARNEY. Right.

Chairman LEAHY. They just give the best knowledge possible. They investigated competitive issues in the dairy industry. They ultimately concluded that there was a problem and the career, the nonpartisan lawyers recommended action against certain firms in the industry. But my staff tells me the Department of Justice back then never took any action. Did this actually happen?

Attorney General VARNEY. Well, as you know Senator, I just got there in April and I've been very immersed in looking at the structure of the industry as it exists today and what we can do going forward. I too, am aware of the controversy surrounding the previous administration. I do want to point out that the Department did file a lawsuit after the merger of DFA Southern Belle, and they lost that lawsuit and went on to appeal it and won it.

So I think that there is basis to continue to investigate and bring these suits and bring them in a way that can reach a successful conclusion for the dairy farmers, and I am very focused on what we are going to do going forward, looking at the record of where we've been in the past.

Chairman LEAHY. Thank you.

Doctor, I have to thank you and tell you how appreciative we are that the Department moved very quickly. Senator Sanders and I, and all the Senators from the various dairy-producing States, have had what I think was almost an unprecedented meeting with Secretary Vilsak. He demonstrated a real crisis. He actually took some very quick steps and he responded, but was, I think most appreciated by the Senators who were there. We had a secretary who actually understood the complexities of the dairy industry and could speak about it. He has traveled across the country.

He has met directly with dairy farmers. He announced that in July, that they're raising the dairy price supports. The OMB said that will cost about $250 million. The increase is currently set to expire at the end of October. Could you tell us what has happened in that with the raising of the price support, how much money was spent? What is that actually doing?

Dr. GLAUBER. I don't have exact figures, but I can tell you generally what's been going on.

Chairman LEAHY. Sure.

Dr. GLAUBER. When we raised those price support levels in July, we did see an immediate increase in product prices. We have also seen, generally, an increase in product prices since that time. Whether or not they are directly related to the increase in price supports, I think there are a lot of other factors, but the point is, we've been—I think if I'm not mistaken we've only acquired a few million tons of product. That is far less than what we had originally anticipated largely because of the price increases. I would be happy to get you the exact numbers when I'm back in the office on Monday.

Chairman LEAHY. Could you, please?

[The information appears as a submission for the record.]

Chairman LEAHY. I know on the MILC program, just in Vermont, the part I wrote in on the feed adjustment, that is about $15 million into Vermont. Overall, it is going to pay out a little over a billion dollars. A quarter of a billion of that comes from the feed cost adjustment. As I said, that $15 million that came directly into our State was very helpful, but we still have this huge disparity. You also spoke about the Livestock Gross Margin Dairy insurance program, the LGM Dairy. Most folks who don't live on a dairy farm don't fully understand that. I know it protects farmers against loss of gross margin, the market value of the milk minus the fee costs. How many farmers have signed up for that, and how does that work?

Dr. GLAUBER. Well, let me explain. One of my other hats is, I'm chairman of the Federal Crop Insurance Corporation Board of Directors. Back in July of 2007, we had a submission where a private party brought forward this proposed insurance product for dairy producers. The board approved it in July of 2007. Essentially what it allows producers to do is guarantee a margin for the milk that is produced.

Every day, we calculate the margin based on the futures price for milk, futures price for corn, futures price for soybean meal. And that allows you to lock in. If you purchase that insurance product on that day, it allows you to lock in that margin. So in 2 months' time, when the contract comes due, one can then turn around and if the margin has declined precipitously by either a collapse of dairy prices or increases of feed prices, then you are able to then get a payment if it exceeds the deductible.

Now, it is a very new product and we still have just a handful of producers who have signed up for the product. That said, I know just last fall we had a Board of Directors meeting where we expanded—at the request of several States, expanded the program into, I believe Kentucky and Tennessee, New Mexico, Washington. I would just say that the important thing is, this is particularly good when you have a reasonable margin out there. I mean, if you have a very low margin, well, it will help things from getting worse, but it won't boost income above what the market anticipates that margin to be. That's the important thing, much like any insurance product.

Chairman LEAHY. You know, I remember all the pressure we got from the administration in 2002 to strip out the competition title which we had put into the Farm Bill of 2002. I and several others, we actually had a bipartisan coalition from the Senate in getting that in. Is that something we should look at again? I mean, this would have actually directly and legislatively addressed some of these issues. Is that something we should look at again in the next farm bill?

Dr. GLAUBER. Well, certainly we work with Justice in their investigations. They will come to us and ask us for information because they seek the expertise that the Department has on a lot of these issues. I think through these workshops—again, unprecedented—that we will be conducting, we will be looking at these things very, very closely. As far as whether or not something like that is needed in the farm bill, I think that is something that would be presumably worked out among you members and the administration.

Chairman LEAHY. Thank you. I've gone over my time.

Senator Sanders, please.

Senator SANDERS. No, you haven't. I don't see any clocks here. When you're the Chairman, you never go over your own time.

[Laughter.]

Chairman LEAHY. The Chairman never goes over. There's two things I've learned about being Chairman: I am never late for a hearing because it starts when I get there, and we have flexibility in time. But this is an important matter. As you know, we're trying to get as much detail on the record because this is going to be—both Senator Sanders and I are going to use this record in arguing with the other Senators about what should be done.

Bernie.

Senator SANDERS. Thank you, Patrick.

Attorney General Varney, let me start off, picking up on a point that Senator Leahy made. It is fairly widely known that in late August 2006, career professionals in your division, in the Antitrust Division, and were not political appointees, but professionals, concluded a 26-month investigation into far-ranging anti-competitive practices in the dairy industry. It is my understanding that, in August 2006, that team—these are professional investigators—recommended action against some of the dairy industry's biggest firms, including Dean Foods Dairy Farmers of America, and National Dairy Holdings.

Unfortunately, under the Bush administration, when that was kicked up to the political people, they decided not to pursue that investigation or take any action. Can you give us assurance that you, in fact, will continue that investigation, and if it leads you to the conclusion that action should be taken, that in fact you are prepared to take action?

Attorney General VARNEY. I can give you every assurance, Senator, that any investigation that I undertake that leads us to believe there is evidence sufficient to prosecute will be prosecuted. There is no doubt that we will prosecute that kind of activity should we find it.

Senator SANDERS. Thank you.

[Applause].

Chairman LEAHY. I appreciate the applause especially as it is following a statement that I wholeheartedly agree with, but we do have to follow the Senate rules and we will have to——

Senator SANDERS. Even in St. Albans?

[Laughter.]

Senator SANDERS. We have a little flexibility can't we here?

Chairman LEAHY. During the break, we definitely will.

Senator SANDERS. Let me ask Assistant Attorney General Varney another question. One of the problems my staff has had is I think everybody wants to know what the truth is and what the facts are. You can't go forward unless you know reality. We have read and studied a lot the dairy industry, and we read the dairy press. What we have ascertained is what Senator Leahy and I indicated a moment ago about a significant concentration of ownership in various regions of this country. That's what we believe to be the truth, based on what we read.

Attorney General VARNEY. Right.

Senator SANDERS. Meanwhile, what has happened is we want to confirm that fact about the likelihood of Dean controlling 70 percent, for example, of the fluid milk market in New England. But when we call up the milk marketing orders around the country and we say, this is what we believe, can you tell me if this is true or not they say that in fact that information is confidential. They say that by law, the USDA collects all this data but they can't share it unless it is in a lawsuit or in other limited circumstances.

On the surface, this seems pretty absurd to me. I think the people of this country have a right to know, Congress has a right to know, to what degree there is concentration of ownership. Can you tell me if you think, in fact, that the public has a right to know this information, not only in Vermont, but all over this country? What do you think?

Attorney General VARNEY. Well, it's interesting Senator, because as—in my prepared remarks for the record I quote Justice Brandeis, who says "sunlight is the best disinfectant". I am a firm believer in transparency. As a matter of fact, just Thursday afternoon I was meeting with a group of dairy farmers who expressed their frustration about the lack of transparency generally in the industry.

So with my colleagues at USDA, it is certainly something that we're going to be examining, both from the perspective of, how do we ascertain and then inform the public as to what we believe the levels of concentration are, but more importantly, what are the real barriers to sharing that kind of information? We understand that business has a right to keep proprietary data and that they are not compelled in this country to provide certain proprietary data absent a lawsuit or another form of enforcement.

On the other hand, this is a very distressed industry and transparency is something we all need in order to understand how we can improve the production and the health and life of the dairy market in the United States. So I think both USDA—and I would turn to my colleague—and I are committed to understanding not only what the concentration levels are, but how we introduce more transparency.

Senator SANDERS. Well, I appreciate that. I mean we all understand that for business, certain kinds of proprietary information is vital and no one questions that. On the other hand, what we are here to try to do is to see how we save family-based agriculture in America. If we find in dairy and in other commodities—this is not unique to dairy—that there is monopoly control, the public has a right to know, Congress has a right to know. I think you agree with that?

Attorney General VARNEY. I do agree with that Senator.

Senator SANDERS. Let me ask you another question. When we talk about monopoly control with regard to Dean this is not, by the way, some new idea. As I'm sure both of you know, a number of private parties, including both consumers and dairy farmers, have filed lawsuits against Dean Foods alleging antitrust violations. In 2007, for example, two classes, representing over 4,000 dairy farmers, sued Dean Foods, DFA, and National Dairy Holdings, alleging that they conspired to monopolize milk markets in the Southeastern United States. In other words, this is not just a Northeast issue, it's a national issue, various regions.

More recently, a class of consumers sued Dean Foods, DFA, National Dairy Holdings, and others for conspiring to fix the price of milk in stores. So you're having farmers and consumers suing Dean Foods. My question is does the Department of Justice plan to investigate these allegations or request access to the documents in these cases, as appropriate?

Attorney General VARNEY. Well, Senator, as you know, I can't comment on any specific investigation the Department is currently involved in or may become involved in. I can tell you that we carefully monitor all private antitrust actions in this arena. We read every public document. We are very cognizant of the allegations at issue here. We are very aware of the proceedings, of the evidence that's coming in on the records.

Private antitrust is certainly an important—Senator Leahy asked me about the tools—private antitrust is certainly an important tool of the Department. We do watch those matters carefully and have in the past, in other industries, as appropriate, either intervened or brought our own lawsuits. So you can rest assured that that tradition continues.

Senator SANDERS. Okay. Well, again, that's good news, because the point to be made is the problems that we are having in Vermont and New England are not unique. They're taking place all over the country and there have been lawsuits filed. It's important that the Department of Justice work and investigate those as well.

Ms. Varney, as you know, the Capper-Volstead Act provides an exception to the antitrust laws for agricultural cooperatives, but only if those cooperatives "are operated for the mutual benefit of the members thereof". My question is, how seriously do you take the requirement that a cooperative act for the benefit of its members in order to be protected by Capper-Volstead? Could a cooperative lose Capper-Volstead protection if it routinely acted against its members' interest?

Attorney General VARNEY. Well, Senator, Capper-Volstead is something that I have been recently introduced to as the Assistant Attorney General for Antitrust, and I'm really learning a lot about the history of the Act and the history of co-ops and how they've evolved. And without, you know, asserting any conclusions at this point, I understand that the act was intended to bring the small producers together in order to give them some ability to effectively market their milk. It does seem to me initially that some of these co-ops have grown extraordinarily beyond what anybody imagined when Capper-Volstead was enacted.

Now, Capper-Volstead essentially provides antitrust immunity. We obviously take very seriously the congressional determination that some activity is exempt from antitrust scrutiny, even though we're slightly allergic to antitrust immunity anywhere. Having laid that as a framework, certainly if an enterprise is acting outside the scope of their immunity, I believe they would be subject to antitrust review, and potentially prosecution. That is something I would want to think carefully about. Congress does not lightly grant antitrust exemptions, so I think there is a balance that I would have to strike there and I would look forward to working with the appropriate congressional committees on what they see as the limits of Capper-Volstead.

Senator SANDERS. Okay. Thank you very much for your refreshing remarks.

I just have a couple of questions, all right, for Dr. Glauber?

Chairman LEAHY. I might add though, if I could just follow on that on Capper-Volstead, I mention this because all antitrust legislation comes before the Judiciary Committee. The Congress, as you said very rightly, has granted this exemption from the antitrust laws. Congress having granted that can also take that exemption away, could it not?

Attorney General VARNEY. Absolutely.

Chairman LEAHY. And if Congress were to determine that there was a violation of the intent of the law, they could remove the law, could they not?

Attorney General VARNEY. Well, and Senator, it does seem to me that an examination of whether the law is serving its intended purposes may lead to a conclusion that it is not the right law for the state of the industry at this time.

Chairman LEAHY. I mentioned that Senator Kohl, I've appointed as chairman of the Antitrust Subcommittee in the Judiciary Committee. It is something that I know he and I will be discussing, and with Senator Sanders. Thank you. Please go ahead.

Senator SANDERS. Thanks.

Let me ask Dr. Glauber a few questions. One of the important points to be made right here in dairy country is, the fight to preserve dairy and family-based agriculture is not just an issue of dairy farmers. I used to be, as some of you know, the mayor of Burlington. Remember, there are no dairy farmers in Burlington. I can tell you that the people of Burlington and the people of cities all over this country want family-based agriculture to be preserved because they want to get access to fresh, high-quality food. They worry about the concentration of ownership, they worry about foreign imports that do not have the standards that we are used to, and want, in the United States. So this is an issue that goes just beyond dairy producers, as important as that is.

Now, in connection with that point, Dr. Glauber explain in non-bureaucratese, in English, a very simple point. I think Senator Leahy started making it. Here's the point: most people assume that when they go to the grocery store and they buy a product, a gallon of milk, they kind of assume that most of that money goes to the people who produce the product, i.e., farmers.

I think most consumers would be shocked to know that if they're paying, say, $3 for a gallon of milk today, $1, just $1, goes to the farmer. Under today's conditions, that is significantly lower than the cost of production. Farmers are losing money every single day. So $1 goes to the farmer. My question to you: where do the other $2 go?

Dr. GLAUBER. Well, in the case of dairy, it clearly goes for the transportation and processing of dairy products. There's marketing bills put in there. We do a breakout every year for a number of commodities. In fact, the farm level value of total U.S. agriculture is only about 20 cents on the dollar.

Senator SANDERS. Did everybody hear that? What you're saying is, on average, farmers get 20 cents.

Dr. GLAUBER. Yes. For all products. And certainly if you were to go to some of the grains like wheat, it's very minimal, what the price—the farm level price of wheat in a box of Wheaties, for example. Now, when you move up the chain and go to things like higher value products like fruits and vegetables, they command a slightly larger share of the overall dollar. But you're absolutely right. There's a lot of processing and transportation and other costs involved in getting farm level product to the retail——

Senator SANDERS. But it's not just—well, let me take you another step further on that. Do you think it's just transportation? Do you—are you concerned, in terms of the survival of family-based agriculture in America, by these ratios that 8 out of every 10 cents goes to the non-farmer? Does that sound viable to you?

Dr. GLAUBER. I'm less concerned about the ratios. What I think I'm concerned about is what the farm level price is vis-á-vis the cost of producing that product for the farmer. That's the——

Senator SANDERS. But there is a ratio——

Dr. GLAUBER. That's the key thing.

Senator SANDERS. But there is a ratio between them. I mean, let me ask you again: what do you think—what's your understanding of a situation where dairy farmers are receiving 40-year low prices at the same time as a company like Dean Foods is making record-breaking profits? Do you think there's a connection between the two or do you think it's just an accident and a coincidence?

Dr. GLAUBER. Well, I wouldn't say that it's an accident or coincidence. I would have to look at the situation. I think that's one of the things we'll be looking at in terms of these margins. But understand that, over the last year, a lot of other things went on. We had very, very high energy prices. That increases transportation costs, it increases costs for a lot of that marketing bill. So, one has to look at a lot of factors, one factor of which may be the market structure.

Senator SANDERS. Right. That's actually my next question.

Dr. GLAUBER. Okay.

Senator SANDERS. Thanks. In your prepared testimony you mention that the Federal milk marketing order has its primary objective of assuring that fluid milk processors have an adequate supply of milk to meet the needs of consumers and farmers so that they can receive a fair price for their milk. My question is, do you believe that, in fact, the Federal milk marketing order system is broken? Is it no longer doing what it was supposed to do?

Dr. GLAUBER. Well, as you know, it, too, is a system that dates back to the 1930s. We've had a lot of changes in the milk marketing order system. We had, as Senator Leahy can remember, a very, very extensive series of reforms that came out of the 1996 Farm Bill, a very contentious set of reforms which essentially consolidated the number of orders, streamlined the number of class prices.

There is certainly, if you go across—and understand that a large portion of milk produced in this country is outside of the orders entirely, and that, of course, as we've seen, large growth in production in some of those regions and that product, of course, flows into other regions. So they're a very complicated system.

As for the Federal marketing orders, I certainly think that a complicated regulatory structure like that is always worthwhile to review because I think that clearly, when you see the differences between, say, a Southeast order or the New England order in terms of what percent goes to processed production, et cetera, you want to ensure that that order system is performing efficiently.

Senator SANDERS. Let me thank both of you.

Senator Leahy, thank you.

Chairman LEAHY. Thank you. Just two very quick follow-ups. The dairy price supports are going to expire at the end of October, next month.

Dr. GLAUBER. The increase that was put in place.

Chairman LEAHY. The increase. The increase. Yes. What do you think will happen in the market when those support prices return to their previous level?

Dr. GLAUBER. Given the fact that we have not purchased much in terms of product and given the forecast for product prices, I expect that product prices will continue to increase. We have seen some drop in production, in milk production, over the——

Chairman LEAHY. Product priced to the producer would continue to increase.

Dr. GLAUBER. Yes. Yes.

Chairman LEAHY. Is that what you're saying?

Dr. GLAUBER. Yes. Yes.

Chairman LEAHY. I just want you to know, everybody here is paying very close attention to your answer on that.

Dr. GLAUBER. Yes.

Chairman LEAHY. Would the Department consider extending the current price levels beyond October?

Dr. GLAUBER. Well, I think Secretary Vilsak has made it clear that he wants to work with Congress to get the dairy industry through this very tough time, and I think more importantly, look longer run about ensuring—getting a better solution to combat future volatility because as you know, this market has been highly volatile over the last 5, 10 years.

Chairman LEAHY. Well, I know. I mean, look at the chart.

Dr. GLAUBER. Yes.

Chairman LEAHY. Look at the chart I show here, and you can just see that volatility. We don't have ski slopes that are that sharp here in Vermont.

[Laughter.]

Dr. GLAUBER. I was bicycling here last summer and it looks a lot like that.

Chairman LEAHY. One of our bicycle clubs has a great tee shirt. It says, "Vermont: 'Taint Flat".

[Laughter.]

Chairman LEAHY. But you understand, Dr. Glauber. Just, those of us who aren't dairy producers, we go to the grocery store and we see the price of a gallon of milk may come down slightly, but then I go to the charts that I get every week and it shows that the price of the producer has gone down much, much more. Or conversely there are times when the price at the grocery store has gone up, but the price hasn't gone up to the producer. I think everybody is very similar to the way my wife and I are, and our whole family. We don't mind paying the price, if we are actually keeping farmers in business that they are actually getting the value from that. We do feel pretty perturbed if, as Senator Sanders has pointed out, it may go to enormous profits and enormous salaries to people who own a conglomerate. But I thank you both. We're going to do—in just a moment we're going to recess for 5 minutes while we set up the next panel. Ms. Varney, could you stay and hear the next panel?

Attorney General VARNEY. I plan to, Senator, yes.

Chairman LEAHY. Good. Thank you. I mean, you're both welcome to, of course.

Before I recess, could I note there are—I look around here and I see a number of my friends from the Vermont State legislature. Would all the legislators please stand? And you are allowed to applaud. Would you please stand, all the legislators who are here?

[Applause].

Chairman LEAHY. And we will stand in recess for 5 minutes while we set up the next panel. I thank you both very, very much for taking this time.

Dr. GLAUBER. Thank you.

[Whereupon, at 11:17 a.m. the hearing was recessed.]

AFTER RECESS [11:35 a.m.]

Chairman LEAHY. If we could reconvene, please. Thank you all. It was interesting. I see the enormous difference between having the hearing in Washington and having it here, is during the break, Marcelle and I, and certainly Senator Sanders and others, were seeing people we've known forever coming up and people have—some have raised questions of everything from market concentration to over-production.

I have suggested that all—again, as I said before we will keep the record open. If people have testimony they want heard on this subject, the subject we are talking about, we will keep the record open for it. This is unusual. A Saturday hearing is unusual in the Senate but certainly a hearing out of the normal Senate hearing room. So, take advantage of it.

The first person we're going to recognize is Bill Rowell. He's the owner of the Green Mountain Dairy farm in Sheldon, Vermont. I didn't realize, Bill, until I was looking at the background, you're a descendent of the original Vermont settlers who farmed in Orleans County.

Mr. ROWELL. Yes, sir.

Chairman LEAHY. And Franklin County.

Mr. ROWELL. Yes, sir.

Chairman LEAHY. I knew you were raised on a dairy farm in Albany because you've told me that before.

He received his B.A. from Johnson State College, his graduate degree in Urban Environmental Planning from Old Dominion University in Norfolk, Virginia. Along with his brother, Mr. Rowell's farm was awarded the prestigious title of "Vermont Dairy Farm of the Year" in 2008. We'll start with your testimony. We'll do it the same way we did before. I want to hear from each of you, and then Senator Sanders and I will ask questions.

Please go ahead, Mr. Rowell.

STATEMENT OF BILL ROWELL GREEN MOUNTAIN DAIRY, SHELDON, VERMONT

Mr. ROWELL. Very good. Thank you, Senator, Senator Sanders. Thank you both for being here. Our industry is looking for some hope, and your very presence gives us hope and we thank you.

Mr. Chairman, testimony of Willard Rowell. As you've said previously, I operate a farm with my brother, Brian and his family in Franklin County, Vermont. We produce 23 million pounds of milk annually. Our herd numbers 900 lactating Holsteins, 150 dry cows, and 650 replacement heifers. Our waste stream is processed through an anaerobic digester, which offers the farm multiple benefits. Crop land for the dairy consists of 1,000 acres of corn, 500 acres of hay land. We utilize best management practices and operate the farm in a highly efficient manner.

Today we find ourselves in yet another dairy crisis. We recognize that dairy farmers nationwide are producing milk well below their cost of production. Here in the Northeast, the cost of production is approximately $18 per 100-weight. The pay price for raw milk is presently—I think last milk check was $11.60 per 100-weight. That's $2.5 million short this year of what we were paid last year. In fact, if everything goes well, by the end of the year we will only be $1.6 million short of breaking even for the year.

Our national annual milk production in the U.S. amounts to 190 billion pounds and depends on export markets to achieve a balance between supply and demand to ensure fair pricing for our product. The world economy is in recession, consumer demand is down at home and abroad. Last year's export markets of 11 percent have dwindled to about half that this year. The market over-supply or surplus determines the pay price for 100 percent of the milk produced, which has created an untenable situation for the dairy farmer.

The first 6 months of this year, dairymen have converted $4.5 billion worth of equity to loans and continue doing so at a rate of $800 million per month across this country. Upcoming months will prove disastrous for many as equity is depleted and survival of the fittest plays its role.

Presently, there is no dairy farm in the United States supplying raw milk to the market at a profit to the farm. That's unbelievable. The need to balance supply with demand seems obvious, since the over-supply determines pricing on all milk. During the past several years, this country has struggled with the concept of supply management. Our inability to recognize the role played by surplus milk today has us working for half price, or in other words, producing 50 percent of our product for nothing.

Regarding the matter of balancing supply with demand, producers from across the Nation are expressing interest in a plan developed by Holstein USA and the Milk Producers Council. The plan is known as the Dairy Price Stabilization Program. It provides for the establishment of a national 15-member producer board, directed by the U.S. Secretary of Agriculture.

The Dairy Price Stabilization Program is a budget-neutral supply management tool, by which the supply of milk can be balanced with demand through the national board representative of the dairy industry to stabilize milk prices.

As a member of the St. Albans Dairy Cooperative, I'm very encouraged with their recent board decision to endorse the concept of a supply management program in this country. That's the first in the Nation, and I hope others will soon follow. The matter of antitrust, being pursued by Senator Leahy and Senator Sanders, Ms. Varney and Dr. Glauber, is of vital importance to our industry. It ensures that we'll be able to play on a level playing field in a competitive environment. If the farmer gets the balance of supply and demand in line but can't operate on a level playing field, he can't overcome that obstacle. That's a job for you folks, and we thank you for your efforts.

Finally, to ensure stability in the dairy industry there needs to be a comprehensive evaluation of Federal milk marketing orders to determine if they function as intended, to determine the effectiveness of their design and to determine if they're representative of today's needs.

Senators, it is rather humbling to look at all the decent, hard-working people associated with agriculture and then have to recognize the state of our dairy industry today. Today's world consists of 6.4 billion people presently; 9 billion will have arrived by the end of the century, and we represent the people who will feed them.

We extend our gratitude to Senator Leahy and the Federal delegation for these hearings and thank you for providing responsible leadership.

[The prepared statement of Mr. Rowell appears as a submission for the record.]

Chairman LEAHY. Thank you. Thank you, Mr. Rowell. Thank you for taking the time to be here. You have worked on these issues for a long time and it's been very helpful to the State.

The same with Paul Doton, who's going to speak next. Mr. Doton is from—has a farm—in fact, the Doton farm in Barnard, Vermont. Owns and operates a dairy operation and milks 60 Holsteins, along with his wife Sherry and his son Brian. He produces—and please correct me if I'm wrong on the numbers—about 1.1 million pounds of milk or around 128,000 gallons of fresh milk each year?

Mr. DOTON. That's correct.

Chairman LEAHY. He's a member of Agri-Mark Dairy Cooperative, board member of Yankee Farm Credit, and a member of the Vermont Milk Commission. As I noted earlier, the report that I received from Commissioner Allbee, or Secretary Allbee, has been made part of the record. Roger and Tom Berry and others from my office have been talking yesterday, and it's only because of the agriculture heads who are meeting is why he's not here. But we let him know that you were going to be here too.

So, please go ahead, Mr. Doton. And nice tie.

[Laughter.]

Mr. DOTON. Thank you. My brother bought it in Dallas, Texas for me.

[Laughter.]

Chairman LEAHY. Does he know that those are Vermont cows on there, though?

Mr. DOTON. We're guaranteed they are: I'm wearing them in Vermont.

[Laughter.]

Chairman LEAHY. You're going to make sure you had Holsteins on it, huh?

Mr. DOTON. Correct. In spite of what my sister says. She has Jerseys.

Chairman LEAHY. I notice Mr. Wellington does, too.

So go ahead, please.

STATEMENT OF PAUL DOTON, DOTON FARM, WOODSTOCK, VERMONT

Mr. DOTON. Good morning. Thank you to both of you for having this hearing in the State. As you stated, my name is Paul Doton. I run a small dairy operation—as compared to Mr. Rowell it's small, anyway—in Barnard Vermont, where I milk 60 Holsteins with my wife, Sherry and our son Brian.

I've been working on the farm since birth, but I did take a break to go to college and I worked off the farm for 5 years. I have four younger siblings, and they had to matriculate through the farm so I could come back in 1977. I guess you could say that I've been farming for almost 60 years.

Our son Brian is 23 years old and he's fully involved in the farm with us. In fact, we formed an LLC to make sure he understood that when he graduated from high school, he was going to be part of the operation. We're using that to be able to pass the farm on to him before I kick the bucket and he has to pay the high estate tax.

[Laughter.]

Mr. DOTON. We own 200 acres of land and rent or use another 200 acres of land in our local area for growing hay and corn. As you stated, we do produce 1.1 million pounds of milk and we market it through the Agri-Mark Dairy Cooperative. As I've stated before, I have been dairy farming my whole life. When I worked off the farm it was for a feed, seed, and fertilizer company. This is the worst I have seen on the farm as far as high production costs, but devastatingly low milk prices are concerned.

Right now as I speak, my operation is losing in the neighborhood of $75 per cow per month. That's a little lower than what some people are stating, but we use intensive grazing, so we cut back on the grain in the summer and hopefully we'll make it through and we won't have cows that are a little gaunt going into the fall.

How are we making ends meet? Fortunately we have a maple syrup business, we sell vegetables, we do custom mowing, we plow snow. We haven't figured out a way to do custom mowing or plowing snow year-round, or making maple syrup. Without this income, I would already be out of business. Doton Farm, much like many other farms, cannot hang on much longer. How long can we go on losing $4,500 per month? My answer is, not long at all.

Dairy farming is a business. When I spend money economists tell me that it circulates several times throughout the local economy. They estimate that for every cow I milk, it means $13,000 in annual economic activity in the local economy each year. If that holds true, my farm contributes almost $800,000 to my town in taxes and other benefits in addition to open space and wildlife habitat. I do spend money locally, but only when we have money to spend.

As an example, my veterinarian service is local, as is my farm equipment dealer. My repair work for farm trucks and tractors is also performed locally if we cannot fix it ourselves. Our farm is starting to show the wear and tear, not only on the equipment, but on the three of us that are the entire workforce on our farm meaning myself, my son and my wife. In spite of what my son says, I do go to several meetings a month, but I am there. I milked this morning. If this gets done in time, I will milk tonight.

Chairman LEAHY. At least the sun is shining.

Mr. DOTON. Yes.

Our vet, for example, now does not visit our farm as often since we cannot afford to have her every month. It's important to have a regular herd check every month to check for pregnancy or lack thereof in our cattle. She used to come every month, but now we've stretched that to one and a half or 2 months. In talking to her I'm not the only one that's doing that. So it is affecting the economy. We also are trying to repair all the farm equipment and milk equipment ourselves, even more so than in the past. Everything must be fixed if it is broken, as new equipment is certainly out of the question at this point in time.

We are struggling to make ends meet, even though we are diversified and have more than one source of income. But when my business suffers, so does the business of many of my neighbors, like, as I mentioned, the veterinarians and the mechanics. Their businesses are stressed by this downturn in our economy in the milk prices.

I feel strongly that the end result of this hearing is that we must find a way for dairy farmers to recover their cost of production plus profit, and that's the only reason to have a hearing like this. Every other group in the marketing chain can recover their costs if import costs rise, except the dairy farmer. That situation is unfair and cannot continue. What other business in the United States is in a position where they cannot raise their prices to recover their costs? Even our non-farming friends cannot believe that we're working 365 days a year but cannot make ends meet.

Am I worried about my future and Sherry's future? I certainly am. But I worry even more about the future of dairy farming for my son Brian. He is 23. How can he survive if milk prices do not even cover the cost of production? How can he raise a family, send his children to school, invest in the farm and keep it going for the next generation? Because the next generation will certainly not milk cows and work the land if there is not a way to make a profit on their investments.

I also serve on the board of Yankee Farm Credit which is part of the farm credit system. Earlier this week I was at a meeting in North Carolina, where I had a chance to talk to farmers and Farm Credit officers from around the country. I can tell you that dairy farmers all over the country are struggling and are going out of business at an alarming rate. That is also happening here, as you have heard, in this region as well.

I am also on the Vermont Milk Commission and have heard some testimony from all aspects of the dairy industry, from farmers, to processors, to retailers. There's no quick or easy solution for the

Commission or the State to take, but we must work together to address this problem.

Finally, I am also director of Agri-Mark Dairy Co-Op which markets milk for farmers not only in Vermont, but throughout New England and Eastern New York. During the past 3 months alone, our co-op has just over 50 dairy farms that have gone out of business. With many of those in Vermont, I know this trend will continue if something is not done to increase the milk price.

Thanks for this opportunity to testify, and I will be glad to answer questions later. Thank you.

Chairman LEAHY. Thank you very much.

[The prepared statement of Mr. Doton appears as a submission for the record.]

Chairman LEAHY. Our next witness is Travis Forgues of the Forgues Family Farm in Alburg. I should probably say, because this becomes part of the full record in Washington, Alburg, Vermont. We all know Alburg.

But along with his family, he owns and operates an organic dairy farm with 70 cows, 240 acres. It's been in his family for over 35 years. I might note parenthetically, his wife and children are all here with him and we welcome you all.

Mr. Forgues serves as a board member of the CROP, a cooperative, Organic Valley Family Farms. It's a national organic dairy farmers' cooperative, with approximately 1,300 members in 28 States.

Mr. Forgues, please go ahead, sir.

STATEMENT OF TRAVIS FORGUES, FORGUES FAMILY FARM, ALBURG, VERMONT

Mr. FORGUES. Chairman Leahy, Senator Sanders members of the Committee, thank you for inviting me to appear before you to discuss the important issue of sustainability of the dairy industry in New England.

I grew up on my parents' conventional farm in Alburg Springs, Vermont, just across the road from Lake Champlain near the Canadian border. I love life on the farm with my parents, Henry and Sally, and two younger sisters, but I was always aware of the stress my parents felt trying to make ends meet. It was always a struggle. Believing there was no future in farming, my parents encouraged me to go to college and carve out a career away from the farm.

As my wife Amy and I began to think about raising our family, we realized we wanted to give our children the same rich, rural upbringings that my parents had given me. When I approached dad about making a go of farming however, he agreed to let me return, but insisted I had to come up with a way to make it work. We bought the house next door to the farm and started co-farming with my folks, both having jobs off the farm to make ends meet.

Since my dad had been downsizing our farm to keep afloat, he hadn't chemically treated his fields. He'd always resisted the use of drugs, genetic engineering and other conventional technologies used to get cows to produce more milk. He had already switched to grass pasturing to cut the high cost of feed. By the time we began thinking about switching to organic, which commanded a higher price, we realized we were already well on our way.

In 1997, we started shipping our milk organically to a small Vermont-owned organic milk company. We are very proud to be part of the small company that was shipping organic milk to local markets. It was not to last however, as the owner sold the company to a large corporate competitor. It was then I realized how important true ownership of our future was. With that in mind, I became the first Organic Valley cooperative farmer in the State of Vermont in 1999. We started as a small group, but Vermont is now the second-largest producer pool in Organic Valley's family of farms totaling over 120.

Just as a side note, if you start talking about how many farmers we have left in the State, Organic Valley has approximately 12 percent of those farms that are certified organic. If you talk to many of them, the vast majority of us would not be here today without what we had done.

Organic Valley represents over 1,200 farmers across the country, all with the same goals: long-term, stable sustainable pricing. In 2008, I was elected to the Board of Directors of Organic Valley, which I serve on presently. You have asked me to comment on the sustainability of the Northeast dairy industry: it is not sustainable. The conventional system that has developed over the last 50 or so years has done so on the back of the farmers, and while farmers are strong and can endure much, they are not invincible.

The ongoing instability of the market, with ups lasting shorter and downs lasting much longer, relies on dairy farmers to bear most of the risk of oversupply weak markets, falling exports, and unregulated imports. The processors are able to take advantage of over-supply by making larger profits with lower paid prices to farmers or raising the price at the shelf.

The government, encumbered by regulatory structures and fiscal realities, is forced to make small, short-term efforts that do not change the realities year after year. Without meaningful reform, the instability will continue until the farmers break. That moment is approaching, and one has to ask if that time is now.

As a certified organic farmer, I am fortunate to have been able to avoid many of the troubles of the conventional dairy industry. For the past 10 years, I have received a stable pay price, steadily increasing to the price I continue to receive today, approximately $27 a 100 at mailbox. I believe I've been able to enjoy the stability because of three main central principles that I participate in, both on my farm and through the cooperative: setting our pay price, supply management and marketing.

Setting our pay price. As a farmer in a cooperative I have been able to set my pay price for my milk that is a fair price and sustainable for my family. We have agreed as a cooperative to set our price and demand that price or we will not sell our milk organically. Many other organic farmers, whether members of our cooperative or not, have seen this model and followed it. We are able to do this because we have the alternative market for conventional milk.

If we cannot find a market for organic milk at our price, we sell it conventionally. We do not bid it out and hope for a high price, it is our price or none. Many will say this does not translate to the conventional market because there's no alternative market. I think that there is a way to set up a two-tiered pricing method for conventional farmers.

The farmers are able to receive a set price of, for example, $15 for 100 for a certain amount of their milk; even if it's just 30 to 40 percent of their milk, they will be in a much more stable position than they currently are. A set price can be either regulated by the government, or the farmers can contract milk for a set price if the processors would be willing to do that contracting.

But the only way for this type of system to be effective for farmers is if there is support from the government and the rest of the dairy industry. Whether through incentives or forced through regulation, the farmers must have some assurance that for at least part of their milk they will receive a stable pay price they can count on year after year.

Supply management. Currently, the dairy industry works outside the bounds of any normal supply/demand doctrine. The dairy industry, processors, and marketers do not provide any information to farmers about the forecast of supply needs. Farmers, as a result, produce as much as they can because more production helps them pay their bills. This leads to chronic over-supply depressing prices and farmers in too much debt to survive.

Without meaningful supply management, this cycle will only continue. Voluntary programs like CWT are not enough to be meaningful. I understand that farmers who sell their herds are simply buying back into herds when the price comes back. This program also results in over-supply in the beef industry, hurting those farmers. Meaningful supply management requires the marketers to make good assessments about their needs and communicating those needs to the farmers. Farmers who continue to produce and expand above those needs should not receive the same price for their milk.

At Organic Valley, in response to this flowing market, we have instituted a mandatory supply management system. It has not been easy, but our membership has collectively decided to reduce milk production by 7 percent. We are seeing our supply slow and our utilization increase. This helps us protect our pay price. Again, we are a small microcosm, but we are also a model of how farmers can begin to take back control of their piece of the supply/demand puzzle rather than just being at the mercy of the market.

Finally, marketing. Dairy farmers today are completely separated from their market, the ultimate consumers. Over a decade of marketing under the "Got Milk?" campaign has resulted in a consumer who drinks milk because a celebrity tells them to. There is no connection to the farm with a farmer who helps produce the milk. By taking this away, there is no way to educate the consumer about what a sustainable price is at the shelf for milk.

At least 30 percent of our farmers in Organic Valley participate in the marketing of our milk. Whether through retail stores, trade shows, or farm tours, our farmers are making a connection with the consumer. In turn, our consumers understand that the milk they are buying is helping to keep a farmer on the farm and maintain the rural community in the United States.

In conclusion, these difficulties in the Northeast and across the country can be avoided by creating the atmosphere for a cultural shift in the dairy industry. Short-term cures like more exports or expanded purchases by government programs do not address fundamental structural problems in the dairy industry.

A traditional dairy farm was historically naturally restricted from growth by barn size and land base. They are run by independent-minded farmers interested in working on the land. These small family farms form the basis of a vibrant and healthy rural community and diverse food supply.

Common sense says it's good to have tens of thousands of family farms providing diversity of farm operations and production, training tomorrow's farmers and supporting rural communities. We must find a way to support these individual farmers in the midst of a global economy. By strengthening each one of these small parts we strengthen and protect the whole. But support is not only monetary, it is recognizing that these farmers are not just cogs, but are critical, co-equal parts of the whole. Thank you.

[The prepared statement of Mr. Forgues appears as a submission for the record.]

Chairman LEAHY. Thank you very much.

Our last witness before we ask questions is Robert Wellington. He's the senior vice president for Economics, Communications, and Legislative Affairs for Agri-Mark Dairy Cooperative. He's a longtime dairy expert in the New England region. He works closely with the Departments of Agriculture in all the New England States, as well as New York. He has also been very active, working with my office to help increase milk prices. He frequently testifies before State legislative bodies, as well as Congress. He has a Bachelor and Master's degree in Agriculture Economics from Rutgers and you taught there for several years, am I right, Bob?

Mr. WELLINGTON. Yes.

Chairman LEAHY. Thank you. Please go ahead.

STATEMENT OF ROBERT WELLINGTON, AGRI-MARK DAIRY COOPERATIVE, LAWRENCE, MASSACHUSETTS

Mr. WELLINGTON. Thank you both for all the work you have done.

I want to get right to the point here, because things are so severe. Prospects for sustainability in the Northeast dairy industry are falling rapidly due to the severe financial crisis faced by dairy farm families in the Northeast and throughout the Nation.

If a farmer cannot cover his costs and return a fair return for the investment and labors of its owners, then all other aspects of sustainability become irrelevant. If farmers are not buying the inputs needed to run their operations and the milk is not flowing to processing and manufacturing plants, then the other non-farm parts of the Northeast industry also are not sustainable.

It has been estimated that each cow grazing on a hillside generates more than $13,000 of economic activity. This means that an average-sized farm in the Northeast, milking about 100 cows, results in over $1.3 million of economic activity. It has also been estimated that every nine cows support one job in the dairy economy, from the farm inputs, to the farm itself, to the use of the milk and other products from the farm. If that average farm family is forced out of business, $1.3 million of economic activity and 11 jobs go with it.

This past January, a number of dairy industry representatives went to Washington to warn legislators of the looming crisis on the horizon. The Vermont delegation listened and understood, but other areas of the country remained in denial. When we explained that an industry supporting over a million jobs and far over $100 billion in economic activity was at risk, due in part to the national worldwide recession, Congress and the administration still refused to provide any relief for the dairy farming community in either the stimulus package or the supplemental appropriations bill, despite the support for that relief from the entire Vermont delegation and others.

Now the situation has hit home and dairy farmers are facing the worst financial situation since the Great Depression. They are receiving 1979 milk prices, but paying 2009 production costs. The result is thousands of dollars of losses per month on small farms, up to hundreds of thousands of dollars of losses per month or more on large or multi-family farms.

I have a chart in my testimony that was put together by Dr. Stevenson of Cornell. It shows a Milk Cost Index versus the Milk Price Index for the past 20 years. The situation has gotten progressively worse and is most severe in 2009, and with no surprise it's almost exactly the same as that chart up there.

The causes of farm milk price volatility are many but a primary one is the misalignment of supply and demand for milk and dairy products. It has been shown all too often that a mere 2 or 3 percent misalignment can move prices tenfold, that is, 20 to 30 percent. This is a terrible problem when prices are moving down, but a wonderful opportunity on the up side.

The immediate problem today is cash on the farm. Either markets need to rise dramatically immediately or else another source of money needs to be reached on the farm. A doubling of the MILC payment level, as well as increasing the cap retroactive to February 2009, would be extremely helpful for most farms in the Northeast. Measures to enhance market prices, like the $350 million additional price support allocation in the 2009–2010 agriculture appropriations bill, could even be more helpful if used appropriately.

One of my major concerns is that cheese prices were below the support price for much of this year, as it is right now, this week, but no product was removed from the marketplace. This was the worst of both worlds. The support price created a benchmark price to depress market prices, but it never resulted in any surplus product being removed from the marketplace. That cheese surplus is sitting in private warehouses and is a major factor why cheese prices are far less likely to recover very much this autumn. USDA needs to actually buy product to balance supply and demand.

Market prices will eventually recover as more producers leave and market supplies tighten, but this is a long, painful, and terrible process. Low prices have gone on much longer and gotten much lower than anyone had foreseen a year ago, and now it will take well into 2010 before acceptable price levels are reached. However even once milk prices recover, it will take a long time for farmers to repay the debt accumulated and equity lost in just the past 9 months.

The one certainty appears to be that prices will likely fall back to the pattern shown in that table if nothing is done. We are looking at alternative long-term pricing programs to reduce volatility and low net farm income. The problems are many, and include reaching a consensus among the strongly opinionated dairy farmers. Farmers have funded a supply management endeavor known as CWT, Cooperatives Working Together, for several years. It worked well when small surpluses developed but has yet to fully impact the current dairy crisis, despite conducting three herd buyouts this year.

This is a voluntary program funded by dairy farmers producing about 70 percent of the milk in the country. However, nonparticipants, often called free riders, gain the same benefits without paying a 10-cent assessment. Some co-ops would like to see a mandatory government-authorized CWT. Well, that could eliminate free riders but would also result in other problems that must be addressed.

Some people would use the futures markets to address the price volatility problem. Well, that could work. It would not necessarily improve farm income over time and could depress it. I have another chart from Dr. Stevenson that shows that, and in that chart volatility was reduced. But the average contract price received through the futures market was less than those that farmers received——

Chairman LEAHY. Incidentally, these charts will be made part of the record.

[The charts appear as a submission for the record.]

Mr. WELLINGTON. Yes. Thank you very much.

Some people have suggested using some type of farm revenue insurance. While this might help, one must keep in mind that insurance premiums are usually affordable because the event that one is ensuring against is rare. If 1 out of every 1,000 houses burns down each year, the premium rate can be low. However, if every house burned down every 3 years, the premium would be huge and likely unaffordable.

Milk prices have been burning down every 3 years for all dairy farmers. Supply control programs such as those proposed by the Holstein Association have merit but only if dairy farmers are agreeable to the restrictions set therein. Whatever plan that is brought to Congress must enjoy an overwhelming consensus of dairy farmers if it hopes to have a chance at passage, in my opinion.

We do not have the right message to send the appropriate signals to dairy farmers when too much milk is going to severely depress the milk price. A farmer is going to do what is best for their operation and their family, and rightfully so. However, when milk prices rise, farmers often increase production to capture more revenue and, hopefully, profit.

But then when prices fall, farmers also increase production to maintain cash-flow and minimize losses. Farmers' reaction when prices fall is bad for market prices, but appropriate for the farm operation. Farmers must be told when marginal, additional milk has less value and given an incentive not to produce it.

I have an example in here, and for the sake of time I won't give you the details of it except to say there there was 5 percent too much milk in this last year and it dropped prices on an average of $18 to less than $12 a 100-weight. If you attributed that 5 percent to the drop in income, every 100-weight of that additional milk impacted farmers by a negative $102 per 100-weight. That was the value of that additional milk.

Finally, Federal order pricing is needed to raise Class 1 differentials and floor those prices. Volatility in cheese markets should not have to produce volatility in fresh drinking milk markets.

Thank you for this opportunity to address these issues and for all the help you have provided dairy farmers over the years. I will be happy to provide further details or thoughts, as needed.

[The prepared statement of Mr. Wellington appears as a submission for the record.]

Chairman LEAHY. Thank you very much.

Throughout all this testimony there's been—at least I've heard in various ways—talking about supply management, as well as the obvious things of marketing as well as what we've raised earlier with Ms. Varney and others about the whole issue of consolidation of the marketing ability.

Mr. Rowell, you referenced the National Holstein Association, Dairy Farmers Working Together, supply management proposal. How could such a proposal have prevented the current crisis?

Mr. ROWELL. That proposal, Senator, has a national producer board advising the U.S. Secretary on how to administer the program, and that calls for an annual forecast of the market, revised through quarterly meetings. It establishes a producer base for each licensed dairy producer in the country. If we see that we're going to be 4 or 5 percent over-supplied, the order would be to reduce your supply.

Chairman LEAHY. Well, let me make sure I understand that. Is that a voluntary thing or would that be done mandatory?

Mr. ROWELL. No, sir. That is going to take an act of Congress. In fact, it's being drafted into a bill as we speak.

Chairman LEAHY. Do you have any concern about the government having a mandatory program?

Mr. ROWELL. Yes, I have some concern about it. But I have some concern, Senator, about allowing a small single-digit percentage of over-production to determine the price of all of the milk and suffering like this on a repetitive basis.

Chairman LEAHY. Speaking of the percentage that Mr. Wellington just spoke about.

Mr. ROWELL. Yes, sir.

Chairman LEAHY. Dr. Glauber's testimony—I've got the numbers here. He talked about cow numbers being at 9.13 million at the end of 2006, then increased to 9.34 million by 2008. Now, milk prices were historically high at that time. The increase in the cows came, milk prices went down. Do you see a corollary?

Mr. ROWELL. Yes. And we need to improve the market signals to the farm. The farmer is encouraged with the higher pricing, so he increases his herd, which then decreases his price as the export market disappears. The export market is so fickle, depending on somebody else's misfortune in another part of the world. When that is repaired and they can produce for themselves, our export market leaves us. We expect the government to come up with a subsidy so that we still have an export market but we have to compete with, say for example, the European Economic Union. They're going to subsidize their dairy industry by $5 billion. So what do we do, ask the U.S. Government for $10 billion so we can——

Chairman LEAHY. Do they have a quota system?

Mr. ROWELL. Yes. In Belgium they do, and they're dumping milk.

Chairman LEAHY. That was going to be my next question. I was struck by, in the last two or three days, I saw that photograph of dozens of trucks going across a field, dumping milk.

Mr. ROWELL. They have a quota system. We had a couple of gentlemen from Israel visit the farm a couple of years ago. I said, what is the price of a bottle of milk on the shelf in your country? The gentleman said well, it's about the same as the price of a bottle of water, unless it's a well-known spring, then the water sells for more than the milk. So the world is flooded with milk. And it's apparent to us on the farm that if we don't manage the supply, we're going to continue to suffer.

Chairman LEAHY. Let me ask, and I want to make sure we can wrap up, and some questions may be placed in the record after.

But Mr. Doton, you talked about Farm Credit. How is Farm Credit helping farmers and how are the lenders affected by this crisis?

Mr. DOTON. During the crisis last September, Farm Credit was one of the only lenders that had an available supply of money.

Chairman LEAHY. But how are they being affected? Is that lending going to continue?

Mr. DOTON. As long as the supply of money is able to be continued, that the lending agency that lends the money to Farm Credit is able to access those funds.

Chairman LEAHY. Would you say that's——

Mr. DOTON. It is at a higher rate than it was previously.

Chairman LEAHY. But that's the only source of credit, basically?

Mr. DOTON. The only——

Chairman LEAHY. Is that basically the only source of credit?

Mr. DOTON. For agriculture?

Chairman LEAHY. Yes.

Mr. DOTON. Farm Credit, basically? I'd like to say that, but there are other funds. Farm Credit is one that's been able to maintain that to credit-worthy borrowers.

Chairman LEAHY. The Vermont Milk Commission, and I mentioned you being a member of that, and Secretary Allbee running it, has the Commission recommended changes to Federal policy?

Mr. DOTON. That really wasn't part of the scope of the Vermont Milk Commission because the Vermont Milk Commission is to oversee Vermont milk, and only about 6 percent of it, because it's only that portion that is produced—manufactured and sold in the State.

Chairman LEAHY. Let me talk about the Holstein Association and Dairy Farmers Working Together's supply management proposal. How would you feel about a mandatory supply management program?

Mr. DOTON. I've been attending several of these meetings where the presentations were made by the Holstein Association, and it's interesting that they have been able to change their program a little to conform to what people are bringing to them.

I also had a meeting of my region in Agri-Mark, and the opinions were about as varied as they could be. You can understand; we have got a few——

Chairman LEAHY. I've been at those kind of meetings.

Mr. DOTON. We've got a few people from New Hampshire and they add to the spice of the meeting. But there are some people that say "keep the government the heck out of this". Be careful what you ask for, because you might get it, at least some.

Senator SANDERS. And how many of those people return their MILC checks?

Mr. DOTON. Only one of them would not accept his MILC check.

Senator SANDERS. One of them?

Mr. DOTON. One of them. The rest of them all accepted their MILC checks.

Chairman LEAHY. But they want government out.

Senator SANDERS. After denouncing the Federal Government, they cashed the checks, right?

Mr. DOTON. Correct.

Chairman LEAHY. We've heard some similar things in the health debate.

Senator SANDERS. One of the concerns that I might have, and it's been brought up to me, is with this program, how would young people get started with a supply management program?

Chairman LEAHY. That part does concern me, if it's not a family farm.

Senator SANDERS. Not to the detriment of the program, that it should be done away with for that reason, but it's a concern that I have.

Chairman LEAHY. Well, let me ask, Travis, you—one, I'm glad to see—and I apologize for using your first name. We usually try to be a little more formal and we'll correct the record.

Mr. FORGUES. No, I don't like formal at all, so it's all good.

Chairman LEAHY. But I'm also glad to see a fellow Michaelman, another St. Michaels graduate here.

Mr. FORGUES. Well, thank you.

Chairman LEAHY. Now, you're a member of the Organic Valley Cooperative, I believe you said. Is that correct?

Mr. FORGUES. That's correct.

Chairman LEAHY. And the other major player in the organic dairy market is Horizon Organic.

Mr. FORGUES. That's correct.

Chairman LEAHY. That's owned by Dean Foods.

Mr. FORGUES. Yes.

Chairman LEAHY. What's the competition between Organic Valley and Horizon for organic milk? Is it a real competition?

Mr. FORGUES. When you talk about competition especially after listening to the Department of Justice discussing this, there's two components to that. The one question is, is the competition at the farmer level—so talking about the programs, like how we're paying farmers compared to how our competitors are paying farmers, is that competitive? I would say that that has been competitive, especially when we were in a shortage of milk for the last few years of growth. The packages were very competitive, comparable.

People make decisions, they want to be a part of a co-op, they want to have independent deals. I'd say that's been competitive. When I start talking about retail level, for us, we're a farmer-owned cooperative. Our money is pretty finite. I mean, we're farmer-owned that's it. We need to make money based on how we do in the marketplace. I would say my competitors have a whole lot, more money to work with and a lot more resources to deal with the retail level than I would say we do.

Chairman LEAHY. We have talked about this before we talked about it when you were down in Washington. I think one of my proudest achievements in the Senate was when I wrote the Organic Foods Production Act back in 1990, so at that time this would be—people kind of said it's a niche market, crunchy granola is not going to amount to anything. It's now projected to be $23.6 billion, billion with a "b", in 2009. That's up from $1 billion in 1990.

I don't know of any part of agriculture that's grown as rapidly. But if you're going to keep that, you also have to keep the strong standards. We wrote in some very, very tough standards. What happens if those standards are relaxed? What happens if the label no longer means what it means today?

Mr. FORGUES. Well, I mean, it's important to note that the National Organic Program, which really took all the different certifier agencies, put it all underneath a national standard, is really a gold standard of organic production through the world, a well-written bill. If things get lax with that bill and consumer confidence goes down, then the ability to command a price for what you say you're doing will go away. I think one of the biggest problems, as we look at the NOP—or not problems.

But one of the issues we need to deal with is, I don't believe, like you are saying, organics was ever expected to grow at the rate we were supposed to grow. I don't think the Federal Government put enough resources or gave the resources to the NOP to keep up with us. You have a great set of standards. Are they perfect? No. Can they be always improved? Absolutely. But what you need to make sure is that the NOP gets enough resources to keep up with a growing industry in the food segment.

Chairman LEAHY. Sure. I was just going to tell you, after the microphone are turned off, remind me to tell you what President George H.W. Bush said to me when he signed that bill.

Mr. FORGUES. I'll remember.

Chairman LEAHY. It's a funny story.

Go ahead.

Senator SANDERS. Let me ask you this, picking up on the point that Senator Leahy made on organic standards. Our friends at Dean Food are moving fairly aggressively into the so-called organic market. Is that right?

Mr. FORGUES. Horizon Organics is a strong player in the organic market, yes.

Senator SANDERS. Are you concerned in terms of what it means, what most people consider organic to be, that in fact Dean's ownership of Horizon may be diluting that concept or are they maintaining the standards that you think should be maintained?

Mr. FORGUES. I think—you know, I've always been an organic-neutral kind of person in the belief that the standards need to be followed no matter if you're a 30-cow dairy or a 1,000-cow dairy. I think if those rules are followed to what is supposed to be done and the NOP has the resources and the backbone to make sure that those standards are followed—and I will say, I'm highly impressed and very excited to have Kathleen Marrigan involved in making some changes and help with the NOP and the new administrator for the NOP, just being announced.

If that's followed, then Dean Foods being involved in Horizon shouldn't really have anything to do with the organic standards and how those farms are producing. I can't talk about the justice part. That's a whole nother ball of wax that I don't understand a whole lot, and that's what Department of Justice needs to look at. But as for following standards, a Horizon organic dairy farmer or an Organic Valley dairy farmer should all be following the same standards and bringing a quality product to the market.

Senator SANDERS. That's absolutely correct. My understanding is that that may not necessarily be the case right now.

Mr. FORGUES. That is hopefully why we're getting more resources to the NOP, so the NOP can find out if that's true or not.

Chairman LEAHY. Mr. Wellington, I was reading over your testimony before we came here. One of the things that struck me, and you mention it here today too, you said one of your major concerns is that cheese prices are below the support price for much of the year, but no product was removed from the marketplace. You talked about the cheese sitting in private warehouses. Why is this happening? We have a dairy product price support program. It's supposed to be buying cheese to clear the market. Why is this happening?

Mr. WELLINGTON. Well, I think because of the industry saw that they had this great bargain with the cheese price. It couldn't go any lower because of the support price, and they knew that they were going to eat more cheese coming this fall, this winter. So they said why sell it to the government if I can just put it in my own warehouse at these cheap prices? The government created a target price at a very low level. They don't have to sell to the government. And, in fact, because the standards are so much tougher without the price being higher, it's actually a burden to sell it to the government.

So the market price was running 5 to 8 cents below the support price, which is 50 to 80 cents 100-weight. I mean, it was a terrible situation. If the government would have bought several hundred million pounds of cheese that could have been used by food banks and others, we wouldn't have that hanging over our head right now and we could have had a lot faster recovery, in my opinion.

Chairman LEAHY. Do we need to reform Federal order pricing?

Mr. WELLINGTON. I think we certainly need to take a look at it. But I'll be honest with you, I've worked in the Federal order program for 11 years. It does some very good things on orderly marketing and having handlers accountable on their prices and sales. But can it be improved, yes. But in many cases it 's also a messagebearer. It takes other prices and uses them through formulas. But it does decide those formulas, and particularly on Class 1 pricing, there's no reason why you should have an exact carry-through of lower cheese prices, resulting in lower fresh milk prices.

Chairman LEAHY. You know, when I became Chairman of the Senate Agriculture Committee I was sitting in a room for a day, having the whole Federal order pricing explained to me. I was then committed to an asylum for several months to recover.

[Laughter.]

Chairman LEAHY. And this is probably going to show up on a You Tube somewhere that I actually said that. It is a joke. But we had some of the best economists, and it's a very, very difficult thing. As you know incidentally, what's been the impact of the Dean-Suisse merger in 2001 on Agri-Mark's business model?

Mr. WELLINGTON. It hasn't affected us to a great degree because we were never a major supplier to the plants that merged into Dean Foods. Our major suppliers that we supplied milk to was the H.B. Hood Company and Geides Dairy down in Connecticut. So it didn't affect us. We actually had to step in and work with the Justice Department to make sure it wouldn't affect us. In fact we work with the Massachusetts Department of Agriculture to try to stop some of the mergers when they were Suisse Foods. So we were able to then intercede, keep our independence, keep our supply. So we're not a major supplier for Dean Foods, and that's probably a good thing for us.

Chairman LEAHY. I asked that because I know you talked with some of our folks at the time.

Mr. WELLINGTON. Yes.

Chairman LEAHY. And I appreciate that.

Senator Sanders.

Senator SANDERS. Thank you, Senator Leahy.

Let me just begin by saying this. As all of you know, everybody in this room pays taxes. We put money into the Defense Department, we put money into transportation to build roads, we put money into education to make sure our kids get a quality education. And I know that there are a lot of people out there who think that that's a terrible idea. The Federal Government should kind of back off in every respect, including agriculture.

But I don't think there's anybody in this room who should be ashamed for 1 second that some of us at the Federal level are trying to make sure that the people of this country get good, quality food, and that in terms of food security, that we are working hard to try to maintain family-based agriculture in America. I don't think there's anything to be ashamed about that.

Let me start off by asking, what I'd like to do is just throw out a question. Also, I want to congratulate Senator Leahy for putting together a great panel. The first panel was terrific, but I think in these four folks here we see a good cross-section of Vermont agriculture from smaller farms, to a larger farm, to an organic farmer, to one of the best agricultural economists in the country. So Senator, thank you for this very good hearing.

My first question deals with a question on which there is controversy, and that is the whole issue of supply management. What I want to do, before I even ask the panelists, I'd like to ask the members, I know we have a number of farmers here. How many people, farmers here, dairy farmers here, believe that this country has got to move to supply management? Please raise your hand.

[A showing of hands].

Senator SANDERS. How many do not?

[No response].

Senator SANDERS. Now, that's interesting, Senator Leahy. For the record——

Chairman LEAHY. Yes. Let's—I was going to say it, but go ahead.

Senator SANDERS. Let the record note that, here in St. Albans, Vermont, no farmer raised his or her hand in opposition to supply management.

Now, in terms of the testimony that we've heard here we've also heard that. Travis, you've indicated to us that you already do supply management with Organic Valley. Bill, you have been an active proponent of that. So why don't we just throw it out and briefly, Bill, tell me what you're hearing around the country as farmers are losing their farms, as prices have plummeted.

Is there a growing understanding that not every farmer in America can continue to produce as much milk as he or she wants to without paying a consequence for that? And maybe if you want to, as an aside, say a word about what's going on 50 miles north of here in another country which does have quotas and so forth.

Mr. ROWELL. Yes, sir. It has become apparent across the Nation that if we don't control our supply that many of us won't remain as our equity runs out.

Chairman LEAHY. If you don't.

Mr. ROWELL. If we don't control the supply.

Senator SANDERS. Paul, what do you think?

Mr. DOTON. It is absolutely necessary to have a program so people understand that the supply is getting too large and demand is not meeting that, and in some way to tell farmers, you need to cut back, either by getting a lower price or some sort of a program. The whole concept is there.

Senator SANDERS. Travis, now, you guys at Organic Valley have understood this for many years.

Mr. FORGUES. Well, we tried to manage—I think in October we ran into the whole national economic global meltdown. The problem with organics is, we sign year contracts ahead before farmers actually get on the truck because we want to give them security when they're transitioning. So we had to deal with the fact that we had milk that we had already contracted on, and what were we going to do with it?

Because we're not 5 percent over-supplied, we were more like 10. So we had to make a decision, were we going to get rid of farmers, were we going to slash pay prices, are we going to go to this or are we going to try something that nobody wants to deal with, $1,050 farmers in our co-op that are dairymen, you could get 1,050 different ideas. The reality is, we did it in July. We came up with a plan. Is it perfect? No. Are we talking? We will be.

Senator SANDERS. But it's working fairly well.

Mr. FORGUES. It has worked.

Senator SANDERS. You have $27 100-weight. ain't bad, right?

Mr. FORGUES. No. And if we hadn't done that, I can tell you that this independent co-op would have lost millions of dollars in the month of July.

Senator SANDERS. Bob, from your perspective as an economist, what are you hearing?

Mr. WELLINGTON. Well, you've got to keep something in mind. This is not a case of having no supply control or supply control. We have supply control right now, okay, and it's harsh and it's cruel and it's all related to low prices. So we have a system in place, so we've got to be asking——

Senator SANDERS. You mean, as we've driving farmers off the land.

Mr. WELLINGTON. Right. But I'm just saying, we have to be asked, which system do you prefer.

Senator SANDERS. Right.

Dr. GLAUBER. Not necessarily saying, do you like supply control or not, but which system is better for your family and your operation.

Senator SANDERS. All right. Let me ask all of you to respond to this. Dean Foods saw, in the first quarter of 2009, a 147 percent increase in their profits from the preceding year. All of you are struggling to keep your heads above water, or at least in the State of Vermont.

Bill, what do you think about a processor whose profits are soaring while farmers that you know are going out of business? What does that tell you?

Mr. ROWELL. It seems rather unfair not to be able to play on a level playing field, and it needs to be looked into and straightened out. If we are able to manage or balance the supply of milk with demand and we don't have a level field to operate on, we still have an insurmountable obstacle, and that has to be taken care of.

Senator SANDERS. Paul?

Mr. DOTON. I don't like to put it the wrong way, but 3 years ago when we were getting $24, the same situation was in place. Dean was controlling the marketing. So the Federal milk marketing order is the one that sets the rice. What little dealing that you have to do with Dean Foods is on the premium or the service fee, that the co-ops can get above and beyond the minimum price that the milk marketing order allowed. And you're talking about, in the neighborhood of $2 at the most.

Senator SANDERS. Do you have concern, Paul, about the alleged concentration of ownership, of one company owning perhaps 70 percent of New England?

Mr. DOTON. Yes, I do.

Senator SANDERS. And tell me, why is that?

Mr. DOTON. Well, for situations——

Senator SANDERS. I know the answer, but I want it in your words.

Mr. DOTON. For situations like what are going on right now. As Mr. Wellington stated, it has not directly affected Agri-Mark at this point, but the overall system and the condition, and the dairy industry is affected by that program.

Senator SANDERS. Travis, I'm going to skip you on that one because you're not selling to Dean. But Bob what do you think about that?

Mr. WELLINGTON. Well, I mean, as an economist, there's nothing wrong with profit. The problem is the distribution of that profit and where it ends up. I think you have to look at the fact, if one player has more power than the other, that's going to end up with that profit going in that direction. So in some cases you're going to have to try to justify that. It might be the government action.

Senator SANDERS. All right. Let me go back to Bill again. Bill, can you explain to us the way that voting works within a cooperative and the term "bloc voting" and do you think bloc voting gives you and the average farmer enough opportunity to have input into the cooperative?

Mr. ROWELL. I would liken bloc voting to something along the lines of the legislative process, Senator. If you have a deal that you want to move along and your colleague is asked to participate in that deal to move it along, then it will happen. But your colleague is going to be expecting a favor from you later on his deal. So you are constrained by your deal-making process. The legislative process isn't perfect. Bloc voting has probably been able to achieve more of a majority on the CWT issue than if it had been individual voting.

Senator SANDERS. Okay.

Paul, any thoughts?

Mr. DOTON. I think it's important to understand that participation on an individual member basis for a vote like might be required or suggested, to have a bloc vote, would be very slim. Studies show that a 10 to 15 percent range is all the return you get when you send out an individual balloting, whereas if you put bloc vote, send a notice to each member saying if you disagree with the bloc voting done by the co-op, send in and that voice will be heard and that will be a negative vote cast by that person.

Senator SANDERS. The thrust of what I'm trying to get into is, are farmers themselves—are their voices being heard within the coops. That's kind of what I'm—and Travis and Bob, if you——

Mr. DOTON. Then let me continue a little bit.

Senator SANDERS. Sure.

Mr. DOTON. As Executive Director, I have information meetings within my co-op of my region. And let me tell you, there is input from those individuals. I have telephone calls. It doesn't matter whether the profit is coming in to the co-op or if the prices are low, the prices are high. I had one of the largest turnouts with Mr. Wellington coming to my information meeting last 2 weeks ago. Obviously the prices are low. They were not angered. It was, I think, disbelief, your worst nightmares are coming true. But we do have people that give input to my co-op.

Senator SANDERS. Travis, thoughts?

Mr. FORGUES. I'm sorry. The bloc voting thing is something that I have not—we don't pay a lot of attention to. We're a one farmer, one vote kind of co-op. We have seven directors that are voted on by the——

Senator SANDERS. And are you satisfied with the nature of the democracy within the Organic Valley co-op?

Mr. FORGUES. Yes.

Senator SANDERS. Okay. Good.

Bob.

Mr. WELLINGTON. I think in many ways it's very similar. If you had a bill, I think it was mentioned, and you wanted support, but you had to pull all your constituents before you could vote, it would just, like, slow down that process so much. So you have to have people who represent you. They should be elected or, for example, are elected every 3 years. They should be accountable on it.

In the Dairy Compact, we actually had a provision that said you can bloc both, but you have to inform your members and you had to give them the opportunity to vote differently. Not very many did, but you also had to inform them and educate them. So there are ways to make it work, but I think it is an important concept for cooperatives.

Senator SANDERS. All right. My last question, Mr. Chairman, is the following. We had Christine Varney, who is sitting right here, with the Attorney General's Antitrust Division. She's here, she's listening. Let's go right down the line. What recommendations do you have for her? What would you like the Department to do? Bill?

Mr. ROWELL. I saw some information yesterday, passed to me by our friend Bob Foster, regarding a newsletter on an antitrust hearing, I believe, in Greenville, Tennessee on Dean Foods, DFA, National Dairy Holdings. This may not be very timely for them to be involved in that sort of a situation when you have the Assistant Attorney General looking at them to see if they should pursue antitrust against them today. I'd like to see it pursued, you know.

If, in fact, everything is fine and that's the American way, fine, then they're entitled to their profit. But don't keep skinning it off the back of the farmer to the point where you cause a large extinction of farmers and jeopardize the food supply so that somebody can walk away with all the goodies. It doesn't work for me. I'd like to see her pursue that wholeheartedly. The way she spoke, I have a pretty good feeling that she's going to.

Senator SANDERS. Thank you.

Paul.

Mr. DOTON. After that, what can you say? I agree totally with what Bill just said, and just hope she pursues it and brings it to a conclusion.

Senator SANDERS. Travis.

Mr. FORGUES. I would just want to remind everyone that, regardless if farmers in this country are organic or conventional, we are all connected at the hip. If Dean Foods is doing whatever they're doing to conventional dairy and there's something that needs to be fixed, it does nothing but enhance all of us and I would hope that things are being looked into, and I hope that Ms. Varney is taking care of what needs to be taken care of.

Senator SANDERS. Bob.

Mr. WELLINGTON. I would hope that the Department could look at the entire picture. There's a lot of things in the dairy industry that we do that looks pretty convoluted at first until you get to the bottom of how it developed and why we do it. So, get a truthful picture of exactly what's happening and then react to that. The light is good for all of us, in my opinion.

Senator SANDERS. Good. Thank you. Thank you very much.

Chairman LEAHY. Well, thank you. I thank everybody for being here. This is actually a more lengthy hearing than we probably would have had in Washington, but I think more worthwhile.

Ms. Varney, I thank you for coming up here. I know how extraordinarily busy your Department is. You took the time, and Dr. Glauber, the same. I also thank the witnesses, the other witnesses who came here. We will stand in recess, subject to the call of the Chair. I thank you all very much.

We are in conclusion.

[Whereupon, at 12:42 p.m. the hearing was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Questions from Sen. Feingold for Ms. Christine Anne Varney, Assistant Attorney General for the Antitrust Division, Department of Justice, and Dr. Joseph W. Glauber, Chief Economist, U.S. Department of Agriculture at the hearing on "Crisis on the Farm: The State of Competition and Prospects for Sustainability in the Northeast Dairy Industry."

Questions for Assistant Attorney General Varney:

1. As you know, there have been allegations that some of the arrangements between a few dairy cooperatives or their affiliates and dairy processors may violate antitrust statutes. I understand that these cooperatives have limited antitrust immunity under Capper-Volstead. Can you provide more information on the limits of this antitrust exemption? For example, does the immunity cover joint ventures or joint marketing agreements controlled by or affiliated with a cooperative? Similarly, are there limits to the exemption that would mean it does not cover actions against the interest of the farmer members or certain types of antitrust violations?

2. At you confirmation hearing I asked you about the September 2008 report issued by the previous Administration on single firm monopoly conduct. A majority of the then-Federal Trade Commission immediately issued a statement calling the report "a blueprint for radically weakened enforcement of Section 2 of the Sherman Act." The FTC Commissioners described the report as being "chiefly concerned with firms that enjoy monopoly or near monopoly power, and prescribes a legal regime that places these firms' interests ahead of the interests of consumers. At almost every turn, the Department would place a thumb on the scales in favor of firms with monopoly or near-monopoly power and against other equally significant stakeholders." I was encouraged by your decision to repeal the report and repudiate the misplaced priorities that had been influencing Antitrust Division decisions for some time under the previous Administration. Now that you have decided the previous Administration policies were flawed, are there any plans to remedy the damage caused under the previous Administration by the misinterpretation? Besides fixing the merger review process going forward, will you examine previously approved mergers? If so what are the remedies available if you find that a dominant firm was improperly allowed to be created?

3. Time and again, dairy farmers and others that follow the dairy industry lament the Dean/Suiza merger. My understanding is that the limited concessions and divestment made by the companies was quickly worked around as described by Professor Carstensen in earlier testimony before the committee last year. Similarly, I have been told that other efforts to regulate behavior such as limits on long term supply agreements have been worked around. What steps can be taken to ensure that pre-merger requirements are effective? Is there an effort to examine past merger approvals to identify requirements that were not effective?

4. The dairy industry has seen an increasing number of joint ventures for operations such as processing or for marketing. Does the Division view dominant firms and their potential market power individually, or take into account such shared ventures or affiliations? Does it matter whether the dominant firm has a controlling or a minority stake?

5. In your statement you spend some time on the importance of transparency and sunlight in antitrust. Building off this premise, I wanted to gauge your opinion on the use of settlements in antitrust cases and whether they might have the effect of blocking some of this sunlight. What is the Division's policy with regard to including limitations on sharing evidence or other important information to the public as part of a settlement? Furthermore I understand that there are several private antitrust suits regarding dairy competition. A recent article in the *Greeneville Sun* discusses one of these cases and what limits should be in place on release of the documents that have been filed (http://greenevillesun.com/printstory/305659). Do you have any concern that a potential settlement in these types of private antitrust suits would be more likely to include provisions that would keep evidence sealed and provide less transparency? Similarly, looking historically at private versus DOJ antitrust cases in general, do you have any reason to believe that the private settlement may be more focused on monetary awards and contain fewer requirements to fundamentally rectify the underlying competitive issue?

Questions for Assistant Attorney General Varney and Dr. Glauber:

General comment:
The following questions raise important issues that are of concern to USDA and DOJ. To address these concerns, Agriculture Secretary Tom Vilsack and Attorney General Eric Holder announced on August 5, 2009 that the USDA and DOJ will hold joint public workshops to explore competition issues affecting the agriculture industry in the 21st century and the appropriate role for antitrust and regulatory enforcement in that industry. These are the first joint USDA/DOJ workshops ever to be held to discuss competition and regulatory issues in the agriculture industry.

The joint USDA/DOJ workshops will address the dynamics of competition in agriculture markets including, among other issues, buyer power (also known as monopsony) and vertical integration. They will examine legal doctrines and jurisprudence and current economic learning, and will provide an opportunity for farmers, ranchers, consumer groups, processors, the agribusinesses, and other interested parties to provide examples of potentially anticompetitive conduct. The workshops will also provide an opportunity for discussion for any concerns about the application of the antitrust laws or other pertinent laws to the agricultural industry.

The goals of the workshops are to promote dialogue among interested parties and foster learning with respect to the appropriate legal and economic analyses of these issues as well as to listen to and learn from parties with real-world experience in the agriculture sector. We are planning on holding the first workshop early next Spring.

1. There has been an assumption that farmer-owned cooperatives required less oversight because they would always act in the best interest of their farmer members. With some cooperatives growing significantly in size through mergers and the increasing number of joint ventures and investment in other activities such as processing, there appears to be more possibility that a cooperative's interests could be conflicted. Additionally there have been high profile cases of improper payments being made by cooperative executives to other cooperative leaders, most prominently a $1 million payment from Dairy Farmers of America's former CEO to the former Chairman of the Board. Do USDA, DOJ or any other federal agency currently have authority to oversee, investigate or audit cooperatives to ensure that the management is in fact acting in the interests of the farmer members? If not, do you see a need for additional authority, reporting or accounting requirements at least for the largest cooperatives? If so, would this be a role for USDA or DOJ, or would an SEC type model be more appropriate?

   Answer: The USDA has the authority, under section 2 of the Capper-Volstead Act, to hold hearings and issue cease and desist orders against cooperatives that "monopolize[] or restrain[] trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced . . . ." Under Section 2 of the Capper-Volstead Act, the USDA does not have the power to review the management of cooperatives. The Supreme Court has held that the USDA does not have primary jurisdiction over cooperatives.

2. Dairy farmers and farmers in general are in a precarious position, at the end of one supply chain and the beginning of another, often with giant corporations and segments that are more and more concentrated on either side. This means that in addition to the monopsony concerns explained in Assistant Attorney General Varney's testimony for the food supply chain that links farmers to consumers, there are monopoly concerns when farmers go to buy their supplies such as seed, biotech traits and associated herbicides. While examining each segment for imperfect competition is useful and an important step, it also seems critically important to understand how these different segments interact and are related as they squeeze farmers and indirectly the rural communities that depend on them from both sides. In some cases, the oversight responsibility at different segments is handled by different federal agencies including at a minimum the USDA, DOJ, FTC, and CFTC. During the Senate debate on the farm bill I included an amendment that was retained as a directive in the report accompanying the final bill to improve coordination of dairy oversight and sharing of information with other agencies. I am encouraged by USDA and DOJ's joint workshops as a positive step, but am interested in whether regular communication occurs between the different agencies. Is there a specific official at the DOJ and USDA responsible for coordination, collaboration and sharing of information regarding competition in agriculture and dairy in particular? Is this an informal relationship or are there regular meetings scheduled? To what degree have the FTC and CFTC been brought into any discussions? Are there any restrictions on sharing data and resources between agencies? If so, have any of these been an obstacle to cooperation?

   Answer: The Antitrust Division has a Special Counsel for State Relations and Agriculture responsible for coordination, collaboration and sharing of information regarding competition in agriculture. The Department of Justice, along with the Federal Trade Commission, has had a longstanding practice of consulting and sharing expertise with the Department of Agriculture, as memorialized in the 1999 "Memorandum of Understanding between the Antitrust Division, Department of Justice and the Federal Trade Commission and the Department of Agriculture Relative to Cooperation with respect to Monitoring Competitive Conditions in the Agricultural Marketplace."

Pursuant to the Memorandum of Understanding, for many years the DOJ has consulted with USDA when appropriate regarding a number of mergers or business practices to get their views on how agricultural producers stand to be affected by the merger or practice in question, and to take advantage of USDA's knowledge and expertise in our efforts to understand the workings of often complex agricultural markets. In addition to cooperation on specific investigations, upper management of the Antitrust Division and the USDA meet to share information on agricultural issues that affect competition under our respective missions. Moreover, we have held several antitrust training sessions for USDA employees, including having an economist from USDA work on detail for several months at the Antitrust Division.

Furthermore, USDA's Grain Inspection, Packers and Stockyard Administration (GIPSA) Administrator J. Dudley Butler and John Ferrell, Deputy Under Secretary for Marketing and Regulatory programs have regular meetings with officials at the Department of Justice. CFTC has also been brought into these meetings. USDA plans to meet with FTC as well. We have also specifically held a joint Departmental meeting to discuss collaboration on dairy market issues.

There are some limitations on the sharing of certain information. However, we believe those limitations have not been an obstacle to effective and productive cooperation, but in preparing for and conducting the agricultural workshops, the Department of Justice and USDA will examine this issue in greater depth.

3. Since I was first elected to the Senate in 1992, there has been significant consolidation in practically the entire agricultural industry. While some outside groups track these changes, such as the National Farmers Union's periodic reports on the "Concentration of Agricultural Markets," there does not seem to be a similar publicly available data set collected by government agencies. Does either the USDA, DOJ or any other government agency collect such information on concentration in different segments of agriculture? If so, is this information shared with the other relevant agencies that have oversight duties over agriculture or related industries? Similarly, could this information be made publicly available? Is there a need for a more robust collection of information on dairy markets and players that would allow for improved oversight?

Answer: USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) publishes annual statistics on concentration in livestock procurement based on firms that are required to report to GIPSA (those with at least $500,000 in livestock purchases in the case of livestock slaughtering packers). The most recent statistics are in the agency's annual report. Specifically, GIPSA publishes separate four firm concentration ratios (the share of slaughter handled by the four largest firms) for steers and heifers, sheep and lambs, hogs, broilers, and turkeys. The agency also publishes a four firm concentration ratio for production of boxed beef. Currently available red meat data cover the period from 1980 through 2007, while the poultry data cover the period from 2000 through 2007.

The U.S. Census Bureau publishes concentration data drawn from the quinquennial Census of Manufactures. Specifically, the Bureau publishes the share of industry value of shipments accounted for by the four, eight, 20 and 50 largest firms in an industry, and they publish the same ratios for industry value-added (value of shipments less material expenses). The data cover about 50 food processing industries (such as flour milling; cheese manufacturing; animal slaughtering and processing; or brewing). Data are also presented for input industries, such as fertilizers and farm equipment, and the Bureau began reporting concentration data for food retailing (supermarkets, convenience stores) in 2002. The data go back to 1947 for some consistently defined manufacturing industries. The most recently available Census concentration data are for 2002. The Concentration Ratio Report derived from the 2007 Economic Census is scheduled for release in May 2011, although Census has released a number of reports from the 2007 Census beginning in March 2009. A release schedule for that data is available at www.census.gov/econ/census07.

GIPSA and Census data are publicly available and used by enforcement agencies. However, the data often do not correspond to relevant economic markets, either because they cover too broad a product definition or because the relevant market is not national. For example, in the JBS/Swift-National Beef merger investigation last year, the Justice Department determined that the merger affected two specific procurement markets for steers and heifers located in the Southwest and in the High Plains. Published Census concentration data combine nationwide shipments of all cattle, hogs, and lambs; GIPSA data focus on steers and heifers, but are national. In those circumstances, enforcement authorities can subpoena data from merging parties, and they also obtain more precisely tailored data from government agencies or from private sources. For example, during the DOJ investigation of the proposed merger between Cargill and Continental Grain in 1998, the DOJ determined that unpublished USDA administrative data on grain flows through export elevators, obtained through federal grain inspection, could provide relevant information on the structure of local and regional export grain markets, and USDA shared the data with DOJ.

4. Dr. Glauber's testimony talks about how markets work in theory for farmers and consumers, but I was extremely disappointed that it did not go further and question whether the markets are functioning properly and instead left the impression that they were. Any anomalies in price transmission seemed to be attributed to other factors such as increased costs for processing without any evidence. Has the USDA looked at the patterns in retail and farm prices and noticed any anomalies? It appears to me that the

price drop on the farm was not transmitted as quickly or as fully to consumers as price increases were—do you agree? Were there any corresponding changes in costs such as fuel or labor to account for processors requiring a larger margin? If not, did profits of either dairy processors or retailers correlate with the increase in their share of the retail dollar and decrease in farm prices? From our conversation earlier in the year, I understand the Antitrust Division is looking into these issues—are there any initial conclusions that you can share?

Answer: USDA has followed the movements in farm milk and retail prices over the past several months and we have not noticed any anomalies. Over the past peak to trough cycle for milk, the drop in retail fluid milk prices has followed the drop in farm level milk prices. For example, the all milk price reached a peak of $21.90 per cwt., $1.88 per gallon, in November 2007 and fell to a low of $11.30 per cwt., $0.97 per gallon, in July 2009. The national average retail price of fluid milk, as reported by the Bureau of Labor Statistics, fell from $3.90 per gallon in November 2007 to $2.99 per gallon in July 2009, or $0.91 per gallon, equivalent to the decline in the all milk price over the same period. Based on this information, it would appear that the farm to retail price margin for fluid milk did not increase from November 2007 to July 2009.

5. It has been clear to me for some time that there is a serious problem from sticky prices, which occur when farm-level dairy prices fall and the middlemen's share of the consumer's dollar increases. The cumulative impact of this problem is getting worse as the volatility in dairy prices increases and there are more frequent crashes in farm milk prices. A trade publication geared toward dairy processors, *The Cheese Reporter*, has editorialized on this issue twice this year with "Sometimes, Retail Dairy Prices Do the Strangest Things" and "'Sticky' Retail Prices Show Long-Term Harm of Price Volatility." The most recent editorial makes it clear that despite the recent decreases in retail dairy prices, there is a problem: So why aren't we celebrating these retail price declines? Three reasons come to mind: retail prices should be lower than they are now; it's taken way too long for them to decline this much; and based on what milk prices have started doing (slowly rebounding), we might be seeing the "bottom" of the retail dairy product price cycle right now.
While this might be expected from farmers, remember that this is a publication whose audience is primarily cheese makers making these points. Does the USDA or DOJ consider these sticky prices to be a problem? Do you have data on the cumulative impact of sticky prices over multiple dairy cycles? Using either your own estimates or those provided in the editorials, how much have consumers overpaid for milk and dairy products due to sticky prices this year?

Answer: Using data on price changes (both increases and decreases) over the past 25 years, there is little evidence of asymmetric adjustment in wholesale or retail prices in response to changes in the farm price of milk. To the extent that changes in the farm price of milk impact wholesale and retail prices, the adjustment takes roughly 1-2 quarters to pass through to retail both in times of increasing prices and times of decreasing prices.

This analysis focuses on whole milk prices at the farm and retail level using Consumer Price Index and Producer Price Index data from the Bureau of Labor Statistics. More processed dairy products would naturally have a greater lag in price response for *both* increases and decreases in the farm price of milk, but the overall findings regarding asymmetry would still hold. Over the past 25 years changes in farm milk prices have passed through at a rate of roughly 30-35 percent for **both** increases and decreases. There has been some increased volatility in milk prices over the past 5-10 years, but this does not seem to have had a major impact on the responses to price change at the wholesale and retail level. We find little evidence of *asymmetric* sticky prices and therefore no evidence that consumers overpaid for milk over the past year.

The farmer's share of the retail dollar varies with market conditions. In periods of tight supplies the farmers share increases and in periods of excess supply the farmers share decreases. Dairy products as a whole receive about 30 percent of the retail dollar, Table 1. The highest pass through percentage for farm products is for fluid milk at about 50 percent. In 2007 and 2008 the farmers share reached 60 percent of the retail dollar for fluid milk. In 2006 and 2009 when markets were not as tight the farmers share was at or below 40 percent. The main factors in this difference are changes in the over-order premiums for Class I milk. Vegetables and Fresh Fruit farmer share were 25 and 28 percent on average for 2000 to 2008, respectively.

Annual Percent Change in Milk Prices, 1982-2009

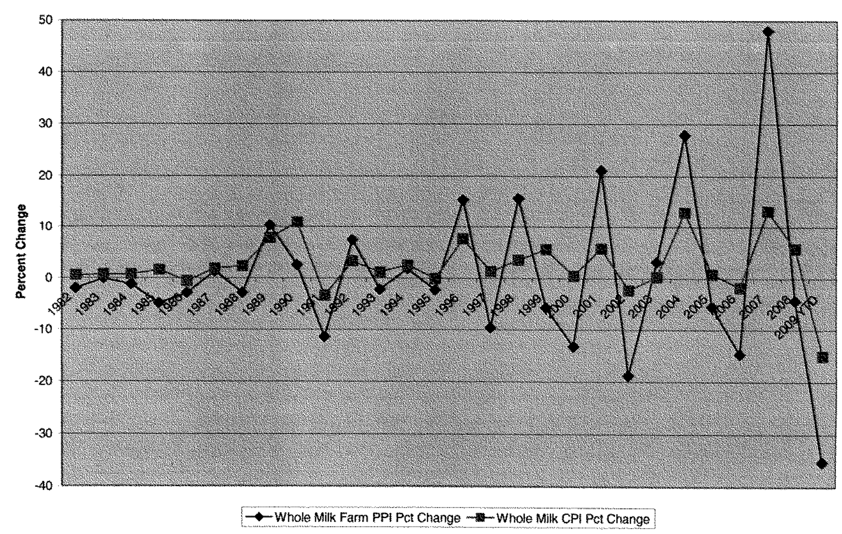
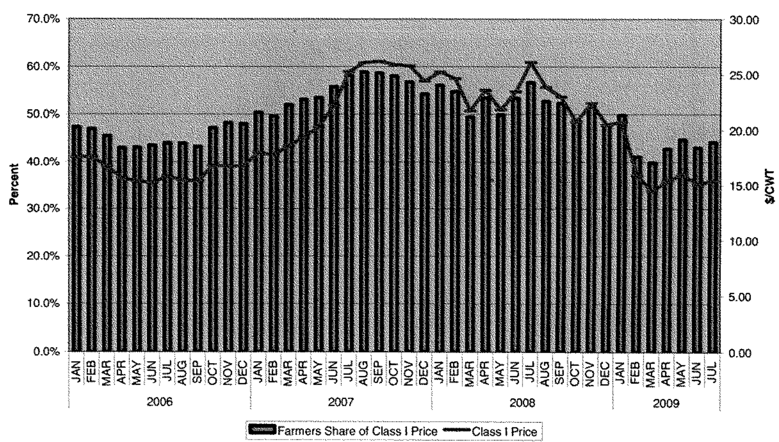
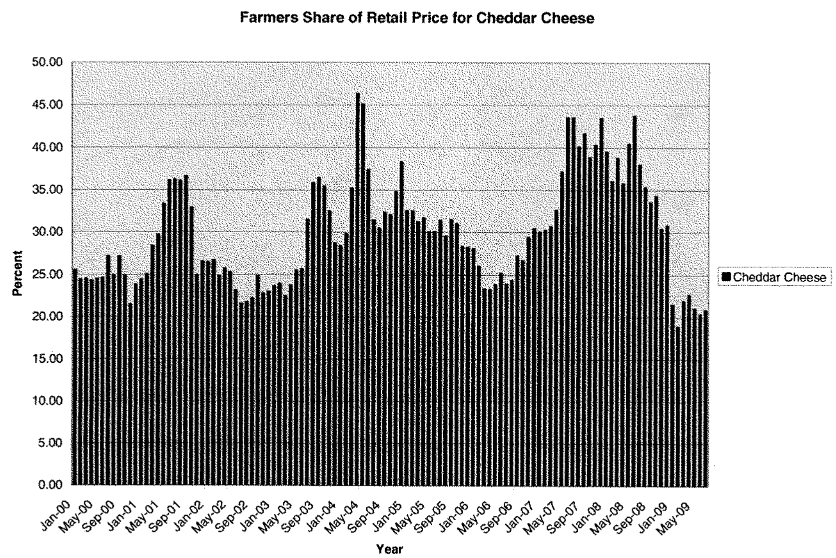


Table 1 Farm Share of Retail Dollar for Select Groups

Year	Dairy Market Basket	Butter	Cheddar Cheese	Whole Milk	Cereals and Bakery Market Basket	Fresh Vegetable Market Basket	Fresh Fruit Market Basket
				Percent			
2000	28	42	27	48	5	26	26
2001	33	47	32	54	5	28	28
2002	27	33	25	47	5	26	29
2003	28	36	30	49	6	26	28
2004	33	49	35	51	6	23	25
2005	29	44	32	50	6	25	28
2006	26	38	27	45	6	26	30
2007	35	41	38	56	8	24	30
2008	32	43	38	53	10	25	N/A

Announced COOP Class I price as a percent of Retail price





6. Related to sticky prices in the previous questions, Dr. Glauber also made the point that the current low farm milk prices are caused by a variety of factors including that "record high retail dairy product prices have curtailed domestic demand for dairy products." If this is the case, doesn't this imply that the sticky price phenomenon is harming dairy farmers by extending and reducing the rebound in domestic demand for dairy products? Is there any way to estimate the negative impact this dampened demand has had on dairy farmers?

Answer: While economists often refer to retail prices as sticky, it does not mean that retail prices don't drop when the farm price drops. Retail prices do follow farm prices down but there's often a lag of a few or sometimes several months. However, over the past peak to trough cycle for milk, the drop in retail fluid milk prices has followed the drop in farm level milk prices. For example, the all milk price reached a peak of $21.90 per cwt., $1.88 per gallon, in November 2007 and fell to a low of $11.30 per cwt., $0.97 per gallon, in July 2009. The national average retail price of fluid milk, as reported by the Bureau of Labor Statistics, fell from $3.90 per gallon in November 2007 to $2.99 per gallon in July 2009, or $0.91 per gallon, equivalent to the decline in the all milk price over the same period. This suggests that the "sticky price phenomenon," at least in the most recent down cycle in farm milk prices, has not dampened demand for fluid milk products and negatively impacted dairy farmers.

Questions for Dr. Glauber:

1. Dr. Glauber, I noticed in your testimony that you highlighted that dairy farmers are the most leveraged group in agriculture and that the "financial crisis has made the credit needs of dairy producers all the more pressing." I agree and sent a letter to Secretary Vilsack and Geithner in March regarding these concerns. What steps has USDA taken to address the growing credit issues for dairy farmers? Would USDA support additional authority to assist farmers directly such as expanding their ability to provide low interest emergency loans to cover economic emergencies? What partnerships has USDA considered either with Treasury or the Small Business Administration to ensure that dairy farmers and farmers in general can access programs designed to mitigate foreclosure and provide assistance in response to the financial crisis?

Answer: USDA has been proactive in addressing credit issues for dairy farmers. The Farm Service Agency has the lead role at USDA in providing farm credit. On March 13, 2009, FSA issued guidance to field offices on approaches to deal with dairy price crisis such that as many dairy producer borrowers and applicants could be assisted as possible. Actions taken include:

- Availability of annual production loans with multi-year repayment schedules to continue operations and allow time for recovery
- Release of funds collected from dairy assignments back to borrowers to help them pay essential operating expenses
- Notified all dairy borrowers of options available for them to restructure, reschedule, or defer payments on existing FSA farm loans
- Contacted commercial lenders to clarify that FSA would guarantee qualified annual production loans with multi-year repayment, and to explain loan restructuring alternatives under the FSA guarantee for existing guaranteed loans to dairy farmers

On August 12, 2009, Secretary Vilsack sent letters to all FSA farm loan borrowers advising them of assistance available if they are experiencing financial hardship. The Secretary also sent a letter to guaranteed loan lenders on the same day, encouraging them to consider all possible options for loan modifications under the FSA loan guarantee.

In fiscal year 2009, FSA has made 1,818 direct loans to dairy farmers, including 164 loans funded from the American Revitalization and Recovery Act. The Administration aggressively sought additional funding for FSA farm loan programs when it became apparent that the need for FSA financing had increased dramatically. As a result, FSA received sufficient budget authority to support $983 million more than originally appropriated for FY 2009. By fiscal year end, FSA utilized all but $33 million of the $983 million.

At this time, we believe that USDA has sufficient authorities available to assist dairy and other farmers in financial distress without expansion of the emergency loan program. The direct operating loan program offers more flexibility than the emergency loan program. In the current interest rate environment, the emergency loan program offers little or no interest rate advantage. The current interest rate on operating loans is 3 1/8 percent and the rate on emergency loans is 3 ¾ percent.

Because there is little or no overlap between FSA and SBA borrowers for farm loans, we have not engaged SBA on the dairy issue at this point. SBA does have a long-standing policy of referring farm loan inquiries to FSA, since FSA programs are specifically designed for farm lending, and many FSA personnel have extensive experience in dairy finance. FSA is working with FDIC to update agreements with FDIC as to actions that will be taken when a bank closing occurs. Recently, the Secretary and Sub-cabinet staff have engaged with Treasury to explore possible activities to assure that adequate credit is available to farmers. USDA is committed to assuring that sufficient credit is available to farmers during this period of financial stress.

2. Dr. Glauber, you mentioned herd size in your testimony and it seems clear that USDA should not be doing anything to encourage or otherwise support increasing the herd size at the current time. Has USDA reviewed its policies in other program areas to assess whether they might be indirectly supporting dairy overproduction and expansion? For example, do the loan programs consider the impact and business sense of supporting a proposal to dramatically expand a herd or establish a CAFO when awarding loans and loan guarantees? Similarly, are the indirect impacts of providing a cost-share that enables such an expansion through the Environmental Quality Incentives Program considered as part of the process?

   Answer: USDA has not adopted a blanket policy regarding financing dairy operations. FSA loan decisions are made on a case-by-case basis, based upon a realistic business plan for the individual loan application. In the case of a significant expansion, the business plan would have to project both short and long-term financial viability, in order for a loan or loan guarantee to be approved. Certainly, the plan would have to factor in current milk prices, making approval unlikely in most cases. Any direct or guaranteed loan request involving a CAFO or an operation that will become a CAFO, regardless of whether it is a dairy or other livestock enterprise must go through an extensive environmental assessment process, and the operation must comply with all state and Federal environmental requirements applicable to CAFOs prior to loan approval.

3. In your testimony, you mentioned the new USDA Dairy Advisory committee. While the primary focus of the committee seems likely to be responding to the current crisis, this hearing seems to suggest that competition and antitrust concerns are an important factor in the dairy industry. Are there plans to include a specific antitrust representative on the Committee? Has USDA invited the DOJ Antitrust Division to play a role?

   Answer: The Obama Administration is committed to working with all sectors of the dairy industry to develop changes to the safety net for dairy producers that better protects farmers from current the boom and bust cycle in dairy markets. On August 25, 2009, Secretary Vilsack announced that as part of USDA's continuing efforts to listen to and respond to the needs of producers in the dairy industry he is moving forward on establishing the Dairy Industry Advisory Committee. The Dairy Industry Advisory

Committee Secretary of Agriculture will consist of 15 representatives of the dairy industry appointed by the Secretary. Representatives will include: producers and producer organizations, processors and processor organizations, handlers, consumers, academia, retailers, and state agencies involved in organic and non-organic dairy at the local, regional, national and international levels.

Written nominations for committee members must have been received on or before September 28, 2009. The Department is currently reviewing the nominations that have been received before making a final decision regarding the composition of the Dairy Industry Advisory Committee. The Department will certainly consider placing an antitrust representative on the Committee if such an individual has been nominated.

4. While dairy farmers' primary business is producing and selling milk, a significant portion of their bottom line is also linked to selling male calves and older dairy cows for beef. Considering this, has the USDA examined whether the purchase of hamburger to be distributed through the nutrition programs would be an effective intervention to consider? If so, what are the results of this analysis relative to the other options such as increasing the dairy product support price?

   Answer: The purchase of hamburger would not be an effective way of assisting dairy producers. USDA's Economic Research Service estimates that dairy producers received from each hundredweight of milk sold, on average, $1.26 from the sale of dairy cows and other dairy cattle in 2008. Based on this information, cattle prices would have to increase by 25 percent to raise returns to dairy producers by just $0.30-$0.35 per hundredweight of milk. The amount of additional hamburger that could be distributed through USDA's nutrition programs is limited and would not support such a large increase in the price of cattle. Other options such as increasing dairy product support prices or making direct payments to dairy producers are much more effective ways of supporting the incomes of dairy producers.

QUESTIONS FOR THE RECORD FOR DR. JOSEPH GLAUBER,
CHIEF ECONOMIST, U.S. DEPARTMENT OF AGRICULTURE
Submitted by US Senator Bernard Sanders
SENATE JUDICIARY COMMITTEE HEARING:
Crisis on the Farm: The State of Competition and Prospects for Sustainability in the Northeast Dairy Industry"

Saturday, September 19, 2009
St. Albans City Hall, St. Albans, VT
10:00 a.m.

1. Dr. Glauber, during your testimony, you stated that you did not find it strange that farmers receive only one third of the price that is ultimately obtained for their product at the retail level. You explained that this was reasonable because the other two thirds of the price went to pay for certain distribution costs, including the costs of hauling and transportation. I have since been contacted by farmers who note that, in fact, they are charged for hauling and transportation costs. Given that the costs of transportation are actually paid by the farmers, do you now find it problematic that farmers receive only one third of the price that their milk is sold for at the retail level? Is this an indication of lack of competition in the market?

   Answer: You are correct farmers do pay a portion of the cost of hauling milk. They pay the cost of hauling milk from the farm to the milk processing plant. They do not pay the cost of moving packaged milk from the processing plant to retail outlets. In addition, the farm to retail margin includes packaging, labor, refrigeration and other costs associated with processing raw milk and retailing fluid milk products. Even though, as you point out, farmers do pay the cost of hauling milk to the milk processing plant, I do not believe there is any evidence that the current margin is extraordinarily large or an indication of lack of competition in the market. In fact, the economics literature suggests that there are better measures of competition in a market than the farm share.

2. Dr. Glauber, you spent a portion of your testimony discussing the correlation between the price farmers get paid for their milk on the farm and the price consumers pay for dairy products in the store. Many economists refer to store prices as sticky. When the farm price of milk goes up, the retail price goes up as well, but conversely, when the farm price of milk drops, we do not see retail prices drop at the same rate. If retail prices rise when farm prices rise, why don't retail prices drop when the farm price drops?

   Answer: While economists often refer to retail prices as sticky, it does not mean that retail prices don't drop when the farm price drops. Retail prices do follow farm prices down but there's often a lag of a few or sometimes several months. However, over the past peak to trough cycle for milk, the drop in retail fluid milk prices has followed the drop in farm level milk prices. For example, the all milk price reached a peak of $21.90 per cwt., $1.88 per gallon, in November 2007 and fell to a low of $11.30 per cwt., $0.97 per gallon, in July 2009. The national average retail price of fluid milk, as reported by the Bureau of Labor Statistics, fell from $3.90 per gallon in November 2007 to $2.99 per gallon in July 2009, or $0.91 per gallon, equivalent to the decline in the all milk price over the same period.

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3. Dr. Glauber, in your prepared testimony you mention that the Federal Milk Marketing Order (FMMO) program's primary objective is to "assure that fluid milk processors (bottlers) have an adequate supply of milk to meet the needs of consumers and farmers receive a fair price for their milk." It seems that when we have a system that does not take into account the true cost of production of milk which can be $18 per hundredweight or higher and the price that farmers are getting paid is $11.25 per hundredweight that farmers are not getting a fair price for their milk. Is this price difference between cost of production and price paid for milk an indication that the Federal Milk Marketing Order system is broken? We have the MILC program, which Senator Leahy and the rest of the Vermont Congressional delegation worked to enhance with the feed adjustor payment, but that assistance still leaves our farmers very far from the cost of production. What kind of an industry can survive when they are losing $6.75 per hundredweight?

Answer: The price difference between the cost of producing milk and the price paid for milk is not an indication that the FMMO system is broken. The FMMO Program is a marketing program, not a price or income support program, and as such cannot set minimum prices above the relative market value of the products of milk. FMMOs have no mechanism to provide additional dollars to handlers (above those received from the market) to pay farmers more than the minimum market value of milk. Thus, raising minimum milk prices above market justified levels may result in fluid milk processors taking less milk or reducing premiums. It also could lead to manufacturing milk plants withdrawing from FMMO pools to avoid paying prices they cannot recoup from the market place. Congress recognized that the FMMO system is not a price or income support program by authorizing the Dairy Product Price Support Program and the Milk Income Loss Contract Program in the 2008 Farm Bill to support milk prices and the incomes of dairy producers.

One of the objectives of the FMMO Program is to help equalize the market power between the many dairy farmers and the few buyers of milk. FMMOs do this by establishing an enforceable milk classification, pricing, and pooling system. The program focuses on assuring that an adequate supply of milk is available for fluid or beverage uses and assuring that all dairy farmers supplying the market receive equitable prices. The program sets minimum prices for milk based on the prices that dairy processors receive for cheese, butter, and nonfat dry milk. These prices up and down with supply and demand conditions for manufactured dairy products.

FMMOs provide other benefits. Auditors visit plants regularly and audit handler records to assure proper payments according to how the handler used the milk. FMMO personnel carry out a program of weighing and testing milk to assure proper payments for the milk the farmer delivered. Orders enforce timely payments and provide substantial market information that benefits the entire industry.

In the long term, losses of $6.75 per hundredweight are not sustainable. USDA recognized the financial stress in the dairy industry and responded by taking actions worth more than $1 billion to reduce this stress. The actions taken were discussed in detail in my testimony. In addition, farmers are responding by cutting production and farm milk prices have begun to improve. The all-milk price has increased by $1.40 per cwt. since July and recent increases in the wholesale prices of cheese and nonfat dry milk suggest the price received by farmers for milk will continue to move higher in the coming months.

4. Dr. Glauber, my staff and I have recently been exploring the issue of who controls the market for milk processing in various regions of the country. According to dairy industry press, Dean Foods, the largest processor in the United States, controls approximately 90% of the market for fluid milk in Michigan, about 80% in Massachusetts, 80 to 90% in Tennessee, about 70% in New England, over 80% in Northern Alabama, and over 70% in northern New Jersey. Dean Foods denies these numbers but refuses to publish numbers of its own. In an attempt to verify the numbers, we called the various Milk Marketing Orders and found that the data is confidential. By law, the USDA collects all this data but they can't share it unless it is in a lawsuit or in other limited circumstances. Can you tell me if you think that the public has a right to know this information and if you think there is any legitimate reason that information regarding who controls the fluid milk market should be kept secret?

   Answer: Any views I may have on the public's right to know are not relevant. Rather, it is the view of Congress as encoded in regulations that are relevant in this instance. Section 8d (2) of the Agricultural Marketing Agreement Act (AMMA) of 1937, as amended, clearly states that all information furnished to or acquired by the Secretary of Agriculture under marketing order programs shall be kept confidential by the Department of Agriculture.

5. Dr. Glauber, in your prepared remarks, you stated that the Secretary of Agriculture does not have the authority to raise prices when feed prices rise. However, according to 7 U.S.C. § 608c(18): "Whenever the Secretary finds, upon the basis of the evidence adduced at the hearing required by section 8b or 8c [7 USCS § 608b or this section], as the case may be, that the parity prices of such commodities are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, *make adjustments in such prices.*" (emphasis added). I read this section to state that if there are problems with the price or availability of feed, or other economic conditions which affect the market supply and demand for milk, the Secretary can make adjustments to prices after having an appropriate hearing. Am I reading the law incorrectly?

   Answer: Under the authority granted by the pricing standard specified in the AMAA, the FMMO Program conducts formal rulemaking proceedings to determine how the milk marketing orders should set minimum prices. Such proceedings are always initiated by the industry.

   The FMMO Program focuses on assuring that an adequate supply of milk is available for fluid or beverage uses. The Program sets minimum prices for milk based upon the market prices of manufactured dairy products. Section 608c (18) has long been viewed by the courts as the procedure by which the Secretary establishes and adjusts minimum prices. Through a public hearing, the Secretary evaluates the marketing conditions in an area and considers the price of feeds, the available supply of feeds, and other economic conditions that affect the market supply and demand for milk and its products in the marketing area. Based upon evidence presented at the hearing, the Secretary sets minimum milk prices that are reflective of all the economic factors, will ensure a sufficient supply of milk, and will be in the public interest.

6. As you know, milk protein concentrates (MPCs) are powdered milk products containing between 40 and 90 percent complete milk protein. MPC and casein (another additive) were not subject to the section 22 restrictions of the Agricultural Adjustment Act of 1933, and, therefore, they are not subject to WTO agreements. It is my understanding that U.S importers are exploiting this loophole to their advantage, pushing prices down by bringing in this additional additive instead of using domestic product. In 2004, the International Trade Commission issued a nearly 500 page report finding that low milk prices in 2000 and 2002 were a result of growth in U.S imports of milk protein products, as these imports directly compete with the domestic dairy products. What can we do to stop MPC imports from depressing dairy prices? Would you support legislation to regulate MPCs like any other agricultural product?

   Answer: Tariffs on MPCs are subject to the WTO Agreement on Agriculture, as are all other agricultural products. MPCs were not covered by Section 22 import quotas as were many other dairy products at the time of the Uruguay Round trade negotiations. Therefore, imports of MPCs are subject to tariff-only treatment and are not under a tariff rate quota. U.S. MPC imports during the first six months of 2009 fell by 12 percent, compared to the same period in 2008, and were at their lowest level in five years.

7. Dr. Glauber, in your prepared testimony, you mention the Consumer Price Index (CPI). Currently, as you know, the price used by the Federal Milk Marketing Orders is ultimately based on the price set on the spot cheese market at the Chicago Mercantile Exchange. The spot cheese market is problematic because it is exceptionally thin – with few buyers and a limited product. Do you believe that we could use the CPI to find a more accurate price than the one set on the CME? Why or why not? How can we get a more diverse set of metrics to determine the price that farmers should be paid for their milk that more accurately takes into account the cost of production and other factors that go into the cost of producing milk?

   Answer: The minimum prices under the FMMO system are determined by a survey of dairy product prices conducted by the National Agricultural Statistics Service, yield factors and make allowances (cost of converting raw milk into various dairy products). The spot price of cheese at the Chicago Mercantile Exchange is not used to establish the price of milk used in cheese production (Class III milk) marketed under the FMMO system. However, there is a strong correlation between the price of cheese as reported by the National Agricultural Statistics Service and the spot cheese price on the Chicago Mercantile Exchange.

   I do not believe that the CPI would be a more accurate price for establishing the value of milk used in various dairy products under the FMMO system, because the CPI includes a

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variety of distribution and retailing costs unrelated to the processing of milk. These distribution and retailing costs would have to be accurately determined and adjusted over time for the CPI to be valid measure of the value of milk. In addition, changes in pricing behavior by retailers and others in the marketing chain could alter the relationship between farm milk prices and retail dairy product prices.

Prior to implementation of FMMO reform in 2000, USDA examined various approaches for establishing minimum prices under the FMMO system. USDA elected to adopt the current system based on recommendations from several independent studies and the lack of other viable alternatives. Since that time, no alternative has been proposed that would provide a more accurate measure of the value of milk. Nevertheless, USDA is willing to work with producers and other stakeholders to assist in developing an alternative method for establishing minimum prices under the FMMO system.

8. Dr. Glauber, in a recent statement, Dean Foods said that it "does not control dairy prices or the dairy market. The numbers that have been reported by various media are grossly inaccurate. We buy less than 15% of [the] nation's raw fluid milk supply." Wall Street Journal, 9-17-09. My office calculates that 15 percent of national fluid milk production is about 27.5 billion pounds of milk. National sales of Class I milk are between 55 and 60 billion pounds per year. Assuming Dean Foods primarily deals in the Class I market, my office calculates that its press release essentially admits that it accounts for as much as 46 percent of national Class I sales. If you examine Dean Foods' market control of bottled milk on a regional basis, those percentages would be even higher. Can you tell me whether you agree with our calculations?

   Answer: I can find no errors in you calculations. However, I believe Dean Foods produces and sells a variety of dairy products not just fluid milk. Since your calculations assume that all of the milk purchased by Dean Foods is processed into fluid milk, your calculations likely overstate the percentage of the Class I market that Dean Foods controls.

9. Dr. Glauber, in reviewing USDA's Agricultural Marketing Service's 2009 Dairy Market Statistics 2008 Annual Summary, I was alarmed to see the price difference between the announced cooperative Class I prices and the Federal Order Class I price in Table 31. Does the high difference in price in different regions of the country point to potentially greater consolidation and lack of competition in those regions of the country? For example, in Boston the price difference is $1.50 but in Milwaukee it is $3.01. What accounts for these differences?

   Answer: The FMMO Class I price differential structure in most orders was established by Congress and became effective in 2000. Modifications were made by USDA in the Southeast, Florida, and Appalachian marketing areas effective May 1, 2008. Marketing conditions vary over the months and years, and while FMMO minimum prices serve as a basic price structure, actual market conditions frequently generate prices above the minimum prices.

Cooperatives use the FMMO minimum price structure to negotiate compensation of costs and returns not covered by minimum prices. Cooperatives voluntarily make information concerning over-order charges available to FMMO market administrators. Because such information is not complete and is not verified, conclusions about concentration and cooperative over-order charges cannot be made. However, there are certain observations that can be made. First, the Class I differentials for the areas cited in your question have not been adjusted since 2000 and it is likely marketing conditions have changed in each area. There is a strong demand for milk for cheese manufacturing in the Upper Midwest marketing area and competition for milk for cheese production may be pushing up the price paid for milk used for fluid (Class I). The amount of service to handlers provided by cooperatives affects the level of the over-order charge. Cooperative membership and the ability of cooperatives to work together affect the level of over-order charges. Finally, the actual over-order charges received by cooperatives may not reach the announced levels.

Questions for the Record to Joseph Glauber, Chief Economist, USDA
From Senator Charles E. Schumer
September 19, 2009

1. You testified that net cash income for dairy farmers declined 94% between 2008 and 2009 and that dairy farmers are among the most highly leveraged with 70% using debt. Farmers in the Northeast are increasingly worried that they will not be able to repay the substantial debt many have incurred due to extremely low prices even if their debt is restructured or loans are extended. What is USDA doing to aid farmers, who have incurred significant debt due to this market crisis, to ensure they are able to remain in business once market prices increase?

Answer: USDA has been proactive in addressing credit issues for dairy farmers. The Farm Service Agency (FSA) has the lead role at USDA in providing farm credit. On March 13, 2009, FSA issued guidance to field offices on approaches to deal with the dairy price crisis. Actions taken include:

- Availability of annual production loans with multi-year repayment schedules to continue operations and allow time for recovery
- Release of funds collected from dairy assignments back to borrowers to help them pay essential operating expenses
- Notified all dairy borrowers of options available for them to restructure, reschedule, or defer payments on existing FSA farm loans
- Contacted commercial lenders to clarify that FSA would guarantee qualified annual production loans with multi-year repayment, and to explain loan restructuring alternatives under the FSA guarantee for existing guaranteed loans to dairy farmers

On August 12, 2009, Secretary Vilsack sent letters to all FSA farm loan borrowers advising them of assistance available if they are experiencing financial hardship. The Secretary also sent a letter to guaranteed loan lenders on the same day, encouraging them to consider all possible options for loan modifications under the FSA loan guarantee.

In fiscal year 2009, FSA has made 1,818 direct loans to dairy farmers, including 164 loans funded from the American Recovery and Reinvestment Act (ARRA). Through ARRA and supplemental appropriations, FSA received sufficient budget authority to support $983 million more in farm loans than originally appropriated for FY 2009. By fiscal year end, FSA utilized all but $33 million of the $983 million.

As announced on July 31, USDA increased the amount paid for cheddar cheese and nonfat dry milk under the Dairy Product Price Support Program. These purchase price increases, which are in place from August 2009 through October 2009, raise the price paid for nonfat dry milk by $0.12 per pound and the price paid for cheddar cheese by $0.18 per pound above the minimum purchase prices specified in the 2008 Farm Bill. From October 1, 2008 to date, USDA has purchased 277 million pounds of nonfat dry milk and 4.6 million pounds of butter under the DPPSP, much of it during late 2008 and the first half of 2009.

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The Secretary announced on March 26, 2009 that approximately 200 million pounds of nonfat dry milk would be further processed or bartered for dairy products for use in domestic and international feeding programs. The nonfat dry milk is being further processed or bartered into value-added products, such as instantized nonfat dry milk, ultra high temperature milk, cheese, and ready-to-eat milk-based soups. In addition, at least 1 million pounds of nonfat dry milk will be sold on a competitive bid basis for the production of casein.

USDA is also working with the Department of State to provide foreign food assistance. This assistance includes about 500,000 pounds of nonfat dry milk for use in the McGovern-Dole International Food for Education and Child Nutrition Program; and about 1 million pounds for use by the U.S. Agency for International Development, based on anticipated requests from the State Department.

The 2008 Farm Bill modified and re-authorized the Milk Income Loss Contract (MILC) program which provides counter-cyclical payments to producers in times of low prices or high feed costs. In order to provide assistance as quickly as possible to dairy producers, FSA published regulations re-authorizing the revised MILC program on December 4, 2008.

Declining milk prices caused the Boston Class I price to fall below $16.94 beginning in February, triggering payments under the MILC program. USDA began distributing MILC payments in early April after the information needed to adjust the $16.94 trigger price for feed costs became available and the final payment rate was calculated. To date, over $700 million has been paid to producers under the MILC program this year.

On May 22, 2009, USDA announced the reactivation of the Dairy Export Incentive Program (DEIP) with allocations for the export of 68,201 metric tons of nonfat dry milk, 21,097 metric tons of butterfat, and 3,030 metric tons of cheese. These quantities reflect the maximum volume of dairy products the U.S. is allowed to export with subsidies consistent with the U.S. World Trade Organization (WTO) commitments on a July through June year. On July 6, 2009, USDA announced that the uncommitted balances still available from the May allocation would be made available and form the initial allocations under the July 2009 through June 2010 year. To date, total subsidy obligations for nonfat dry milk totaled just over $7 million to support more than 37,000 metric tons of exports under DEIP.

On August 25, 2009, USDA announced that nominations would be accepted to form a new Dairy Industry Advisory Committee. Approximately, 300 nominations have been received by USDA and the Department is in the process of reviewing the qualifications of the nominees. The Advisory Committee will review farm milk price volatility and dairy farmer profitability and provide suggestions and ideas to the Secretary on how USDA can best address these issues to meet the dairy industry's needs. Appointed representatives will include: producers and producer organizations, processors and processor organizations, handlers, consumers, academia, retailers, and state agencies involved in organic and non-organic dairy at the local, regional, national and international levels.

On August 5, 2009, Agriculture Secretary Tom Vilsack and Attorney General Eric Holder announced that the U.S. Department of Agriculture (USDA) and the Department of Justice will hold joint public workshops to explore competition issues affecting the agriculture industry. These are the first joint USDA/Department of Justice workshops ever to be held to discuss competition and regulatory issues in the agriculture industry. The goals of the workshops are to promote dialogue among interested parties and foster learning with respect to the appropriate legal and economic analyses of these issues as well as to listen to and learn from parties with real-world experience in the agriculture sector.

2. How many dairy farms will go out of business between 2009 and 2010 because farmers are unable to repay debt incurred during this year's extreme low dairy prices?

   Answer: USDA does not have an official forecast of the number of dairy farms that will go out of business between 2009 and 2010 because farmers are unable to repay debt incurred during this year's extreme low prices. There are several factors that determine how many dairy farms go out of business in any year, including the relationship between milk prices, feed costs and the costs of other production inputs, the age of the farm operator, the availability of hired farm labor, the availability of off-farm jobs, and the profitability of other farming enterprises. In fact, the number of dairy farms has declined on an annual basis for over 50 years. Over the past two decades, the number of dairy farms has declined by an average of 5.7 percent per year, ranging from a low of 4 percent in 2005 to a high of nearly 8 percent in 1993.

3. What impact will farm bankruptcies have on competition in the dairy industry, consumer dairy prices, rural economies and the agriculture industry as a whole?

   Answer: USDA has not conducted an analysis of the impact of farm bankruptcies on competition in the dairy industry, consumer dairy prices, rural economies and the agriculture industry as a whole. Despite the severe economic conditions facing dairy producers in 2009, we expect that the decline in dairy farm numbers would have very limited impacts on competition in the dairy industry, rural economies and the agriculture industry as a whole. In regard to consumer dairy prices, retail dairy product prices are currently forecast to increase by 2.5 to 3.5 percent in 2010 which about equals the annual rate of inflation in retail dairy product prices over the past four years.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 3, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are the responses for the record of Christine Varney, Assistant Attorney General, Antitrust Division, U.S. Department of Justice, to written questions received following the September 19, 2009, hearing held by the Committee entitled, "Crisis on the Farm: The State of Competition and Prospects for Sustainability in the Northeast Dairy Industry."

We hope this information is helpful to you. If we can be of further assistance, please do not hesitate to contact this office.

Sincerely,

Ronald Weich
Assistant Attorney General

cc: The Honorable Jeff Sessions
Ranking Member

Questions from Sen. Feingold for
Ms. Christine A. Varney, Assistant Attorney General for the Antitrust Division,
U.S. Department of Justice,
and Dr. Joseph W. Glauber, Chief Economist,
U.S. Department of Agriculture
at the hearing on "Crisis on the Farm: The State of Competition and Prospects for Sustainability in the Northeast Dairy Industry."

Questions for Assistant Attorney General Varney:

1. As you know, there have been allegations that some of the arrangements between a few dairy cooperatives or their affiliates and dairy processors may violate antitrust statutes. I understand that these cooperatives have limited antitrust immunity under Capper-Volstead. Can you provide more information on the limits of this antitrust exemption? For example, does the immunity cover joint ventures or joint marketing agreements controlled by or affiliated with a cooperative? Similarly, are there limits to the exemption that would mean it does not cover actions against the interest of the farmer members or certain types of antitrust violations?

   A: The Capper-Volstead Act authorizes certain producers to "act together in associations . . . in collectively processing, preparing for market, handling, and marketing" agricultural products. 7 U.S.C. § 291. To qualify for antitrust immunity, an association must be "operated for the mutual benefit of members"; must not deal in a greater value of nonmembers' products than members' products; and either must not give any member more than one vote because of the amount of stock or membership capital he owns, or must not pay dividends on stock or membership capital greater than eight percent per year. These associations "may have marketing agencies in common" and "may make the necessary contracts and agreements." The exemption is limited: the Supreme Court has held that the Act does not shelter conduct of a cooperative when it conspires with nonexempt parties to restrain trade or when it employs certain practices that violate section 2 of the Sherman Act. See, e.g., Maryland & Virginia Milk Producers Ass'n, Inc. v. United States, 362, U.S. 458, 463 (1960).

2. At your confirmation hearing I asked you about the September 2008 report issued by the previous Administration on single firm monopoly conduct. A majority of the then-Federal Trade Commission immediately issued a statement calling the report "a blueprint for radically weakened enforcement of Section 2 of the Sherman Act." The FTC Commissioners described the report as being "chiefly concerned with firms that enjoy monopoly or near monopoly power, and

prescribes a legal regime that places these firms' interests ahead of the interests of consumers. At almost every turn, the Department would place a thumb on the scales in favor of firms with monopoly or near-monopoly power and against other equally significant stakeholders." I was encouraged by your decision to repeal the report and repudiate the misplaced priorities that had been influencing Antitrust Division decisions for some time under the previous Administration. Now that you have decided the previous Administration policies were flawed, are there any plans to remedy the damage caused under the previous Administration by the misinterpretation? Besides fixing the merger review process going forward, will you examine previously approved mergers? If so what are the remedies available if you find that a dominant firm was improperly allowed to be created?

A: The Department of Justice is committed to enforcing the Sherman Act effectively, and you can be assured that we will bring enforcement actions whenever we deem they are warranted. With respect to specific cases under section 2 of the Sherman Act, the Department believes that such cases should be brought whenever the evidence is strong, the theory sound, and the harm substantial.

With respect to mergers, the Department reviews mergers and acquisitions to ensure they do not harm competition in violation of the antitrust laws, and has authority under section 7 of the Clayton Act to bring enforcement actions against anticompetitive transactions, including previously consummated mergers. In that context, the Department would consider a wide range of potential remedies. I cannot comment on what action the Department may potentially take regarding a particular transaction. However, as I indicated at my confirmation hearing, I am open to considering the effect that recently approved mergers have had on competition. In addition, the Department recently announced it was participating in Merger Workshops with the Federal Trade Commission to consider whether the DOJ/FTC Horizontal Merger Guidelines needed to be updated.

3. Time and again, dairy farmers and others that follow the dairy industry lament the Dean/Suiza merger. My understanding is that the limited concessions and divestment made by the companies was quickly worked around as described by Professor Carstensen in earlier testimony before the committee last year. Similarly, I have been told that other efforts to regulate behavior such as limits on long-term supply agreements have been worked around. What steps can be taken to ensure that pre-merger requirements are effective? Is there an effort to examine past merger approvals to identify requirements that were not effective?

A: The Department of Justice reviews each merger on its own merits and undertakes a thorough investigation of its effects on competition. Whenever our investigation indicates that a particular merger would violate the antitrust laws, we aggressively pursue a remedy sufficient to fully restore competition to the market. The Department can "fix" competitive problems in several ways, including seeking a full-stop injunction that would prevent the parties from consummating the transaction. In instances when the merging parties accede to the Department's remedy, the Department may choose to negotiate a settlement (a consent decree) or accept a "fix-it-first" remedy that allows the merger to proceed with modifications that restore or preserve competition. When the Department enters into a consent decree, it files a lawsuit with a federal district court and submits the proposed settlement; the court reviews the settlement and must approve the settlement as in the public interest.

Under my leadership, I will ensure that the Department commits the time and effort necessary to ensure full compliance with any and all remedies, be they through a consent decree or otherwise. It is important to prevent parties from making commitments that they then may flout and harm competition. I tend to favor in most instances a judicial consent decree. This requires, in the first instance, that decrees be drafted with sufficient reporting and access requirements to keep us apprised of how the decree is being implemented, and then a continuing commitment of resources to decree compliance and enforcement.

4. The dairy industry has seen an increasing number of joint ventures for operations such as processing or for marketing. Does the Division view dominant firms and their potential market power individually, or take into account such shared ventures or affiliations? Does it matter whether the dominant firm has a controlling or a minority stake?

   A: The Department applies the appropriate analysis to the facts of each particular case to protect competition. When analyzing the competitive effects of a transaction or particular conduct involving joint ventures or affiliations, the Department thoroughly examines whether a firm's ownership interest—whether controlling or minority—will give it the ability or incentive to exercise market power to the detriment of consumers.

5. In your statement you spend some time on the importance of transparency and sunlight in antitrust. Building off this premise, I wanted to gauge your opinion on the use of settlements in antitrust cases and whether they might have the effect of blocking some of this sunlight. What is the Division's policy with regard to including limitations on sharing evidence or other important information to the public as part of a settlement? Furthermore I understand that there are several private antitrust suits regarding dairy competition. A recent article in the

Greeneville Sun discusses one of these cases and what limits should be in place on release of the documents that have been filed (http://greenevillesun.com/printstory/305659). Do you have any concern that a potential settlement in these types of private antitrust suits would be more likely to include provisions that would keep evidence sealed and provide less transparency? Similarly, looking historically at private versus DOJ antitrust cases in general, do you have any reason to believe that the private settlement may be more focused on monetary awards and contain fewer requirements to fundamentally rectify the underlying competitive issue?

A: Transparency is very important to the Division. Complaints filed in cases initiated by the Department are part of the public record. Under the Tunney Act, the Department is required to make public its proposed settlement in such cases along with a Competitive Impact Statement. A federal district court must evaluate the Department's action and any comments to ensure that the settlement is in the public interest. However, the Department also recognizes that it is important that competitively sensitive information be kept confidential. Disclosure of such information could harm competition, for example, by making it easier for competitors to reach and maintain anticompetitive agreements. The Department generally does not comment on the confidentiality provisions of settlement agreements in private litigation.

Questions for Assistant Attorney General Varney and Dr. Glauber:

1. There has been an assumption that farmer-owned cooperatives required less oversight because they would always act in the best interest of their farmer members. With some cooperatives growing significantly in size through mergers and the increasing number of joint ventures and investment in other activities such as processing, there appears to be more possibility that a cooperative's interests could be conflicted. Additionally there have been high profile cases of improper payments being made by cooperative executives to other cooperative leaders, most prominently a $1 million payment from Dairy Farmers of America's former CEO to the former Chairman of the Board. Do USDA, DOJ or any other federal agency currently have authority to oversee, investigate or audit cooperatives to ensure that the management is in fact acting in the interests of the farmer members? If not, do you see a need for additional authority, reporting or accounting requirements at least for the largest cooperatives? If so, would this be a role for USDA or DOJ, or would an SEC type model be more appropriate?

A: The Department of Justice does not have authority to ensure cooperatives' management are acting in members' interests. The Antitrust Division will vigorously enforce the antitrust laws against any transaction or conduct that falls outside of the scope of the Capper-Volstead antitrust exemption. The Department currently believes that it has the authority to obtain the information it needs to protect and promote competition in this and other industries, but will examine during the agricultural workshops whether additional information would be helpful.

2. Dairy farmers and farmers in general are in a precarious position, at the end of one supply chain and the beginning of another, often with giant corporations and segments that are more and more concentrated on either side. This means that in addition to the monopsony concerns explained in Assistant Attorney General Varney's testimony for the food supply chain that links farmers to consumers, there are monopoly concerns when farmers go to buy their supplies such as seed, biotech traits and associated herbicides. While examining each segment for imperfect competition is useful and an important step, it also seems critically important to understand how these different segments interact and are related as they squeeze farmers and indirectly the rural communities that depend on them from both sides. In some cases, the oversight responsibility at different segments is handled by different federal agencies including at a minimum the USDA, DOJ, FTC, and CFTC. During the Senate debate on the farm bill I included an amendment that was retained as a directive in the report accompanying the final bill to improve coordination of dairy oversight and sharing of information with other agencies. I am encouraged by USDA and DOJ's joint workshops as a positive step, but am interested in whether regular communication occurs between the different agencies. Is there a specific official at the DOJ and USDA responsible for coordination, collaboration and sharing of information regarding competition in agriculture and dairy in particular? Is this an informal relationship or are there regular meetings scheduled? To what degree have the FTC and CFTC been brought into any discussions? Are there any restrictions on sharing data and resources between agencies? If so, have any of these been an obstacle to cooperation?

A: The Antitrust Division has a Special Counsel for State Relations and Agriculture responsible for coordination, collaboration and sharing of information regarding competition in agriculture. The Department of Justice, along with the Federal Trade Commission, has had a longstanding practice of consulting and sharing expertise with the Department of Agriculture, as memorialized in the 1999 "Memorandum of Understanding between the Antitrust Division, Department of Justice and the Federal Trade Commission and the Department of Agriculture Relative to Cooperation with respect to Monitoring Competitive Conditions in the Agricultural Marketplace."

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Pursuant to the Memorandum of Understanding, for many years the Department has consulted with USDA when appropriate regarding a number of mergers or business practices to get its views on how agricultural producers stand to be affected by the merger or practice in question, and to take advantage of USDA's knowledge and expertise in our efforts to understand the workings of often complex agricultural markets. In addition to cooperation on specific investigations, upper management of the Antitrust Division and the USDA meet to share information on agricultural issues that affect competition under our respective missions. Moreover, we have held several antitrust training sessions for USDA employees, including having an economist from USDA work on detail for several months at the Antitrust Division.

There are some limitations on the sharing of certain information. However, we believe those limitations have not been an obstacle to effective and productive cooperation, but in preparing for and conducting the agricultural workshops, the Department of Justice and USDA will examine this issue in greater depth.

3. Since I was first elected to the Senate in 1992, there has been significant consolidation in practically the entire agricultural industry. While some outside groups track these changes, such as the National Farmers Union's periodic reports on the "Concentration of Agricultural Markets," there does not seem to be a similar publicly available data set collected by government agencies. Does either the USDA, DOJ or any other government agency collect such information on concentration in different segments of agriculture? If so, is this information shared with the other relevant agencies that have oversight duties over agriculture or related industries? Similarly, could this information be made publicly available? Is there a need for a more robust collection of information on dairy markets and players that would allow for improved oversight?

A: The Department does not regularly collect information on concentration in various segments of the agriculture industry. However, in the course of its active investigations, for the purpose of determining the competitive effects of particular transactions, the Department may collect detailed information and data on other companies' capacity to compete and provide effective constraints on competitors' ability to exercise market power in the relevant markets under consideration. As a result, Department staff develops extensive expertise in various industries—in agriculture as well as other sectors of the economy—through investigations that help them effectively monitor concentration and quickly identify competitive problems in subsequent investigations.

The Department believes that the information it can obtain is sufficient to protect competition in the agriculture industry as well as other industries. In addition, the Department consults and shares expertise with USDA under the Memorandum of Understanding described above.

The Government Accountability Office has recently collected data on concentration in agriculture industries, examined concentration and the potential effects of concentration on agricultural commodity and retail food prices, and published its results in a study on June 30, 2009. GAO-09-746R, "Concentration in Agriculture."

4. Dr. Glauber's testimony talks about how markets work in theory for farmers and consumers, but I was extremely disappointed that it did not go further and question whether the markets are functioning properly and instead left the impression that they were. Any anomalies in price transmission seemed to be attributed to other factors such as increased costs for processing without any evidence. Has the USDA looked at the patterns in retail and farm prices and noticed any anomalies? It appears to me that the price drop on the farm was not transmitted as quickly or as fully to consumers as price increases were—do you agree? Were there any corresponding changes in costs such as fuel or labor to account for processors requiring a larger margin? If not, did profits of either dairy processors or retailers correlate with the increase in their share of the retail dollar and decrease in farm prices? From our conversation earlier in the year, I understand the Antitrust Division is looking into these issues—are there any initial conclusions that you can share?

A: As you note, the Department of Justice and the USDA will conduct a series of jointly run workshops in 2010 to address the dynamics of competition in agriculture markets. At this point, we have not formed any conclusions. In the workshops, we will examine whether changes in the marketplace, including increased consolidation and vertical integration, have generated efficiencies, or whether they have led to increases in monopoly or monopsony power, to the detriment of farmers and consumers.

The Department is aware of concerns about the difference between the price of milk at retail and the price paid to dairy farmers for their milk and is focused on evaluating the market dynamics behind it. The Department and USDA will devote particular attention to this issue in the agriculture workshops. In addition, please be assured that the Department will carefully examine allegations of anticompetitive conduct and take appropriate action to protect competition in the dairy industry.

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5. It has been clear to me for some time that there is a serious problem from sticky prices, which occur when farm-level dairy prices fall and the middlemen's share of the consumer's dollar increases. The cumulative impact of this problem is getting worse as the volatility in dairy prices increases and there are more frequent crashes in farm milk prices. A trade publication geared toward dairy processors, *The Cheese Reporter*, has editorialized on this issue twice this year with "Sometimes, Retail Dairy Prices Do the Strangest Things" and "'Sticky' Retail Prices Show Long-Term Harm of Price Volatility." The most recent editorial makes it clear that despite the recent decreases in retail dairy prices, there is a problem:

> So why aren't we celebrating these retail price declines? Three reasons come to mind: retail prices should be lower than they are now; it's taken way too long for them to decline this much; and based on what milk prices have started doing (slowly rebounding), we might be seeing the "bottom" of the retail dairy product price cycle right now

While this might be expected from farmers, remember that this is a publication whose audience is primarily cheese makers making these points. Does the USDA or DOJ consider these sticky prices to be a problem? Do you have data on the cumulative impact of sticky prices over multiple dairy cycles? Using either your own estimates or those provided in the editorials, how much have consumers overpaid for milk and dairy products due to sticky prices this year?

A: The Department does not collect data specifically on the cumulative impact of sticky prices over multiple dairy cycles. I believe that USDA may have publicly available national aggregate data on retail bottled milk prices and may collect farm prices, but I will defer to USDA to describe the information it has.

Stickiness in pricing is common across a variety of competitive markets, but whether price stickiness allows any industry to achieve above normal profits in the long run may raise important competition issues. As I mentioned in the answer to the last question, the Department and USDA will devote particular attention to competition in the dairy industry in the agriculture workshops.

6. Related to sticky prices in the previous questions, Dr. Glauber also made the point that the current low farm milk prices are caused by a variety of factors including that "record high retail dairy product prices have curtailed domestic demand for dairy products." If this is the case, doesn't this imply that the sticky price phenomenon is harming dairy farmers by extending and reducing the rebound in domestic demand for dairy products? Is there any way to estimate the negative impact this dampened demand has had on dairy farmers?

A: The Department is aware of concerns regarding prices in the dairy industry. The Department and USDA will devote particular attention to understanding how dairy prices are set in the agriculture workshops.

SUBMISSIONS FOR THE RECORD

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September 19, 2009

Comments RE: **"Crisis on the Farm: The State of Competition and Prospects for Sustainability in the Northeast Dairy Industry"**

In 2001 I was asked to come to Washington, D.C. to share a farmer perspective on the anticompetitive effect of milk company mergers with the staff of House and Senate Judiciary Committee members. The firm of Verner, Liipfert, Bernhard, MacPherson and Hand hired me as an outspoken dairy farmer to represent the interests of small, family-owned dairy farms, particularly farms in the Northeast. At that time the issue was the Dean/Suiza merger and Dairy Farmers of America (the largest milk cooperative with significant presence in the Mid-West, Mid-South and moving rapidly into the Northeast) as well as National Dairy Holdings.

Eight years later it is obvious to even the uninitiated that my small voice had absolutely no impact on these staff members--or if it did have any impact the House and Senate Judiciary Committee members ignored their calls for action or at least an investigation of these mergers, until now. Today we are in a crisis of unprecedented proportion as giant milk companies such as Dean Foods boast of their highest quarterly profits while their dairy farmer suppliers are facing bankruptcies. As the current crisis continues we are grateful to Senator Sanders and Senator Leahy for hearing our cries and bringing Assistant Attorney General for Antitrust Division, Christine Varney and USDA officials to Vermont to speak and hear farmer testimony on this crisis.

Milk crises are not new to the dairy industry. The first crisis I remember was in 1957. It was a local crisis, to be sure, but nevertheless it was a crisis for the twenty or so dairy farmers involved. One of the local buyers was going out of business which left only two local processors to buy the farmer's milk. Some of the older farmers, cynical and jaded from years of surviving low milk prices, believed the remaining two processors would join together to cut prices paid to farmers. As I recall that is exactly what happened. The upshot of that crisis was the beginning of a local milk marketing cooperative. Twenty-six years later, after a mere ten years in the dairy business, I became a board member of that cooperative.

In 1983 a group of milk coop members and other local dairy farmers formed a "milk marketing study group". We brought in speakers on milk marketing issues from around the country. We were fortunate to receive grant funding and University Extension assistance in pulling these meetings together. It is interesting to note that in the past decade the most common topic at our study group meetings is that of "consolidation in the dairy industry". Peter Hardin and John Bunting of "The Milkweek", a monthly milk marketing newspaper that keeps farmers up-to-date on marketing news, have often been our featured speakers. Dr. William Heffernan, professor Emeritus of the University of Missouri, an expert on the effects of consolidation in retailing and dairy has also been a featured speaker. Dr. Heffernan is author of numerous reports to the National Farmers Union. Many of these reports detail the dangers of consolidation in the food industry explaining the power, both political and economic, that these huge food corporations then possess. Their goal is not to benefit the public but to increase the wealth of their stockholders. Heffernan also warned his audience of the difficulty in attracting the attention of the Justice Department Antitrust Division. The large corporations with their powerful legal counsel are often able to legally obscure any "red flags" that otherwise might alert the Antitrust people.

As a dairy farmer I am concerned with not only the effect of mega mergers on my dairy business but also the effect on consumers who buy our products. My concern is with greater concentration in the dairy processing industry farmers are losing out. We have fewer and fewer processors to which we can sell our milk. As these mergers are allowed to continue there is little or no competition among processors. We dairy farmers will end up with only one or two outlets for our milk which will undoubtedly raise the price consumers pay in the grocery store. I am compelled to implore the Department of Justice Antitrust Division along with the US Department of Agriculture to begin a broad, critical and thorough review of all milk company mergers now and during the past ten years, at the minimum, and focus especially on Dean Foods and Dairy Farmers of America. Also it is important to review the relationships with National Dairy Holdings, Dairylea and Dairy Marketing Services. This review should look at all aspects of the distribution chain for fluid milk, particularly entities labeled as farmer cooperatives. These reviews must include the relationships between processors and cooperatives as well as the ties between supposedly unrelated milk processing companies, their CEOs and other company management.

Thank you for allowing me the opportunity to offer my comments to the Senate Judiciary Committee oversight hearing.

Sincerely,

Alice H. Allen

Dear Vermonters concerned about the dairy crisis: For those who did not see it, here is an exceptionally lucid letter published in today's Free Press from David Usher a retired engineer who gives his analysis of the situation. I think it is remarkably concise and refreshingly on target.

Too Many Efficient Cows

Today's economic pain for Vermont dairy farmers results from an oversupply of milk nationally and internationally, including the first level of derived products that can be stored such as powdered milk, butter and bulk cheese. Despite all the contortions, distortions and subsidies inherent in today's milk market, the problem, but not the solution, is quite simple. There are too many efficient cows supplying the market demand for commodity milk, which suggests there are too many farms devoted to milk production whose input costs are too high.

The solution is complex because several decades of well-meaning government intervention have both alleviated and exacerbated what is basically a supply and demand problem. How to unravel this web of subsidies and wild swings in prices should be the focus of relief for dairy farmers. Or, tough as it may be, dairy farmers should voluntarily opt to use their talents and resources for other agricultural pursuits. History shows a continual decline in the number of Vermont dairy farms, but not a commensurate reduction in the volume of milk produced. Vermont is simply producing more milk than the market requires.

If a reduced supply results in higher and more stable retail prices, but fewer and economically healthier dairy farms, so be it. The alternative is continued massive taxpayer subsidies

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To whom this may concern;

The milk pricing system that is now in place needs fixing. There are four players involved Producer Processer Retailer Consumer three out of the four are adversely effected by the wild price swings. 3% to 4% surplus should not swing the farmers pay price by 40% to 50%. This cycle seems to come around every 3 to 4 years. As a producer located in CT It becomes about impossible to do any planning. Having been the dairy business for all most 40 years this is the worst that I have ever seen it. In this uncertain world in which we now find our selves living I believe its important to have food produced regionally.

Please do not let the the dairy farmers die on the vine, now is the time to act!

Sincerely Vern Bahler

Bahler/Oakridge Farms
Ellington Ct.

To whom it may concern,

I am writing this as a Vermont dairy farmer who feels the need to speak to issues facing today's dairy industry. Though I wasn't able to personally attend the recent Dairy hearing held on September 19th in St. Albans, VT, I have read a number of articles regarding that meeting and I feel that I am well-versed enough in dairy issues to make my voice heard.

There is little doubt that we face a crisis in the dairy industry unlike anything that has been witnessed by nearly everyone involved in agriculture today. We would have to go back to the depression era to find similarities. The Dairy industry is in dire need of change before we lose what is the backbone of this country. It is important that we take this opportunity to make needed changes in the way that our milk is priced and in that end, I support the Dairy Stabilization Plan proposed by the California Milk Producers Council and Dairy Farmers Working Together. Having said that, it is equally important that we not dismantle laws and policies that have worked to stabilize the price that we receive and the markets we have created.

In Senator Sanders quest to investigate Dean Foods for manipulating the prices that dairy farmers receive, I have a concern that Dairy cooperatives may be pulled into the fray. I applaud the Senator's desire to assure that large corporations are not taking advantage of their size to their own benefit and without regard to the hard-working farmers that feed this nation. However, that desire must not dismantle long standing legislation such as the Caper-Volstead Act, making it legal for farmers to band together and form co-ops that bargain for their member dairy farms. As a dairy farmer who has been producing milk for 30 years, I have had the opportunity to spend 15 without a co-op to represent me and 15 years as a member of first, the St. Albans Cooperative and now the Dairylea Cooperative, Inc. With that perspective, I can attest to the good work that our Co-ops do for us, such as providing services that are essential to our businesses, establishing a solid market for our milk, but more importantly, the voice they carry on behalf of their members on the State and National levels. It is essential that the legislation that allows these cooperatives to exist and work on behalf of dairy farmers not be tampered with or worse, dismantled, in our quest to right the ship. This would only bring more volatility to the markets that we have established as Co-ops and create instability on the dairy farms, something we really don't need.

In closing, please understand that today's dairy farmers need a pricing plan that works to level the playing field and our cooperatives need to be left intact in order to be part of that process. I thank you for your time and consideration and want to thank you for working on behalf of today's dairy farmers.

Respectfully,

Reg Chaput
Chaput Family Farms

Testimony of Paul Doton
Before the U.S. Senate Committee on the Judiciary
at St. Albans, Vermont
on September 19, 2009

My name is Paul Doton. I run a small dairy operation in Barnard, Vermont, where I milk 60 Holsteins with my wife Sherry and son Bryan. I have been working on the farm since birth, I guess you could say, almost 60 years. Our son Bryan is 23 years old and fully involved in the farm with us. We own 200 acres of land and rent or use another 200 acres in our local area for growing hay and corn. We produce about 1.1 million pounds of milk or about 128,000 gallons of fresh milk each year that we market though the Agri-Mark dairy cooperative.

I have been in dairy farming my whole life and this is the worst I have ever seen on the farm as far as high production costs, but devastatingly low milk prices. Right now, as I speak, my operation is losing $75 per cow per month. How are we making ends meet? Fortunately, I have a maple syrup business, sell vegetables, do custom mowing and snow plowing to name a few. Without this income, I would already be out of business. Doton Farm, much like many other Vermont farms, cannot hang on much longer. How long can we go on losing $4,500 per month? My answer is -- not long at all.

Dairy farming is a business, and when I spend money, economists say it circulates several times throughout the local economy. They estimate that for each cow I milk means $13,000 in annual economic activity in the local economy each year. If that holds true, my farm contributes almost $800,000 to my town in taxes and other benefits in addition to open space and wildlife habitat. I spend money locally, but only when we have money to spend. My veterinarian service is local, as is my farm equipment dealer. My repair work for farm trucks and tractors is also performed locally if we cannot fix it ourselves. Our farm is now starting to show the wear and tear from several months of prices below our costs of production.

Our vet, for example, now does not visit our farm as often because we cannot afford to pay them. She used to come every month on a regular schedule, but that is now stretched to a 1½ to 2 months

We are also trying to repair all of the farm equipment or milking equipment ourselves, even more so than in the past. Everything must be fixed if it is broken, as new equipment is certainly out of the question. We are struggling to make ends meet, even though we are diversified and have more than one source of income.

But when my business suffers, so does the businesses of many of my neighbors, like the veterinarians and local mechanics who help support my farm operation. Their businesses are also being stressed by this downturn in our economy and milk prices.

I strongly feel that the end result of this hearing is that we must find a way for dairy farmers to recover their costs of production plus profit – period! Every other group in the marketing chain can recover their costs if input costs rise except the dairy farmer. That situation is unfair and cannot continue! What other "business" in the U.S. is in that position where they cannot raise their prices to recover their costs? Even our non-farming friends cannot believe that we are working 365 days a year but cannot make ends meet.

Am I worried about my future and Sherry's future? I certainly am. But I worry even more about the future of dairy farming for my son Bryan. He is 23, and how can he survive if milk prices do not even come close to covering the cost of production? How can he raise a family, send his children to school, invest in the farm and keep it going for the next generation? The next generation will certainly not milk cows and work the land if there is not a way to make a profit on their investments.

I serve as a Board member of Yankee Farm Credit which is part of the Farm Credit System, and earlier this week was at a meeting in North Carolina where I had a chance to talk to farmers and Farm Credit officers from around the country. I can tell you that dairy farmers all over the country are struggling and are going out of business at an alarming rate. And that is also happening here in our region as well.

I am also a member of the Vermont Milk Commission and have heard testimony from all aspects of the dairy industry, from farmers to processors to retailers. There is no quick or easy solution for the Commission or the state to take but we all must work together to address this problem.

I also serve as a director of the Agri-Mark dairy cooperative, which markets milk for farmers not only here in Vermont, but also throughout New England and eastern New York. During the past three months alone, our co-op had just over 50 dairy farms go out of business, with many of those from Vermont. I know that trend will continue if something is not done to increase farm milk prices.

Thanks you for this opportunity to testify, and I will be glad to answer any questions you may have.

Senate Judiciary Committee
Hearing on "Crisis on the Farm: The State of Competition and Prospects for Sustainability in the Northeast Dairy Industry"
Saturday, September 19, 2009

Statement of U.S. Senator Russell D. Feingold

While this hearing focuses on competition and the dairy industry in the Northeast, it is very relevant to Wisconsin and any other dairy region. I thank Chairman Leahy for holding this hearing on a topic I have wrestled with since I was a State Senator.

My State Senate district included a significant rural area and many family dairy farms. On the wall of my office, I had a graph showing the growing spread between retail and farm prices with the margins of the middlemen and retailers increasing and the farmers' share decreasing. This graph has stuck with me these 28 years because I continue to hear from farmers about these problems.

Farmers are at the end of one supply chain for their inputs and at the beginning of the food production chain, but in each case they do not have a chance to set the prices they pay or receive. This helps make it a challenging profession, but also means that any time a segment along either of these chains lacks enough competition and someone is able to leverage market power to increase his or her margins, the farmer sees either an increased cost or reduced share of the retail dollar. To paraphrase an expression that you'd hear on the farm—manure runs downhill.

While I have concerns about the concentration and potential for inadequate competition in dairy farmers' inputs, such as seed, biotech traits in seed and the associated herbicides, these are not unique to dairy, so I will focus on what happens between the farmer and the consumer who buys a dairy product.

There are certain times in the market cycle when the farmers' share shrinks more than others; we are in the midst of one of those periods for dairy. In general, increases in prices for milk and the corresponding wholesale dairy products are quickly and fully transmitted to the consumer via higher prices in the store. But when the price of milk and dairy commodities falls, as occurred in December 2008 and January 2009, the retail prices either remain level or fall more slowly and less completely than would be expected. Economists would describe this as 'sticky prices' and in addition to meaning that consumers pay more than they should for dairy products, the sticky prices short-circuit the normal supply and demand signals. So when consumers don't see the drop in price, they don't respond by increasing consumption and the damaging low prices at the farm level are prolonged even further. A February 27, 2009, *Cheese Report* editorial, "Sometimes, Retail Dairy Prices Do The Strangest Things," that I have submitted for the record provides several specific examples from this year.

While it is clear to me and many in the dairy industry that there is a serious problem with these retail and farm price patterns and there is a feeling that it is likely due to inadequate competition, with significant concentration at the cooperative, processor and retail levels, depending on the region, it is extremely difficult to know which entity is taking an undue share. Both during Ms. Varney's March confirmation hearing and at a meeting beforehand, I raised this issue with her and was encouraged by her interest and commitment to investigate. I was further encouraged in the months since the hearing by Ms. Varney's willingness to meet with and listen to dairy experts and farmers from Wisconsin. Following Ms. Varney's confirmation, I sent her a letter in May, which I would like included in the record, reiterating some of my past concerns along with highlighting the potential impact of acquisitions by dominant firms of small competitors and suggested that the Division should consider examining these even if they were too small to trigger a reporting threshold. Specifically, I highlighted concern about the acquisition by Dean Foods of processing plants in Wisconsin and the potential impact on competition in the school lunch milk supply. Similarly, I was glad to join Senators Bernie Sanders and Chuck Schumer in sending a letter in August that reiterated some of these concerns in more specifics.

Also in August, the USDA and Department of Justice announced that they will examine competition in the dairy industry through a series of joint hearings and consider what actions can be taken to crack down on any abuses. This is the type of cooperation and improved oversight that are sorely needed, and it's something I urged throughout the previous administration. While this partnership is a good start, it should go beyond DOJ and USDA to consider the entire dairy system and also bring in the Federal Trade Commission to consider concentration at the retail level, and the Commodity Futures Trading Commission to consider steps to ensure that cash markets for dairy markets are not manipulated. Still, the responsiveness and seriousness that Ms. Varney and the current Antitrust Division bring to oversight of agricultural markets including dairy are a sea change from the previous eight years and should be commended.

Finally, I would be remiss if I did not mention the terrible situation facing thousands of dairy farmers in Wisconsin and every other dairy region of the country. The combination of relatively high input costs, prolonged low prices for milk and shrinking availability of credit has put many producers on the brink. Given this situation, immediate assistance is needed in the short term even as we take steps to address the systemic issues such as competition. Since January, I have been working with my colleagues to encourage the U.S. Department of Agriculture to take a variety of short-term and long-term actions to help dairy farmers cope with this crisis. The USDA responded by implementing several of our suggestions including shifting surplus dairy products to nutrition programs, utilizing the Dairy Export Incentive Program and taking emergency action to boost the Dairy Product Price Support Program. Unfortunately, even these actions may not be enough to completely address this crisis, and I continue to support additional relief for dairy farmers such as including an additional $350 million in the Agriculture Department appropriations bill for the upcoming fiscal year.

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Select Committee on Intelligence
Democratic Policy Committee

May 19, 2009

The Honorable Christine A. Varney
Assistant Attorney General for Antitrust
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Assistant Attorney General Varney:

As you know from our discussions during Senate consideration of your nomination, I have been concerned for some time about the lax antitrust oversight and enforcement of the previous administration, and was encouraged by your commitment to take a more vigorous approach. The Antitrust Division's decision to withdraw the report on antitrust monopoly law under Section 2 of the Sherman Act was a good first step in rebalancing the scales. The report's conclusions were clearly flawed; a majority of the Federal Trade Commission under the previous administration issued a statement calling the report "a blueprint for radically weakened enforcement" and stating that "(a)t almost every turn, the Department would place a thumb on the scales in favor of firms with monopoly or near-monopoly power and against other equally significant stakeholders."

I was further encouraged by your clear commitment at a speech before the Center for American Progress to fully use the criminal and civil enforcement tools of the Antitrust Division, instead of the passive approach taken too often during the past eight years. With this framework and charge to the Division's staff, I look forward to seeing the results in specific areas and cases as time goes on.

One area that I think we agree that needs renewed attention is competition in agriculture. Despite Congress having held more hearings regarding antitrust concerns in agriculture than in any other area, the previous Antitrust Division brought very few enforcement actions. In some cases, this inaction by the government has led to private antitrust actions. While the government is not a party in these cases, the Division might gain useful information if it sought access to the evidence uncovered during discovery in such cases.

It may also be useful to examine the impact of acquisitions by dominant firms of small competitors that are below the reporting thresholds under the Hart Scott Rodino Antitrust Improvements Act. This could encompass looking at the collective impact of several small acquisitions or on the local impact on an individual acquisition. For example, I understand the Dean Foods has made a number of small dairy processing acquisitions that were below the reporting threshold in the years since its merger with Suiza Foods was reviewed by the Antitrust Division. I have heard specific concern from several of

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my constituents about the potential negative local impact on competition for fluid milk due to the acquisition by Dean Foods of the processing plants of Foremost Farms in De Pere and Waukesha. There is concern that, especially for certain product lines such as milk packaged for school lunch programs, the acquisition will result in a significant reduction in competition in parts of eastern Wisconsin. I encourage you to examine these types of concerns in the dairy industry and other industries along with the traditional pre-merger reviews for larger transactions.

Thank you for considering these issues and for your commitment to enforcing the nation's antitrust laws.

Sincerely,

Russell D. Feingold

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EDITORIAL COMMENT

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...it seems that price increases get passed along at retail more quickly, and more completely, than price declines.

'Sticky' Retail Prices Show Long-Term Harm Of Price Volatility

As reported on our front page, the Consumer Price Index for dairy and related products posted its ninth straight decline in August, and now stands at its lowest point in over two years. Retail prices for some dairy products, such as whole milk, are at their lowest levels in several years.

Our response? Big whoop. Given how low farm milk prices have been this year, it's taken way too long just for retail prices to drop to this point and, frankly, they should have been even lower for several months now.

To briefly review the latest retail price data, the August dairy CPI was 192.381 (1982-84=100), down from a peak of 214.748 in August of 2008. The dairy CPI had been above 200 for 19 straight months, but has now been below that mark for six months in a row.

Meanwhile, the retail price for whole milk averaged about $2.98 per gallon in August, down slightly from July and the second straight month that retail whole milk prices have averaged under $3.00 per gallon.

So why aren't we celebrating these retail price declines? Three reasons come to mind: retail prices should be lower than they are now; it's taken way too long for them to decline this much; and based on what milk prices have started doing (slowly rebounding), we might be seeing the "bottom" of the retail dairy product price cycle right now.

These points deserve to be closely examined, so let's look at a couple of products specifically tracked by the US Bureau of Labor Statistics, which publishes the CPI data.

Retail Cheddar cheese prices averaged about $4.55 per pound in August, down a penny from July and down more than 27 cents from August of 2008. But at $4.55 a pound, retail Cheddar prices during August averaged more than three times the average of the CME cash market price for 40-pound Cheddar blocks ($1.3471 per pound).

And that's been the case pretty much this entire year. By April, for example, CME block Cheddar prices had averaged under $1.21 per pound for four straight months, but average retail Cheddar prices in April still averaged about $4.76 per pound, or almost four times the CME price.

Meanwhile, retail whole milk prices averaged about $2.98 per gallon in August, which was down more than 90 cents from August of 2008. Retail whole milk prices have now averaged under $3.00 per gallon for two straight months; the last time that happened was in early 2004.

Why should retail prices be lower than they are now? With Cheddar, it's interesting to note that retail prices dipped below the $4.00 level three times since early 2004: in November of 2006 and then in May and June of 2007. Average CME block prices for those months were $1.3745, $1.7211 and $2.0100, respectively.

It should be noted that that November 2006 CME average was the highest of that year. CME blocks averaged below $1.20 per pound for six straight months, and under $1.30 for nine straight months. And retail Cheddar prices dipped below $4.00, albeit briefly, in November of that year.

This year, CME block prices averaged under $1.30 for seven straight months before rising to almost $1.35 in August. Yet retail Cheddar prices have thus far "bottomed out" at just $4.55. No wonder farmers and others are upset about "sticky" retail prices (prices that don't fall very fast).

As far as whole milk is concerned, the Class I federal order base price has been under $11.00 per hundredweight since January, when it was 15.74 per hundred. Retail whole milk prices have declined about 60 cents a gallon since January, to under $3.00 in July and August.

The last time the Class I base price was as consistently low as it has been this year was in 2002-03, when it dipped below $11.00 per hundred in July of 2002 and remained below that price until September of 2003 (even dropping below $10.00 per hundred for five straight months in 2003).

During that period, retail whole milk prices ranged from about $2.75 per gallon in July of 2002 to around $2.66 per gallon in March and August of 2003. This year, despite the very low Class I price, retail whole milk prices have barely dipped below $3.00 per gallon.

What about the speed of price transmission? In 2007, the Class I base price jumped from $15.92 in May to $20.91 in July, and retail milk prices jumped from $3.26 a gallon in May to $3.81 in August.

Earlier this year, the Class I base price dropped from $15.74 in January to $9.43 in March. Retail whole milk price averages fell from about $3.58 to $3.12 per gallon.

Thus, a jump of $5.00 in the Class I price prompted a jump of about 55 cents in retail milk prices back in 2007, while a drop of over $6.00 in the Class I base price earlier this year resulted in a decline (so far) in retail milk prices of about 46 cents per gallon.

As far as cheese prices are concerned, back in 2007 the CME block market average rose from about $1.46 per pound in April to $2.01 in June, and was between $1.89 and $2.09 from June through December of that year. The retail price of Cheddar rose from $3.98 in June to $4.52 in October before dipping a bit.

Late last year and early this year, the CME block price average fell from around $1.80 in October to just $1.08 by January, and was below $1.25 until August. Retail Cheddar prices averaged over $5.00 per pound in November and January and fell to just $4.55 by August.

The bottom line here: it seems that price increases get passed along at retail more quickly, and more completely, than price declines.

Now, CME cash prices are rising, and federal order prices are also heading up. Retail prices are probably at or near their bottoms, which aren't as low as they were a few years ago, and it seemingly took forever to get even this far.

That's yet another problem with extreme price volatility: price transmission on the way up is quick and fairly complete, but on the way down it's slow and incomplete.

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EDITORIAL COMMENT

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> ...retail milk prices are simply "stickier" than in the past. That is, retail prices just don't respond very quickly to changes in wholesale prices.

Sometimes, Retail Dairy Prices Do The Strangest Things

It's a well-known fact in the dairy industry that farm-level milk prices have taken a major dive this year, and that dairy product prices have also taken a major dive (some took the bulk of their dive last year and have remained low so far this year).

What hasn't been known is how retail dairy product prices would react to these lower product prices. As 2009 progresses, those retail price movements are beginning to become better known and, frankly, in at least some instances they are a bit strange and a bit frustrating, to put it mildly.

As reported on our front page last week, the Consumer Price Index for dairy products did decline in January, as did the price indexes for both milk and cheese. The CPI for whole milk in January was at its lowest level since June of 2007, and January's CPI for cheese and related products was at its lowest level since last June.

So far, so good. But then things get a little strange.

For example, the average retail price for natural Cheddar cheese in January was over $5.00 per pound for just the second time ever (the first was last November).

Looked at another way, Cheddar prices at the CME cash market have been over $2.00 per pound at various times in three of the past six years (2004, 2007 and 2008) but only in November of 2008 and January of 2009 (when CME cash prices averaged under $1.09 per pound) did retail prices average over $5.00 per pound.

Granted, Cheddar in stores in January was produced last year, so it's a bit of a stretch to think retail Cheddar prices would drop precipitously. But Cheddar still above $5.00?

More eye-opening, however, is what happened with retail fluid milk prices earlier this month. This information is from the monthly survey conducted by federal order market administrators between the 1st and 10th of each month in selected federal order cities or metro areas.

In early February, as would be expected with the big drop in the federal order Class I price (February's Class I base price was $10.72 per hundred, down $5.02 from December), retail fluid milk prices did indeed decline; the market administrators' survey found an average price of $3.45 per gallon, down 17 cents from January and the lowest price since May of 2007.

But the retail price movements in various cities were, well, they were pretty inconsistent, to say the least.

Arguably, the consumers who have the most "responsive" retail milk prices live in the Baltimore area; in early February, whole milk prices in that city averaged $3.04 per gallon, down some 92 cents from early January. Those would appear to be some of the more fortunate consumers in the US.

By contrast, consumers in two cities actually saw milk prices increase in early February compared to early January. One of those cities was Portland, OR, where whole milk prices jumped from $3.16 per gallon in early January to $3.51 per gallon in early February. That just doesn't seem to make any sense whatsoever.

Meanwhile, milk buyers in the largest city in Wisconsin also saw their milk prices increase in early February. Granted, the increase was only two cents per gallon, but given all the news stories in farm and general newspapers and on TV about plummeting farm milk prices, it's a bit surprising farmers haven't organized a protest against certain Milwaukee retailers because they haven't dropped their milk prices in line with the drop in farm prices.

While they're at it, maybe farmers should protest the fact that Milwaukee's retail milk prices, at $3.86 per gallon for whole milk, are well above the average for the 30 cities surveyed by the market administrators.

Come to think of it, at current milk and gas prices, Milwaukee consumers might be better off driving to Detroit and stocking up on milk (at an average of $2.96 per gallon) than staying close to home and paying some of the highest retail milk prices in the US.

Speaking of some of the highest retail milk prices in the US, Milwaukee consumers appear to be getting a real bargain compared to milk buyers in another of the Upper Midwest order's major cities, namely Minneapolis.

Yes, consumers in that market did see a decline in milk prices in early February, but at $4.09 per gallon, Minneapolis milk buyers, who reside in one of the largest milksheds in the US, are paying less for milk than consumers in just two other cities among the 30 surveyed by market administrators: New Orleans ($4.55) and Fort Lee, NJ ($4.12).

Fort Lee (metro New York) is an interesting story for a couple of reasons. First, average retail milk prices there didn't change from early January to early February, despite the big drop in the Class I price.

And second, milk prices there trail only New Orleans, despite being located near two of the top five milk-producing states in the US. There's added intrigue in this point because about 250 miles away, in Syracuse, NY, retail milk prices in early February averaged just $2.92 per gallon, among the lowest in the country.

Now, maybe a big part of the problem here is that retail milk prices are simply "stickier" than in the past. That is, retail prices just don't respond very quickly to changes in wholesale prices.

But that apparently only applies when prices are dropping. When prices increase, retailers are quick to pass along the bulk of that increase. Back in 2007, to cite just one example, the Class I base price increased by about $5.00 per hundred from May to July; retail milk prices in the market administrators' survey rose from $3.38 per gallon in early May to $3.80 by early July.

It would seem that there are perhaps three options here for getting retail dairy prices to more quickly reflect wholesale and farm prices. Two of those are to get rid of the "stickiness" when prices drop, or prevent prices from rising so much in the first place.

Or maybe, as seems to be the case in some markets, more competition is needed at the retail level. •

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This is a testimony for Vermont Senator Leahy and Senator Sanders re: "Crisis On The Farm: The State Of Competition And Prospects For Sustainability In The Northeast Dairy Industry."

My husband and I have been dairy farming for 33 years now. We rented a farm in St. Albans, VT, for three years before buying a 360-acre farm in Franklin, VT, where we raised our four children, and where they have learned a good work ethic. Today they are grown, all married, all with good careers, and all with children now. They didn't realize back then, that the work ethic in their daily chores would be the foundation for their future success.

We have one full time hired hand that helps with milking the 115 head of Holstein cows and with the chores of raising about 70 replacement heifers. We plant and harvest our own mixed haylage and corn silage with the help of family. We can count on one hand the number of years where we had a profit from our labor in this dairy business, which reflects that we were able to meet the costs of production for most of those 30 years.

I attended the Senate Judiciary Committee hearing in St. Albans on September 19, and I left feeling encouraged that there will be an investigation into the operations of Dean Foods, DFA, and NDH. The information on future milk pricing was less encouraging in that we are not going to break even with production costs in the foreseeable future, which means we will continue to borrow to operate our dairy business. The good news is the temporary increase in the milk price support, and the MILC checks that we have been receiving. Thank you for this.

The current formula for pricing milk is convoluted to the extent that it makes it nearly incomprehensible for the average educated man. We believe that it is intended to be that way so it would be difficult to dispute, and we believe it is time to change that formula.

If a federal milk supply management system is developed to stabilize supply and demand, please consider:

- Setting milk bases now before 'sexed semen' heifers enter the milking string in 2012
- That the length of the growing season for all crops is different throughout U.S. meaning that production costs will fluctuate depending on where you live
- Dividing the country into 5 or 6 regions according to supply and demand for milk meaning less trucking of milk (decreased fuel costs) across the country
- Farmer owned processing plant(s) in each region, paid for by farmers ($ per hundred weight of milk) meaning closer to parity for our product
- Regulating the growth of a dairy business if a dairy does not have the land base or other measures to handle the manure from their cows meaning sustaining water quality and reducing dairy monopoly
- Reducing some of the agricultural subsidies and instead appropriate those monies to pay a fair price for milk meaning it will 'feed' the U.S. (economy)
- Regulating dairy imports so as to not jeopardize the dairy industry in the U.S.

The bottom line is that we would like to receive a fair price for producing quality milk, a price that is compatible with inflation, i.e., with the rising costs of grain, fertilizer and fuel. The milk price support needs to be adjusted to reflect the pricing of these main production costs.

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United States Senate
Senate Committee on the Judiciary
Oversight Hearing
"Crisis on the Farm: The State of Competition and Prospects for Sustainability in the Northeast Dairy Industry"

Testimony of Travis Forgues
Forgues Family Farm
Alburg Springs, Vermont

Chairman Leahy, Senator Sanders, Members of the Committee, thank you for inviting me to appear before you to discuss the important issue of the sustainability of the dairy industry in New England.

With my family, I own a small organic dairy farm with 70 cows and 240 acres, in nearby Alburg Springs. My family has been on this same farm for 35 years. I ship my certified organic milk with CROPP Cooperative/Organic Valley Family of Farms. I also serve on the Board of CROPP Cooperative, a national organic dairy farmers with approximately 1300 members in 28 states. My testimony today represents our family's experience on the farm in Vermont.

I grew up on my parent's conventional farm in Alburg Springs, Vermont, just across the road from Lake Champlain near the Canadian border. I loved life on the farm with my parents, Henry and Sally, and two younger sisters, but I was always aware of the stress my parents felt trying to make ends meet. It was always a struggle. Believing there was no future in farming, my two college-educated parents encouraged me to go to college and carve out a career away from the farm. As my wife Amy and I began to think about raising our family, I realized I wanted to give my children the same rich rural upbringing that my parents had given me. When I approached Dad about making a go of farming, however, he agreed to my return to the land, but insisted I had to make it work. We bought the house next door to the farm and started co-farming with my folks. Since my dad had been downsizing our farm to keep afloat, he hadn't chemically treated his fields. He'd always resisted the use of drugs, genetic engineering and other conventional technologies used to get cows to produce more milk. He'd also already switched to grass pasturing to cut the high costs of feed. By the time we began thinking about switching to organic, which commanded a higher price, we realized we were already well on our way.

Where once the Forgues Family Farm could barely eke out an existence for one family, that same farm --- 240 acres with 70 milking cows --- today is able to support two families. It's all because we converted to organic farming. In these difficult economic times, we hope that we'll be able to sustain my family and pass down the farm to my children when the time comes one day.

You have asked me to comment on the sustainability of the Northeast Dairy Industry. It is not sustainable. The conventional system that has developed over the last fifty or so years has done so on the backs of the farmers. And while farmers are strong, and can endure much, they are not invincible. The ongoing instability of the market, with ups lasting shorter and downs lasting much longer and harder, relies on dairy farmers to bear most of the risk of oversupply, weak markets, falling exports and unregulated imports. The processors are able to take advantage of oversupply by making larger profits with lower pay prices to farmers, or raising the price at the shelf. The government, encumbered by regulatory structures and fiscal realities is forced to make small short term efforts that do not change the realities year after year. Without meaningful reform, the instability will continue until the farmers break. That moment is approaching, whether it is five years from now, or twenty, it will come.

As a certified organic farmer, I am fortunate to have been able to avoid many of the troubles of the conventional dairy industry. For the last ten years, I have received a stable pay price, steadily increasing to the price I continue to receive today, approximately \$27/cwt at mailbox. I believe I have been able to enjoy this stability because of three main central principles that I participate in, both on my farm, and through my cooperative: setting our pay price, supply management, and marketing.

Setting Our Pay Price. As a farmer in a cooperative, I have been able to set my pay price for my milk that is a fair price, and sustainable for my family. We have agreed, as a cooperative, to set our price and demand that price, or we will not sell our milk organically. Many other organic farmers, whether members of our cooperative or not, have seen this model, and followed it. We are able to do this because we have the alternative market for conventional milk. If we cannot find a market for our organic milk at our price, we sell it conventionally. We do not bid it out and hope for a high price – its our price, or none.

Many will say this does not translate to the conventional market because there is no alternative market. I think that there is a way to set up a two-tier pricing method for conventional farmers. If the farmers are able to receive a set price, of for example \$15/cwt for a certain amount of their milk, even if it is just 30-40% of their milk they will be in a much more stable position than they currently are. A set price can either be regulated by the government, or the farmers can contract milk for a set price, if the processors would be part of that contracting. My cooperative has approximately 35-40% of its milk contracted at the price the cooperative sets. This assures some stability in the face of a market that has not yet recovered.

But the only way for this type of system to be effective for farmers is if there is support from the government and the rest of the dairy industry. Whether through incentives or forced through regulation, the farmers must have some assurance that at least for part of their milk they will receive a stable pay price that they can count on year after year.

Supply Management. Currently, the dairy industry works outside the bounds of any normal supply/demand doctrine. The dairy industry- processors and marketers – do not provide any information to farmers about the forecasted supply needs. Farmers, as a result, produce as much as they can, because more production helps them pay their bills. This leads to chronic oversupply, depressing prices, and farmers in too much debt to survive.

Without meaningful supply management, this cycle will only continue. Voluntary programs, like CWT, are not enough to be meaningful. I understand that farmers who sell their herds are simply buying back into herds when the price comes back. This program also results in oversupply in the beef industry, hurting those farmers. Meaningful supply management requires the marketers to make good assessments about their needs, and communicating those needs to the farmers. Farmers who continue to produce and expand above those needs should not receive the same price for that milk.

In our cooperative, in response to the slowing market, we have instituted a mandatory supply management system. It has not been easy, but our membership has collectively divided to reduce milk projection by 7%. We are seeing our supply slow, and our utilization increase. This helps us protect our pay price.

Again, we are a small microcosm. But we are also a model of how farmers can begin to take back control of their piece of the supply/demand puzzle, rather than just being at the mercy of the market.

Marketing. Dairy farmers today are completely separated from their market, the ultimate consumers. Over a decade of marketing under the "Got Milk" campaign has resulted in a consumer who drinks milk because a celebrity tells them to. There is no connection to the farm, or the farmer who helps produce the milk. By taking this away, there is no way to educate the consumer about what a sustainable price is at the shelf for milk.

At least 30% of the farmers in our cooperative participate in the marketing of our milk. Whether through retail stores, trade shows, or farm tours, our farmers are making a connection with the consumer. In turn, our consumers understand that the milk they are buying is helping to keep a farmer on the farm, and maintain the rural community in the United States.

This is where farmers need to do some more work. They have become a cog in the wheel of commerce rather than being a leading force in educating the United States about where food comes from, and the benefits of healthy, wholesome nutrition. As a result, most Americans have no concept of where their food comes from, and make decisions based on the cheapest price and fanciest box. As recently as this week the USDA has launched a program called "Know Your Farmer, Know Your Food" to begin a national conversation to help develop local and regional food systems and spur economic opportunity. Secretary Vilsack stated "An American people that is more engaged with their food supply will create new income opportunities for American agriculture. "Reconnecting consumers and institutions with local producers will stimulate economies in rural communities, improve access to healthy, nutritious food for our families, and decrease the amount of resources to transport our food." This is the kind of program that can assist in creating the relationship between the farmer and the consumer which will result in consumers appreciating the value of the farmer in the food chain system.

Conclusion

These difficulties in the Northeast and across the country can be avoided by creating the atmosphere for a cultural shift in the dairy industry. Short term cures like "more exports" or expanded purchases by government programs do not address fundamental structural problems in the dairy industry. A traditional dairy farm of thirty cows was historically naturally restricted from growth by barn size and land base. They are run by independent minded farmers interested in working on the land. These small family farms formed the basis of a vibrant and healthy rural community and diverse food supply. Common sense says it is good to have tens of thousands of family farms providing diversity of farm operations and production, training tomorrow's farmers and supporting rural communities. We must find a way to support these individual farmers in the midst of a global economy. By strengthening each one of these small parts, we strengthen and protect the whole. But support is not only monetary, it is recognizing that these farmers are not just cogs, but are critical, co-equal parts of the whole.

For release only by the

Senate Judiciary Committee

Statement by

Joseph W. Glauber, Chief Economist, U.S. Department of Agriculture

Before the Senate Judiciary Committee

September 19, 2009

Chairman Leahy, Ranking Member Sessions, and distinguished members of the Committee, I appreciate the opportunity to discuss the current situation in the dairy industry. I would like to take this opportunity to provide you with an update on the dairy market situation, our forecasts for the dairy market through next year, and the Department's response to the sharp downturn in milk and dairy product markets.

THE DAIRY MARKET SITUATION

The dairy industry has been one of the hardest hit sectors in agriculture in the past year, with producers caught between high feed and other costs and depressed output prices. The Secretary has personally discussed with numerous farmers the dairy market situation and listened as they related the fears they have about the loss of their way of life. He has traveled to many states to hear directly from dairy farmers, implemented a series of policies to assist these producers, and made efforts to communicate what help is available from USDA.

Farm Prices, Input Costs, and Income

I'd like to provide a bit of an economic backdrop to the dramatic downturn in the dairy sector. The monthly all-milk price peaked in the July-September period of 2007 at a record $21.70 per hundredweight (cwt) and averaged a record high of $19.21 for all of 2007, as drought in New Zealand and Australia lowered milk production in those two major dairy product exporting countries and strong global economic growth boosted world dairy product prices and the value of U.S. dairy product exports to record levels. In 2008, the farm-level milk prices remained strong with the all-milk price averaging $18.41 per cwt, the second highest on record. However, average feed costs increased about 35 percent in 2008, and energy costs increased by 30 percent.

This spring and summer, producers were receiving less than $12 per cwt. The milk/feed price ratio, a measure of the profitability of producing milk, was the lowest in over 25 years during the first half of 2009. Feed costs, which traditionally have comprised about one-third to one-half of variable operating costs, are expected to decline about 15 percent in calendar 2009. At the same time, USDA projects that the all-milk price will decline by 34 percent in calendar 2009, to an average of $12.15 per cwt—the lowest average annual price received by farmers for milk since 1979.

There are many factors contributing to lower demand and the decline in farm-level milk prices. Drought in New Zealand and Australia contributed to record high international prices for dairy products in 2007 and 2008, boosting U.S. dairy product exports. More normal weather has returned to both of those countries leading to increased milk production globally. The global recession, the melamine scare in China, European Union (EU) export subsidies, and increases in the value of the dollar have also lowered the demand for U.S. dairy products in world markets. At home, the economic crisis and, until recently, record high retail dairy product prices have curtailed domestic demand for dairy products.

Cash receipts from milk marketings jumped to a record $35.5 billion in 2007, dropping slightly to $34.8 billion in 2008. While cash receipts remained relatively steady in 2008, USDA's Economic Research Service (ERS) reports that high feed prices caused net cash income for dairy producers to fall by an estimated 21 percent between 2007 and 2008 – from $192,000 per farm in 2007 to just over $152,000 per farm in 2008. For 2009, net cash income for dairy producers is expected to plummet to $9,200 per farm – a drop of 94 percent relative to 2008.

Further, ERS data indicate that dairy farms are among the most highly leveraged in U.S. agriculture: about 70 percent of dairy farms use debt, compared to about 30 percent of beef and 50 percent of cash grain farms. Some of the largest dairy farms are the most heavily indebted. Across all sectors in agriculture, dairy ranks third in the average debt to asset ratio, behind poultry and hogs. The financial crisis has made the credit needs of dairy producers all the more pressing.

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Herd Size

In response to record high milk prices and above average returns in 2007 and 2008, the U.S. dairy herd expanded through the second quarter of 2008 to accommodate growing domestic and foreign demand for dairy products. Cow numbers increased from 9.13 million at the end of 2006 to a peak of 9.34 million in July 2008. Cow numbers remained steady during the second half of 2008 despite the deteriorating market outlook, as above average returns in previous months led farmers to bring additional heifers into the breeding herd.

Producers are responding to the current depressed market situation by reducing herd numbers. Cow numbers dropped below a year ago in March 2009 and are expected to average 125,000 lower in 2009 than in 2008. Much of the recent reduction in cow numbers has come in the far western States, where producers tend to have lower overall costs but higher feed costs per cwt of milk produced because they are farthest from major grain producing areas and tend to purchase a larger percentage of their feed.

ERS publishes milk cost of production estimates by state. As an example, for July 2009, California costs for feed were $15.42 per cwt of milk produced. In contrast, the California all-milk price reported by the National Agricultural Statistics Service (NASS) for July was $10.20 per cwt. In a relative sense, New York and Wisconsin fared somewhat better. In New York, feed costs were $11.63 per cwt, while the all-milk price was $11.70. In Wisconsin, feed costs in July were $9.19 per cwt, while the all-milk price there was $11.40.

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Retail Dairy Product Prices

Retail dairy product prices tend to follow movements in farm-level prices over time. However, movements in retail dairy product prices do not exactly match month-to month movements in farm-level milk prices and wholesale dairy product prices due to changes in the costs of processing and retailing dairy products and the pricing behavior of individual food retailers. Furthermore, the percentage decline in farm level milk prices is generally much larger than the percentage drop in retail milk and dairy product prices, because the cost of processing and retailing milk and dairy products tends to move with changes in wage rate, energy prices, and other manufacturing and retail costs independent of movements in farm level prices. For example, if the farm price represents one-third and processing, transportation, packaging, and retailing represents two-thirds of the cost of milk at retail, a one-third drop in the farm-level price of milk if fully passed on to consumers would lead to a 10-percent drop in the retail price of milk. Of course, some retailers may to choose to reduce the retail price of milk in their retail establishments or reduce prices of other items when farm-level milk prices fall to lure customers into their retail outlets.

The Consumer Price Index (CPI) for dairy products as reported by the Bureau of Labor Statistics peaked in August 2008. Since August of last year, the CPI for dairy products has gradually declined and in July was down 10 percent below the peak reached 11 months earlier. Over that same period 11 month period from August 2008 through July 2009, the CPI for fluid milk fell by 17 percent and the CPI for cheese and related products dropped by 10 percent, while the CPI for ice cream and related products was down less than 1 percent. The margin between

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the retail price of fluid milk as reported by BLS and the price fluid milk processors paid for milk dropped between August 2008 and July 2009 and in July 2009 the margin between the retail prices and the price paid for milk by processors nationally was nearly the same as in November 2007 when farm-level milk prices reached their peak.

Outlook for 2010

Milk production is forecast to fall by 0.8 percent in 2009 and an additional 0.9 percent in 2010. Cow numbers are forecast to drop to 8.9 million by December 2010. Reduced production, an improved economy, and lower retail dairy product prices are expected to lead to a gradual increase in milk prices and improved returns later this year and into next year. USDA is currently forecasting the all-milk price to average $11.80 per cwt in the third quarter and $12.90 in the fourth quarter. For all of 2010, we are projecting an all-milk price of $15.08.

ACTIONS TAKEN BY USDA

USDA has taken numerous actions to help producers through this difficult time. In August 2009, Secretary Vilsack announced that USDA is undertaking unprecedented steps to use our administrative flexibility to provide relief to struggling individuals and businesses who have been hit by worsening economic conditions. A key area in this regard is credit. So far in 2009, the Farm Service Agency (FSA) has provided over 1,100 direct loans to dairy producers totaling approximately $70 million. We are also extending loan repayment terms for new loans and notifying FSA dairy borrowers of loan servicing options, such as a deferral of payments or rescheduling of their repayment terms.

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On March 13, 2009, FSA issued a notice which contained guidance on assisting dairy producers with their credit needs. It announced that FSA is releasing milk proceeds for essential family living and farm operating expenses and notified borrowers of servicing options that may be considered by FSA on a case-by-case basis, including extending repayment terms for annual operating loans for dairy farmers, rescheduling, consolidation, reamortization, and deferral for 1 to 5 years. We have also contacted guaranteed lenders to discuss FSA policies for dairy loans and remind them of loan servicing options available under the Guaranteed Loan Program that may be considered for certain producers.

USDA DAIRY PROGRAMS

USDA is also operating four key programs to support milk prices and the incomes of dairy producers. These programs include the Dairy Product Price Support Program, the Milk Income Loss Contract, the Dairy Export Incentive Program, and the Livestock Gross Margin-Dairy insurance program.

Dairy Product Price Support Program

The Dairy Product Price Support Program (DPPSP) supports milk prices and the incomes of dairy producers by establishing purchase prices for butter, cheese, and nonfat dry milk (NDM). As announced on July 31, 2009, USDA has increased the amount paid for dairy products under the DPPSP. These purchase price increases, which are in place from August 2009 through October 2009, increase the price paid for nonfat dry milk from $0.80 per pound to

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$0.92 per pound, the price paid for cheddar in 40-pound blocks from $1.13 per pound to $1.31 per pound, and the price of cheddar cheese in 500-pound barrels from $1.10 per pound to $1.28 per pound.

Cheese and nonfat dry milk (NDM) prices increased after the July 31 announcement, in part due to the impact of USDA's action and in part due to expected tightening of the market this fall. The August Class III (milk used for cheese production) and Class IV (milk used for butter and NDM production) prices were the highest of any month during 2009 and the preliminary all-milk price for the month of August was $0.50 per hundredweight (cwt) higher than July, at $11.80.

For dairy products, the wholesale prices for cheddar cheese and nonfat dry milk are now at or below the current support levels. The wholesale price of butter is currently about $0.10 per pound above the CCC purchase price of $1.05.

From October 1, 2008 to date, USDA has purchased more than 270 million pounds of nonfat dry milk and 4.6 million pounds of butter under this program, much of it during late 2008 and the first half of 2009. The Secretary announced on March 26, 2009 that approximately 200 million pounds of nonfat dry milk would be further processed or bartered for dairy products for use in domestic and international feeding programs. The nonfat dry milk is being further processed or bartered into value-added products, such as instantized nonfat dry milk, ultra high temperature milk, cheese, and ready-to-eat milk-based soups. To date, USDA has bartered for approximately 68 million pounds of ultra high temperature milk and over 22 million pounds of assorted cheeses for the NSLP and EFAP. In addition, at least 1 million pounds of NDM will be sold on a competitive bid basis for the production of casein.

USDA is also working with the Department of State to provide foreign assistance. This assistance includes about 500,000 pounds for use in the McGovern-Dole International Food for Education and Child Nutrition Program; and about 1 million pounds for use by the U.S. Agency for International Development, based on anticipated requests from the State Department.

Milk Income Loss Contract Program

The 2008 Farm Bill modified and re-authorized the Milk Income Loss Contract (MILC) program which provides counter-cyclical payments to producers in times of low prices or high feed costs. In order to provide assistance as quickly as possible to dairy producers, FSA published regulations re-authorizing the revised MILC program on December 4, 2008. Under the MILC program, direct payments are provided to dairy producers in all States if the monthly Class I price in Boston is below $16.94 per cwt. The 2008 Farm Bill increases the payment trigger of $16.94 during January 1, 2008 through August 31, 2012 if the National Average Dairy Feed Ration Cost exceeds $7.35 per cwt. In addition, the Farm Bill increased the annual production eligible for payment from 2.4 million pounds to 2.985 million pounds during October 1, 2008 through August 31, 2012, and increased the payment factor from 0.34 to 0.45. FSA began sign-up for the new MILC program on December 22, 2008 and sign-up will continue through the program's expiration date, September 30, 2012.

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Declining milk prices caused the Boston Class I price in February, 2009 to fall below $16.94, triggering MILC payments. USDA began distributing MILC payments in early April after the information needed to adjust the $16.94 trigger price for feed costs became available and the final payment rate was calculated. The MILC payment rate, including the feed cost adjuster, was set at $1.51 per cwt for milk marketed in February, $2.01 for milk marketed in March, $1.59 for milk marketed in April, $1.47 for milk marketed in May, $1.84 for June marketings, and $1.54 for July marketings. For the February through June period, the feed cost adjuster added about $0.16 per cwt, on average, to the MILC payment rate. For July, the National Average Dairy Feed Ration Cost dropped below $7.35 per cwt. resulting in no adjustment for feed costs in the MILC payment rate.

As of September 8, approximately $700 million has been paid to producers under the MILC program this year. MILC payments are likely to continue for the next several months, although we expect the payment rate to decline given the projected increase in market prices this fall. If current USDA projections for price levels are realized, MILC payments will be triggered for the rest of calendar 2009. For FY 2009, USDA expects to issue about $750 million in MILC payments.

Dairy Export Incentive Program

On May 22, 2009, USDA announced the reactivation of the Dairy Export Incentive Program (DEIP) with allocations for the export of 68,201 metric tons of nonfat dry milk, 21,097 metric tons of butterfat, and 3,030 metric tons of cheese. These quantities reflect the maximum volume of dairy products the U.S. is allowed to export with subsidies consistent with the U.S. World Trade Organization (WTO) commitments on a July through June year. On July 6, 2009, USDA announced that the uncommitted balances still available from the May allocation would be made available and form the initial allocations under the July 2009 through June 2010 year. The DEIP, reauthorized under the 2008 Farm Bill, helps U.S. exporters meet prevailing world prices and encourages the development of international export markets in areas where U.S. dairy products are not competitive due to subsidized dairy products from other countries. Dairy product exports have declined sharply in recent months after reaching a record $4 billion in FY 2008. In FY 2009, the value of U.S. dairy product exports is forecast to drop to $2.3 billion. Cheese exports in July 2009 were down nearly one-half from their April 2008 peak. Butter exports have fallen more than 80 percent from their August 2008 peak, and nonfat dry milk/skim milk powder exports are off more than 70 percent from their May-June 2008 peak. The volume of U.S exports of nonfat dry milk during the January to July 2009 period dropped by 48 percent in comparison to the same period last year. In addition, there is no indication that the European Union (EU) is prepared to stop providing export subsidies for its dairy products. In fact, the EU has been progressively increasing its subsidy rates since reactivating export subsidies in January 2009.

As of September 4, 2009, total subsidy obligations for nonfat dry milk totaled just over $7 million to support more than 37,000 metric tons of exports under DEIP. We have calculated that to remove the same quantity from the domestic market under the DPPSP would cost over $65 million. In addition, our exports will be consumed while DPPSP purchases may continue in storage. Thus, as intended, DEIP is reducing costs to the U.S. government while providing assistance to the U.S. dairy industry, which has seen its international competitiveness continue to be adversely impacted by the use of direct export subsidies by the EU.

Livestock Gross Margin-Dairy

In addition to the above programs, the Livestock Gross Margin-Dairy insurance program, or LGM-Dairy, protects dairy farmers against loss of gross margin, which is the market value of milk minus feed costs. This new insurance program, which was approved by the Federal Crop Insurance Corporation board of directors in mid-2007, uses the Chicago Mercantile Exchange Group futures prices for corn, soybean meal, and class III milk to determine the expected gross margin and the actual gross margin. The indemnity paid to the policyholder at the end of the 11-month insurance period is the difference between the gross margin guarantee and the actual gross margin (if the difference is positive).

The LGM-Dairy insurance policy can be customized to fit any size farm. LGM-Dairy is also considered a bundled-option insurance--buying both a call option to limit higher feed costs and a put option to set a floor on milk prices. The policy capacity is up to 240,000 hundred-weight per year. In March, 2009, the Federal Crop Insurance Board of Directors approved expansion of the sales period to allow more time for LGM-Dairy sales and other enhancements to make LGM-Dairy more producer-friendly. Currently, dairy producers in 36 states are eligible for LGM-Dairy insurance.

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THE FEDERAL MILK MARKETING ORDER SYSTEM

I would also like to talk briefly about the Federal Milk Marketing Order (FMMO) program administered by USDA's Agricultural Marketing Service. The FMMO program is not a price or income support program, but a marketing program that helps establish a competitive balance between the many dairy farmers and the relatively few buyers of their basic commodity—raw milk. The FMMO program sets up a classified pricing system, establishes minimum class prices, and pools all revenues within a defined regional area. The primary objective of the program is to assure that fluid milk processors (bottlers) have an adequate supply of milk to meet the needs of consumers and farmers receive a fair price for their milk.

In 2008, about 61 percent of U.S. milk marketings were sold to handlers regulated by FMMOs, and less than 40 percent of the milk sold to regulated handlers was used by bottlers and classified as Class I. A major milk market outside of the Federal order system is the state of California, with its own regulatory system similar to a FMMO. Other unregulated Western States include Idaho, Montana, Nevada, Wyoming, and Utah. Like California, Montana and Nevada also have state programs.

It has been suggested that the FMMO program has the authority (specifically 7 U.S.C. Section 608c (18)) to raise minimum milk prices when feed prices rise, regardless of other market factors. FMMOs cannot set minimum prices above the relative market value of the products of milk. FMMOs have no mechanism to provide additional dollars to handlers above those received from the market in order to pay farmers more than the minimum market value of milk.

Thus, raising minimum milk prices above market-justified levels would result in fluid milk processors taking less milk or reducing over-order premiums. It would also result in manufacturing milk plants withdrawing from FMMO pools to avoid paying prices to producers that exceed the value of dairy products sold less processing and other operating costs.

DAIRY INDUSTRY ADVISORY COMMITTEE

Over the past three years, we have seen farm-level milk prices decline from relatively high levels in 2007 and 2008 to the lowest levels in 25 years in 2009. This boom and bust cycle in farm-level milk prices has repeated itself several times over the past three decades. The price and income volatility in the dairy sector calls for creative thinking across all the various components of the dairy sector regarding longer-term solutions. To jumpstart thinking about longer-term solutions, on August 25, 2009, USDA announced that nominations would be accepted to form a new Dairy Industry Advisory Committee. The Secretary of Agriculture will appoint up to 15 representatives from the dairy industry to serve in an advisory capacity. These appointed representatives will include: producers and producer organizations, processors and processor organizations, handlers, consumers, academia, retailers, and state agencies involved in organic and non-organic dairy at the local, regional, national and international levels. To clarify, the advisory board is not the FMMO Review Commission established in the Food, Conservation and Energy Act of 2008, although it is likely to consider issues related to federal milk marketing orders.

Nominations must be received on, or before, September 28, 2009. The Advisory Committee will review farm milk price volatility and dairy farmer profitability and provide suggestions and ideas to the Secretary on how USDA can best address these issues to meet the dairy industry's needs.

This concludes my testimony. I will be glad to answer questions you may have.

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To: Senate Judiciary Committee Hearing
"Crisis On The Farm: The State Of Competition And Prospects For Sustainability In The Northeast Dairy Industry"
St. Albans, V.T. Saturday, Sept. 19.
Dairy_Hearing@Judiciary-dem.senate.gov

From: Bryan Gotham, dairy farmer, Edwards, N.Y.
315-405-6456, blcgotham@yahoo.com

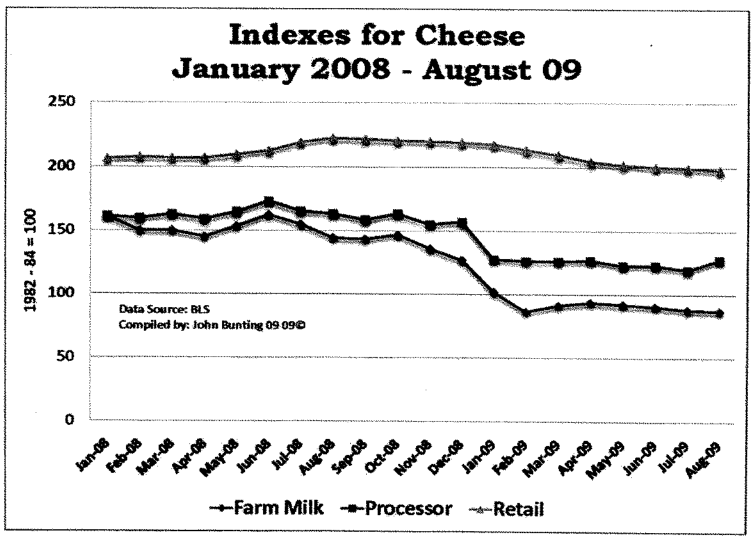
Re: Testimony

Show me the Money

Since the farm milk price collapse in 2009, there was some debate on *where* the money was going. While farmers can get angry at processors for increasing their margins, the graph below shows retailers as the real hogs at the trough.

This is a great example of retailer's practice of Asymmetric pricing when it comes to cheese.

Source: John Bunting Dairy Blog



Why are our Milk markets so volatile today? What is so different from the past when we didn't have this volatility?

Farmers are told a lot of things from the experts on what influences their markets. I will simplify it for them so we can all completely understand what I think is going on. I have two monthly charts one with class III Milk Price the other with Milk Protein Concentrate (MPC) imports. I am examining the relationship between the Massive spikes in Milk Protein Concentrates imports resulting in the purposeful attempt in market manipulation and the flooding of the cheese market with surplus. As far as I know I haven't seen any experts cover this relationship. Most experts talk about MPC going into sports bars, high protein foods, and it doesn't influence our cheese market significantly. Those same people are committed to the current pricing system brain washed into feeling it best represents a fair price for dairy farmers. The other variability in this whole equation now is the Cooperatives Working Together (CWT). Today's market forces create a tug of war between CWT's killing cows off and MPC imports steadily increasing their base import level. MPC imports can only hold the market down only so long because technically we have a shortage of milk in this country compared to cheese yield. MPC increases cheese yield. Another thing no expert talks about. Also, notice how MPC imports are on an upwards trend with higher highs and with greater and greater volatility. This is a good sign of market manipulation and isn't this greater volatility the trend of our milk price? I'm not an expert in this field just a common sense market buff. So I guess you can listen to me.

As you study the MPC import graph there was a steady increase starting from 1996 with no massive spikes. This was until #1 on the graphs, which was the first significant spike resulting in a drop to # 2. Now we start the "control of volatility period". This happens unless there is an outside force that stops MPC import spikes from influencing our market. Then #3 spike dropped the market initially and #4 a new high in imports put the nail in the coffin. #5 continued the sideways low trend because imports stayed high and the move from #6 to #7 caused a small uptick in the bottom. #8 continued the down trend until MPC imports dropped to their lowest levels in 5 years at #9. Milk prices had to rise and the bull market continued until #10. #11 caused a small drop but the #12 spike was the killer of the price. #13 was the initial bottom but a spike to #14 made the new bottom but overall imports were lower and this probably lowers influence. #15 and the massive rise to #16 helped keep the bottom down and you can see the relationship even with small moves in the market. This MPC dominated market is a teeter totter and we all know very little product change has great influence the cheese market these days. #17 imports dropping helped put in a new high but the #18 double spike drove the market down again. Sometimes a back and forth double spick is what it takes to move the market and I am sure this depends on the amount of raw milk in the system at the time. #19 created massive volatility in combination with an extreme shortage of milk it was probably a miscalculation with the importers on milk supply. The 2002-2004 bear market lasted 21 months and it was very painful and obviously farms went under eventually. Also CWT was created in this time period resulting in a new higher level of volatility. The tug of war started now between MPC and CWT. #20 created a new bear market surging to brand new market import highs. Between #19 and #20 the market remained very profitable for most farmers it was the longest time that prices stayed relatively high. Look at MPC imports they remained fairly steady with no major spikes. Before the market highs were always short lived and this is probably credit to the CWT. #21, #22 and #23 demonstrate small changes in MPC imports affects milk price in a side ways market. The huge spike from #23 to #24 resulted in a new bottom again. However, the following spikes #25, #26 and #27 didn't have much influence on the market. I wonder why? Could it have been the drought in Australia and rising milk powder prices? Yes, that's what the experts told us. Anyways the market was under control by outside forces. You know the global market they like to tell us we are in. If this is how we get good milk prices with the market I will have to pray for more disasters I guess.

Cheese price went along for the ride and class 4 milk was the new market leader. MPC imports went sideways to down when we hit the top. The spike from #28 to #29 smashed the market down to #30. #30, #31, and #32 played with the sideways to down market as the dollar stayed weak and exports took care of any extra cheese MPC were creating plus the CWT kept prices buoyant again. But the massive spike in MPC from #32 to #33 regained its power over the market again because the Dollar strengthened exports declined, the Australian drought was over and our economy sunk. The last CWT buyout could not overcome all of these forces.

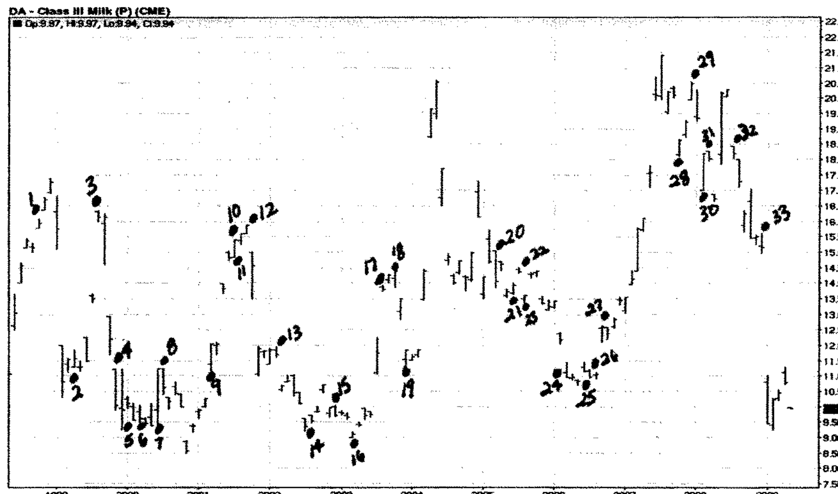
Do you understand our manipulated market yet? Dairy Farming today is like playing poker with a crooked dealer and two professional poker players on the left and right of you. You the farmer sit down at the table and the manufactures are the dealer. The guy to our left is the consumer and the gal to the right is an environmentalist. The dealer has stacked the deck and the farmer will never get any face cards or aces. The dealer always gets the aces, consumer and the environmentalist gets most of the face cards and they are all winning more hands than you and are taking your money. But every once in a while you get lucky and win some of your money back but in gambling the longer you keep playing in the casino the greater the chance you will walk away from that table totally broke! Does this sound like dairy farming yet. We need to make sure that we Dairy Farmers are playing with a fair deck of cards. Do you understand now why I support the Bill S889 Specter Casey bill?

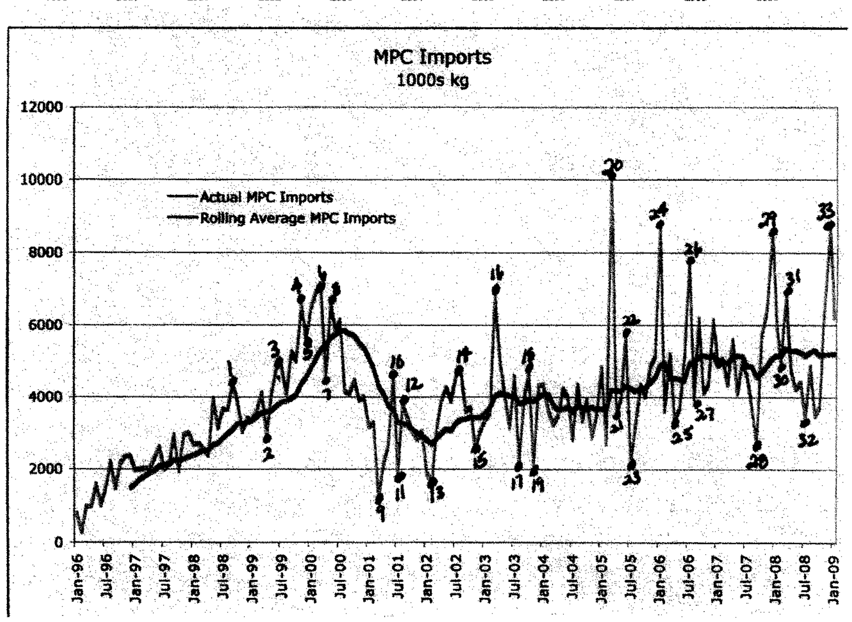
Bill – S889 pays farmers based on a **National Average Cost of Production** and with a Class I differential to maintain local fluid milk supplies. This cost of production data is well documented and is calculated monthly by the federal government. All farms on 0-5% of their milk will receive a lower price to fund the Inventory reduction program if it's necessary. If an oversupply of milk is excessive as determined by the Secretary of Agriculture. Farms that over produce based on there previous year's production will only receive a price equal to one half the **National Average Cost of Production** on the extra milk. **This is not Quota. This is organized management of supply that does not put limits on production. It is what most hard working Dairy farmer's dream about. This is Real organization of supply for the industry's benefit. If you wish to over produce you will get less money eventually and it will discourage further milk production growth. Just like in the current manipulated broken system but with about 95% of the Dairy farmer's income margins maintained!**

This is my message to Washington on behalf of farmers that can see we may have grounds for class action lawsuit here. We are not drinking the Kool-Aid anymore! Farmers call Washington today and everyday until we get us out of this manipulated unfair pricing system. We need change now and not next year before this whole industry is on life support. Set the milk price to cover our cost of production. If not the dealer will always find a way to rig the deck.

Thanks for reading. Ask people questions about this and see what they say,

Bryan R Gotham
blcgotham@yahoo.com
315-405-6456
Dairy Farmer from Edwards NY


DA - Class III Milk (P) (CME)
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009


MPC Imports
1000s kg
Actual MPC Imports
Rolling Average MPC Imports
12000
10000
8000
6000
4000
2000
0
Jan-96
Jul-96
Jan-97
Jul-97
Jan-98
Jul-98
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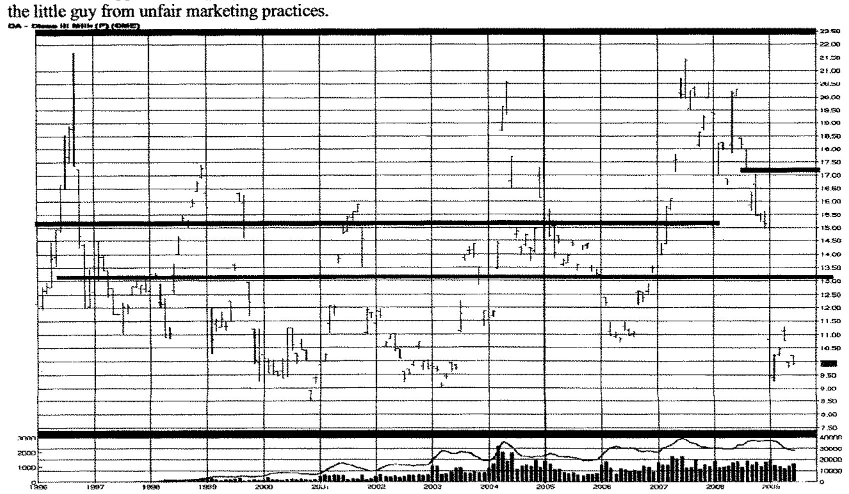
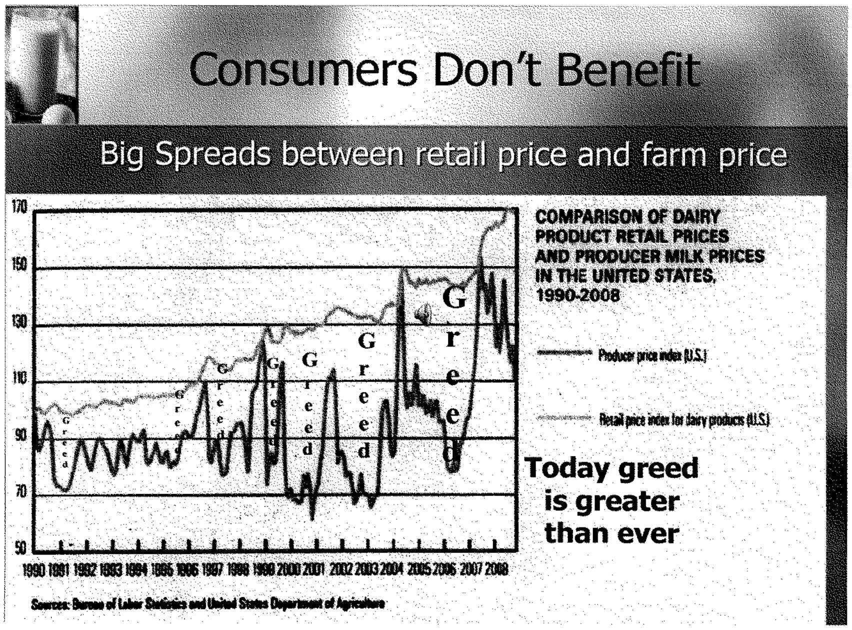
Profit is out of balance in the Dairy Industry

By Bryan Gotham

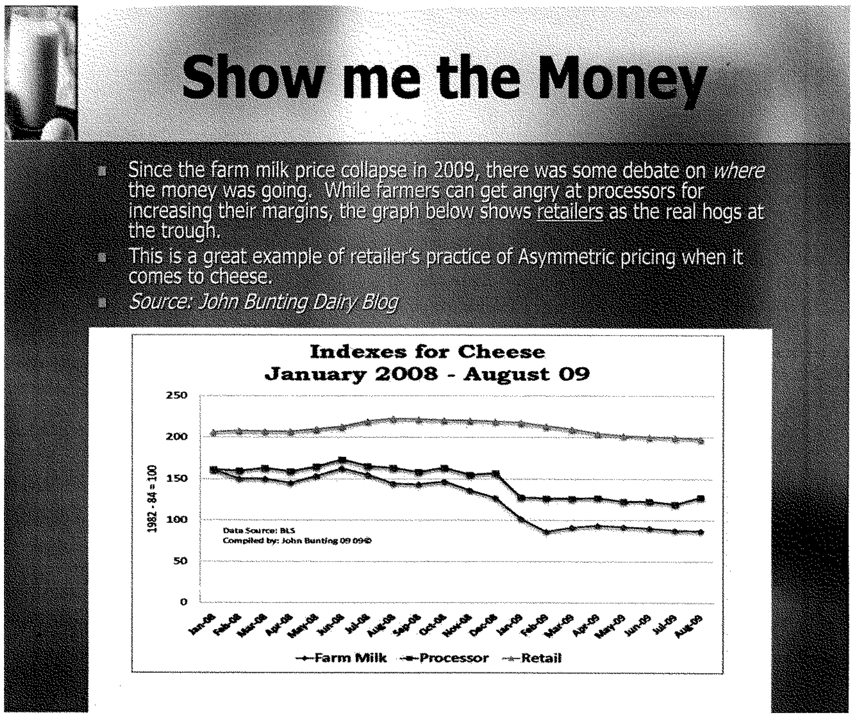
Balance is a tricky thing that we all have to learn and it is an important thing in nature as well as economics. What has caused the dairy industry to be so far out of balance for the American Dairy Farmer?

Up until now the dairy farmers that have survived this food policy experiment, have kept up with this system by increasing performance and efficiency. However, like a fine tuned race car as progress goes forward the gains in performance and efficiency become less and less. This is where we are today we have peaked our performance and the only way we can keep doing more for less is by draining equity from our farms. This time because of free trade ignorance balance will never be achieved unless the consumer's revolt and demand 100% safe American made dairy food be put into their mouths. Today foreign imports flood our market and set a new floor on Dairy farmer's milk price that US Dairy farmers can not compete with. Apex (Asymmetric) pricing at retail and wholesale keeps the lid on low milk prices for extended periods. The market fails to react quick enough to properly reimburse the farmer for previous losses. This result's in generational debt loads and an out of balance wealth transfer from rural America into Corporate America. Spikes in imports and increases in cheese yields from Milk Protein concentrate help nail this floor down longer. Let's look at the graph and explore the simple example of unprofitability in Dairy farming. Since 1996 our market has had tremendous volatility and this volatility makes a ripe environment for those who can practice Apex pricing to do so. Basically retailers and manufactures hold the prices high on consumers for as long as possible reducing price volatility at the consumer level. Supply and demand takes longer to balance and farmer's margins are crushed for longer periods. Also during this unbalanced economic period instead of the whole industry suffering economically one part makes record profits and the other makes record losses. I used everything below $13 dollar Class III as a loss and everything above $15 dollar milk as an offsetting profit for the loss. The rest of the prices I consider breakeven for just operating costs. I raised it up to $17 in 2008 to recognize our new cost of production breakeven point. I counted 78 unprofitable months below $13 and 38 profitable months above $15. So with the current market unbalance we have twice as many unprofitable months as profitable months. If prices are demanded to be stable at the consumer level in our market place than to reach proper balance it needs to be stable at the farm level. We don't have just an over supply and import problem we have an out of balance market problem and it is Apex pricing. Balance must be restored to keep up environmental and consumer demands down at the farm level. Farmers must have a new milk price discovery method for their milk because this one is not working for the farmer or the consumer. To achieve the correct balance the milk price should be based on our average on farm cost of production so we get our fair percentage of dairy retail. Where is the political leadership that can help fix this problem and our out dated cannibalistic supply control program? Stop the excuses Washington; it is time for Government to do its job to protect the little guy from unfair marketing practices.





- **This form of predatory marketing takes advantage of farmer and consumer.**
- **A stable price is demanded for consumers therefore a fair stable price should be provided to the farmer based on cost of production.**
- **Currently the farmers price is mainly determined by a thin market that trades 1% of the cheese sold. Corruption and greed has wiggled into this CME market. Today greed is greater than ever.**


Show me the Money
Since the farm milk price collapse in 2009, there was some debate on *where* the money was going. While farmers can get angry at processors for increasing their margins, the graph below shows retailers as the real hogs at the trough.
This is a great example of retailer's practice of Asymmetric pricing when it comes to cheese.
Source: John Bunting Dairy Blog
Indexes for Cheese
January 2008 - August 09
250
200
150
100
50
0
1982 - 84 = 100
Data Source: BLS
Compiled by: John Bunting 09 09©
Jan-08 Feb-08 Mar-08 Apr-08 May-08 Jun-08 Jul-08 Aug-08 Sep-08 Oct-08 Nov-08 Dec-08 Jan-09 Feb-09 Mar-09 Apr-09 May-09 Jun-09 Jul-09 Aug-09
Farm Milk
Processor
Retail

54772.074

I attended the dairy deposition that was held by Senators Leahy and Sanders on September 19, and as a Vermont dairy farmer I would like to share some of my feelings on the matter.

I graduated college in the spring with a B.S. in accounting and made the decision to return home to our family farm. My sister, who also graduated college in the spring with a degree in dairy herd management, has joined me in coming back to the farm. In returning home to the farm we have teamed up with our Father and Grandfather in running the daily operations. We are current the 4th generation to work our farm.

Without a doubt my Sister and I have returned to the farm under grim economic conditions, and the times have never been tougher on our family. As milk prices reach record low levels, it has become impossible for the farm to break even on the costs of operation, let alone return any kind of a profit. My family has worked extremely hard over the past several decades to maintain the farm with the highest expectations, and a goal of providing a quality family business as an opportunity for future generations. I have seen this done first hand by my father and grandfather, as they have diligently worked over the years to establish a highly efficient business that my sister and I were excited to become a part of. Words cannot commend my gratitude for their blood, sweat, and tears that came in order to provide my sister and I with this opportunity.

With that being said it is extremely frustrating to see little return on all that hard work. The current milk prices are swiftly putting the farm out of business thru no fault of our own, and since we have no control over the price we receive for our milk there is little we can do about it. It is even more frustrating to see others who can control milk prices, such as Dean Foods, reap the benefits of all the hard work of my fellow dairy farmers. In the first quarter of 2009 Dean Foods recorded profits of 76.2 million dollars, up 147% from the year before. As Dean Foods documents record profits, dairy farmers work tooth and nail at the mercy of this company to survive. Hundreds of farmers have been unable to make ends meet and hundreds more are on the edge, including our farm. While my family stresses daily on how we can possibly keep the farm operating, the CEO of Dean Foods cashes his 116 million dollar bonus check. What Dean Foods is doing to the dairy industry is about as un-ethical as it gets, and if something is not done soon the future of America's family farm is in serious jeopardy. I express my concerns with a high level of urgency because it is unclear how much longer we will be able to hold on under the current conditions.

Coming from a long heritage of farmers we are not the type to sit back and wait for change, instead we are working towards a solution. My Family has been active in locally showing our support for the Dairy Price Stabilization Plan. The plan is working towards setting supply standards that would provide dairy farmers with a consistent milk price; a price farmers could survive under. My sister is currently at the World Dairy Expo as an ambassador to the plan, as we try to get farmers across the country on board.

I hope that together we can work towards a brighter future for the dairy industry.
Thank you for your time.

My name is Janice Grimes and my husband Todd and I live in Webster, Iowa. We, like other dairy farmers, are struggling to stay afloat. The price of milk has decreased so much that we went from being able to pay all our bills, to losing about $5000.00 each month. We have cashed in our retirements and life insurance policies. We've borrowed more money from the bank to continue operating and I was forced to return to work off the farm. This has left my husband to do all the milking by himself and it has taken a toll on us. We are living from day to day, not sure if we will go bankrupt and lose our farm, our home, and Todd's parents' house, which is also part of the farm. Our closest dairy friends are barely hanging on and we lean on each other for moral support. Last week, one of our dairy friends filed for bankruptcy and three other local dairy farms have also been lost due to the crisis. We couldn't sell out even if we wanted as dairy cows are worth practically nothing at the market.

The USDA has tried to help by instituting the MILC program. However, the MILC rate is based on the Boston Milk price. The Boston price is the highest in the country and although an adjustment is made for feed costs, it still only adds about 1000.00 to our income. It is simply not enough to ward off bankruptcy. The lack of money is now having a trickling down effect and there is loss of income and business to local veterinarians, hoof trimmers, dairy supply stores, milk haulers and feed mills.

I have been doing everything I personally can to bring attention to this crisis and to try and enlist the help of our government officials. I have written to every member of the Senate Agricultural Subcommittee, Secretary Vilsack, President Obama, Vice-President Biden, Iowa Governor Chet Culver and members of the newly formed Dairy Caucus. I have received little, if any, response.

We had a glimmer of hope when the Senate Ag committee began to hold hearings on the dairy crisis. However, I was very disappointed in the speakers that provided the testimony. Where was the testimony from the dairy farmers? The dairy farmers that did testify were tied to large companies, the Farm Bureau or end processors. I read and heard that cooperatives and processors reported the following:

- There are too many cows producing milk, thus there is an oversupply.
- It's too late to help the small dairy farmer
- It is better to do nothing now and allow the market to find equilibrium.
- The price support program should be eliminated as it is a burden to everyone

The local dairy farmer is LOSING money every day. However, the price of milk has not decreased that much in the store. We KNOW that someone is making a huge profit and it is NOT US. It has to be the cooperatives or the processors, so why would the very people who are making money be testifying to the ag committee?

We want our voices heard. The testimony pointed out above does not represent us and is not in our best interest. The cooperatives and the processors (creameries) are looking out for themselves at our expense.

We would like Congress to adopt the following:

• Double the MILC rate being paid to dairy farmers and make it retroactive to March as suggested by Senator Kirsten Gillibrand.

• STOP the importation of milk products (milk protein concentrates) from other countries!! If the processors and cooperatives really want us to believe there is an oversupply of milk, then why are they importing it??

• Secretary Vilsack has the legal authority to set the price of milk to the cost of production per U.S. Code TITLE 7 Chapter 26 SUBCHAPTER III 608c 18 (18). I know he is aware of this as Farm Aid, on June 18, 2009, delivered 13,000 petitions signed by dairy farmers asking him to do so. The National Family Farm Coalition sent a letter to him on March 2, 2009 requesting the same thing. We would like Secretary Vilsack to set the price of milk to production until the government can look into the situation and see what is truly going on with the market price.

• Have Congress, the agricultural subcommittee or the dairy caucus look at long term reform for the dairy industry

I am sick and appalled that dairy farmers are committing suicide. I am saddened that the CWT program is sending hundreds of thousands of dairy cows to slaughter in an effort to decrease the number of cows in the system. This program is NOT working.

Dairy farmers are an important part of this nation's food supply. If the dairy industry collapses, it will affect all Americans. Dairy farms simply cannot continue to lose thousands of dollars every month. I've heard this crisis referred to as the "perfect storm". For my husband and me, it has been the "perfect hurricane". We will not be able to survive much longer. We need emergency assistance now (and we are talking weeks, not months). We cannot wait for "future" programs to be developed. Without immediate help, we will lose everything we have worked all our lives for – our farm, our home and our most important concern, our dairy cows who we birth, bottle feed, nurture, medically treat and provide comfort for in the hopes that the milk they produce will provide a living for us and will enter the American food system for all who consume dairy products.

--

Todd & Janice Grimes
Windmill Farm Dairy
Webster, IA
641-660-8020

My name is Harold Howrigan III. I live and work on HJ&A Howrigan and Sons dairy farm. Our dairy consists of 750 milking cows, 130 dry cows, and 600 replacement heifers between three separate farms. We have 350 acres of corn and nearly 1,000 acres of grassland, all of which we cultivate and crop using our own equipment. In addition to this, we tap about 25,000 Maple trees in the springtime. 7,000 of these we hang buckets on and gather with teams of horses and sleds. Herd management and the majority of the milking is done by our family.

HJ&A Howrigan and Sons was started by my grandfather, Harold Howrigan, to whom the Sept. 19 hearing in St. Albans was dedicated. Operating the farm now are his three sons: Lawrence, Mike, and Harold Jr.; and six of his grandsons: Brendan, Adam, Ryley, Tim, Cullen, and myself. We are and will always be a family dairy farm. When everyone is out of school and the nine of us are working together cropping, sugaring, or on any project, we have the best crew of young farmers anywhere. We have Grandpa to thank for that -- we learned from the best.

One of the last, and in fact the only, written message that Grandpa left for us when he passed away was a short poem that I think can help everyone understand the motivation behind all of the great things he did for our industry:

It is reassuring to know
That in the fields, the dirt left once the stones are picked
Will still be tilled, by strong, young hands
More skilled!

Senator Leahy said a couple of times over the last few weeks that whenever our grandfather asked for help at the governmental level, "it was never for himself, it was always for others." And believe he did help countless people in the present, whenever that may have been. But I also think that the others he cared out about -- those who truly motivated him -- were the ones in the future. He was building the industry for the next generation, and the generation after that, and the generation after that.

In considering the plight of our industry in the present, I urge you all to think about the future. Consider how the next generation of farmers will get started, survive, support their families, and pass on the love of their land and their work to their sons and daughters. This most certainly has to start here in the present. For if we don't fix things now, there will be no future.

There are some short-term solutions. The trigger price for the Milk Income Loss Contract is the same trigger price that was used in the Northeast Dairy Compact to trigger over-order pricing. The Northeast Dairy Compact worked; the MILC program obviously has not. The difference is that in the Compact, when price per cwt fell below $16.94, the entire difference was made up by the milk processors. In the MILC program only 45 percent of the difference was made up, and only until 2.9 million pounds of milk was made for that year. Raising the MILC trigger price and the base production they are paid for would be one way to immediately get more money straight to the producers and begin to ease their debts. Another way to get money to producers would be to make processors such as Dean Foods accountable even just for some of this difference like they were under the Compact. This seems to me a simple way to ensure that farmers get paid fairly for the hard work they do.

Holding processors accountable for paying producers during times of low milk prices would admittedly result in the cost being passed on to the consumers. Therefore, I think it is important to further educate consumers about the important role milk plays in their health and daily diet. It wouldn't hurt for them to get a glimpse of the hard and honest work dairy farming truly is.

The over-supply of milk in our country is the reason for these low milk prices. This issue needs to be addressed, and a supply management system of some sort seems necessary. However, I believe that what would essentially be a tax on growth is not necessarily the answer. In such a system, ask yourself who would benefit the most. Would it be a young farmer trying to build on a small herd, or a large farm that has reached or nearly reached its growth potential? A farmer with three sons, or three farmers with six sons, like there is on our farm, needs to grow for all six of us to have the opportunity to stay on the farm. Reasonable growth is an essential part of surviving in the dairy industry -- even more so if future generations are to take part. One way to lower supply in the United States is to put a higher tax on milk being imported into the country. We currently pay a 15-cent promotion per cwt. It was only recently that processors were made to pay just 7.5 cents on promotion per cwt of imported milk. In any case, taxing and controlling imports certainly would not raise the supply of milk in the US.

The federal milk market order was put in place in the 1930s to ensure fresh milk and fair prices to all regions of the country. Today, producers are receiving 1930s prices for their milk. Milk market pricing is an extremely complex system, and I don't claim to fully understand its intricacies. I do know that milk today is priced based on cheese-- dairy's least valuable and most volatile product. Fresh drinking milk is the most highly used dairy commodity, and its price remains constant and reasonable for both producer and consumer. Roughly 46 percent of milk coming off of the farm is used as Class 1 fluid milk. If farmers were paid even in a two-tier system for the way that their milk is utilized on the market, then they would at least have a constant price for half of their milk. If the price of milk per cwt was based on Class 1, rather than Class 3 or 4, milk, then I believe that farmers would be ensured a fair price for milk at a much more constant rate.

Just as there are no easy days on the farm, there is no easy solution to this dairy crisis. There is no doubt that something needs to be done soon for the sake of all of the hardworking dairymen and women nationwide. While you struggle to settle on that solution, I respectfully ask you to consider the next generation of farmers -- and the generation after that.

Sincerely,
H J Howrigan III

Written testimony on behalf of myself and my family especially my 9 year old daughter and the future of healthy food in her life.

For – The United States of America, Senate Hearing about Dairy Sustainability. September 19, 2009, St. Albans, Vermont

For- Senator Sanders & Senator Leahey

Submitted by- Kate Keough, 175 Lyman Avenue, Burlington, Vermont

I attend this hearing because I am so concerned about the food chain and nutrition for my daughter's generation. I also attend and submit this written testimony as a concerned citizen of Vermont in support of the Dairy Farmers of this beautiful state.

Morgan is my daughter who was born in the year 2000 in Vermont, we are blessed to be able to raise her in such a clean and safe environment. Over the past year we have watched farms literally disappear and we do not know what to do. I am frustrated that most people do not even realize the impact that this dictated low pricing is having on the Vermont Farm. I think it is horrible that big corporate milk companies are paying their executives huge salaries and our Vermont farms cannot even make basic bills each month. I want to tell everyone I can to help theses farmers but it seems we need you senators to convince the government in Washington to help.

I beg the Senators of our State of Vermont to stop the disappearance of our states farms. I fear the worst nightmare that my daughter's generation will have no farms left in this state and possibly no milk to drink. Dairy farms are part of the basic fabric of Vermont. All children in this state should be drinking multiple glasses of milk each day. Please do all you can do to help educate and inform the people of your state and beyond to reverse this crisis in our milk and dairy industry.

Thank You for allowing the general public like me to submit written testimony.

KINGS-RANSOM FARM
337 KING ROAD
SCHUYLERVILLE, NY 12871
Phone/Fax: 518-695-6876

September 29, 2009

Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Testimony – VT Hearing of the Senate Committee on the Judiciary -10/19/09

Dear Senator Leahy,

I am a twenty year member of Dairylea Cooperative Inc., a milk marketing and service cooperative owned by its dairy farmer members and located in the North East. I am a firm believer in the collective bargaining process which is available to producers through cooperatives. The economic conditions which dairy producers have been experiencing make the cooperative model even more relevant today than any period in my business experience.

Dairy farmers have choices about where to market the milk they produce. They can choose to join a cooperative and market their production through its structure or they can market their milk independently directly to a processor. For our family's operation, we rely on the strong and stable markets that our dairy cooperative – Dairylea - has developed. Over a period of many years, Dairylea has worked diligently for its member's negotiating sales contracts with processors. This means that individual farms gain access to a variety of market opportunities which today are provided by the consolidated processing and retailing industry. Without cooperatives, a producer's opportunity to receive a competitive price might be seriously diminished.

The Capper-Volstead Act authorizes cooperatives to collectively prepare, handle and market commodities and farm products produced by member farms to the most advantageous market. On the other hand, should one choose to operate on an individual basis and attempt to sell their farm's milk production on the open market, They most likely would find themselves at a significant disadvantage to other agribusinesses. The collective bargaining privileges provided through the cooperative structure essentially prevents a buyer from pitting one producer against another. Simply put, I would not like to face the prospect of marketing our farm's production without the expertise provided by our cooperative.

In addition to providing a competitive milk market, Dairylea also offers its members an array of farm services targeted to provide savings and efficiencies for our member's farms. Dairylea also provides a voice for us and our fellow cooperative members on pressing legislative issues at the regional, state and national levels. While I enjoy representing our farm's interests in these arenas, given the pressing nature of the daily demands of our farm business, I do not always have the time to track all of the pending legislative issues. It is great to know that our interests are ably represented be our cooperative. Modern cooperatives, like Dairylea, extend their operations beyond the traditional marketing of commodities by seeking other ways to provide benefits to their farmer members.

In closing, cooperatives are absolutely vital to our farm's success. Without them, our dairy industry would most likely be seriously fractionated. While my marketing experience did not afford me the first-hand experience of the chaos that prevailed in the market prior to the enactment of the Capper-Volstead Act, the written reports of that time period are reminders of conditions that must not be repeated.

Frankly, it is clear to me that cooperatives have been a major contributor to many years of relatively stable prices that the dairy industry has experienced. The current conditions in the dairy market are primarily the result of our industry's loss of share in the international marketplace – Not as a result of inappropriate cooperative activity.

Sincerely yours,

Edgar A. King

Dear Senator Leahy,
In order to solve the high to low and back to high pricing roller coaster, dairy products, especially cheese, should be removed from the Chicago Mercantile Exchange. Speculation and hedging are causing exaggerated changes in prices that are not justified by the dynamics of the market. Make bidders take possession of that which they purchase and a more reasonable price cycle will be the result.

Mike Kohler
Manager, Dairy Producers of Utah.

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
September 19, 2009

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
"Crisis on the Farm: The State Of Competition
And Prospects for Sustainability in the Northeast Dairy Industry"
St. Albans, Vermont
September 19, 2009

I thank you all, everyone in this room, for coming today as we hold this hearing on the competition and crisis in the Northeast dairy industry. I would like to thank Representative Peter Welch, who was unable to be here today but has been leading the charge to address the dairy crisis in the House. We are grateful to all of our witnesses, and we know that some of you have made a great effort to travel to Vermont to participate. Finally, I would like to thank St. Albans' Mayor, Martin Manahan, for his hospitality.

This is an official hearing of the United States Senate Judiciary Committee, and the Senate's official rules of decorum will be in effect. We invite anyone who would like to express their views on the issues presented today to submit testimony for the record.

Before we start, I would like to take a moment to dedicate today's hearing in honor of Harold Howrigan and his service to this community, to our state and to Vermont's dairy industry. Harold was a great man, and a good man, whose accomplishments are as impressive as the personal legacy he has left behind. There were certainly a lot of years in his life, 85 in all, and there was a lot of life in those years. I am proud to have known Harold and am so fortunate to call him my friend. I will always look back fondly of my memories and times with Harold and his lovely wife, Anne. I know so many others will do the same.

Here in Vermont, the dairy industry is a pillar of our state's economy, culture and landscape. Though dairy farmers have long contended with the volatility of milk prices -- even more than they have had to adjust to changing weather -- today we face a crisis of epic proportions. Prices have fallen to lows that no one in this room thought we would ever see. The fact that the cost of production is higher than ever only compounds the problem, and has increased the gap between what it costs our farmers to produce milk and what they are paid for that milk.

The severity and urgency of this crisis cannot be overstated. Not just here in Vermont, but across the country, our bedrock dairy industry is on the brink of collapse. So many of our dairy farmers who had hoped to pass their farms on to future generations are now weighed down with loans and losing money every day. They feel those dreams slipping quickly away.

In Vermont, we have lost 35 of our dairy farms this year, and last year we lost another 19. Each loss of a Vermont dairy farm ripples through families, through our communities and through our economy. It has been easy for many Americans to take American dairy farmers for granted. Their hard work and steady contributions to the Nation's dinner tables and to our economy are a vital part of the infrastructure that is the miracle and the blessing of America's farms. They provide a highly perishable product that puts them more directly at the mercy of fluctuating markets and costs of production. We need both short-term solutions to get out of this crisis, as well as long-term solutions to make sure we do not return to this tumultuous cycle of volatility that threatens farmers' very survivability. That is the purpose of this hearing and of all of the efforts being made to stimulate the dairy industry.

The Senate Judiciary Committee continues to keep a close eye on competition issues in the Northeast dairy market. The current crisis only serves to illuminate the industry's structural issues. We are looking to the agencies that administer our laws to learn whether they have the tools necessary to protect dairy farmers and consumers, and whether those tools can be used to promote sustainability of family farms.

While many areas of the economy are suffering in this recession, the dairy industry is particularly hard hit. With consumer demand down, the price paid to farmers for milk has fallen to record lows. Consumers, however, have yet to see such a massive corresponding drop in retail prices on store shelves. We have long blown the whistle on this disconnect between the price farmers receive for their milk, and the retail price consumers pay in grocery stores. Earlier this year when prices paid farmers dropped by more than a quarter from January to February, consumers only saw store prices cut by six percent. This hurts both farmers and consumers, and suggests a much larger problem with competition and consolidation within the market. When consumers are in the grocery store they don't realize that less than 40 percent of what they spend on a gallon of milk makes its way back to our dairy farmers.

Farmers are doing all the work, they are taking all the risk, and they are making investments that span not just lives, but generations. They put their all into their farms, and all they ask is a fair price to keep their farms going. That's only fair, and that's only right.

The consolidation in recent years throughout the agriculture sector has had a tremendous impact on the lives and livelihoods of American farmers. It affects producers of most commodities in virtually every region of the country, and it affects Vermont's dairy farmers.

For decades, dairy farming in Vermont seemed immune from the consequences of restructuring and consolidation, because cooperatives also served as milk processors for local or regional markets. National markets did not exist. But times have changed and the structure is dramatically different today. The result has been a breakdown of competition, with Vermont dairy farmers not getting their fair share of the retail price of milk, while corporate processors appear to be raking in profits as they continue to raise prices to consumers.

As I think about the gap between retail and farm prices I cannot help but think back to 2001 and the Dean Foods merger with Suiza Foods. That merger created the largest milk processing company in the world, and I continue to be disappointed that the Justice Department under the previous administration approved it. Just as I had feared eight years ago, it seems that market dominance has translated into overwhelming power in the dairy industry, and we have seen local dairies and processing facilities bought, and then closed.

While Dean Foods buys roughly 15 percent of the Nation's raw fluid milk supply, their strategic alliances with other entities expand the company's influence much further. One of these alliances is with the Dairy Farmers of America (DFA), the cooperative that represents 22,000 dairy farmers in 43 states. While it is difficult to point to one cause of the dairy farmer's plight, Dean Foods is posting record-setting profits and paying huge executive salaries. Meanwhile, the prices for dairy farmers are at all-time lows and forcing multi-generation farms out of business. This raises serious questions about the state of competition in the Vermont dairy market, and throughout the Northeast.

In the past, farmers unsatisfied with the prices offered by a processor or manufacturer could market directly to consumers. But those opportunities for independent marketing have been all but eliminated.

Time and again, many powerful interests have opposed our efforts to ensure free and fair markets for agricultural producers. Last month's announcement that the Department of Justice and the Department of Agriculture will be holding their first-ever joint workshops to discuss competition and regulatory enforcement in the agriculture industry is a welcome change. I am pleased that Assistant Attorney General Varney, the Department of Justice, Secretary Vilsack, and the Department of Agriculture are taking these issues so seriously.

We will hear first-hand testimony today about how, and why, Vermont dairy farmers are hurting. Bringing this hearing to St. Albans will ensure that Vermont's voice and Vermont's experience will help inform Congress about these issues. We want to build a hearing record that will let policymakers in Congress and Federal agencies hear directly from the farmers who are coping with this crisis every day. And as a part of that record, on behalf of Vermont's Secretary of Agriculture Roger Allbee, who unfortunately was not able to be here today, I would like to officially submit a copy of the Vermont Milk Commission's Final Report.

Senator Sanders and I recognize that today is a holiday for many, and we understand why Vermonters may not have been able to travel to this hearing. With that understanding, I invite all Vermonters to submit testimony for the record, which will remain open until September 30. Information about how to submit testimony is available here today.

I look forward to the testimony of all of today's witnesses as we continue to seek new ways to address the dairy crisis and improve market opportunities for America's farmers and ranchers.

# # # # #

R & M Longe Dairy Farm
1178 Heitman Rd.
Bridport, VT. 05734
(802) 758-2138

September 17, 2009

Dear Senator Leahy,

My husband and I sold our Vt. Dairy farm in 1993 and built a 300-cow facility in Cottage Grove, TN. We arrived with cattle and machinery 4/13/1993. We had a choice of three markets, independent to Turner Foods of Mayfield, Ky., AMPI, or Mid-Am, both Co-ops. We chose to ship to AMPI. Jim Carroll was general manager. Joe Bavido was our director.

First, I would like to state that the following is from memory and my dates may not be completely accurate, however my story is true.

By 1995 the Southeast, an extreme deficit area, were receiving premiums of up to $3.00 for their milk, however we did not see this reflected in our checks from AMPI. I called AMPI and asked where our premiums were? The man I spoke with told me milk marketing was too complicated for me to understand and we received what AMPI thought we were entitled to and to call the USDA.

Enter Sue Mosley, USDA, Atlanta, Ga. She explained about utilization, premiums, etc. of the then system. I was able to research out AMPI and realized our premiums were distributed throughout their members with the bulk milk from Texas and New Mexico; for every 10 cents the Western farmers received, it cost us $1.00. At that time, we still had base in the Southeast and we were in base building time. When I contacted Jim Carroll to complain, he asked me how I would feel about our milk leaving the Southeast. Of course, if it had left, we would have received almost nothing for our milk in the spring thus driving us out of business. I took this as a threat and asked him how he would feel about a lawsuit coming at him very fast. Our milk remained in the Southeast.

All this made me very curious as to the people we were dealing with. I researched the annual report of both Mid-Am and AMPI. Paying particular attention to plants owned by each Co-op. I called a young farmer that had relocated from Maryland named Kurt Williams.

He saw the same monopoly taking shape as I had seen.

Kurt and I worked tirelessly on trying to find new markets for our milk. Turner Foods had made a deal with AMPI, which would not allow Turner to add any Independent producers. Dean foods had a small plant in Murray, KY and they agreed to help us. I hosted the first meeting with Dean Food's representatives and many of the other farmers in our small area. Kurt and I were told by the representatives that AMPI had contacted Deans and threatened to cut supply to their New Mexico Plant if they met with us. Dean met with us all.

They agreed to take us on as independents as our contracts expired pay us our premiums and they did

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exactly as they stated. TN went from 90% Co-op to 90% independent during the next 2 years.

Markets were changing via the USDA and I contacted Rich McKee in Washington. Regions were consolidating adding a Mo. Cheese Plant thus lowering our class I utilization and our price.

DFA was formed by Mid-AM and AMPI merging.

Dean Foods already owned the Mayfield Dairy in Athens, TN., and then build another large plant just outside Atlanta, Ga. Prices began to fall again due to a supposed surplus of milk. Kurt and I asked our Dean Representatives if we could find a hauler, could we ship to their plant outside Atlanta. We were told no they had enough milk. That made little sense since we knew that the plant was running at 50% capacity, while they had more than enough market to run at 100%.

Kurt was constantly in touch with Maryland Virginia Co-op, as well as other CO-Ops east of us while I took the west and upper mid west to make contacts and find what was happening in those markets. I had never cut my ties with Vermont. I was extremely dismayed when I contacted Senator Leahy Washington Office to bring focus on the mushrooming cancer of DFA and was bluntly informed he was not my senator.

Suiza purchased with DFA Dean Foods. We found another small processor, Country Delight in Nashville run by Ernie Yates. He took our milk as independents. Within months, Suiza also purchased that plant. We were able to remain independent by received our milk checks via DFA.

The block vote was implemented, taking away the farmers voice.

First Kurt sold and returned to Maryland, and then we sold our farm in 2001 and returned to Vermont.

In 2004, insanity took over and we purchased our current farm in Bridport, Vt. We ship to Agrimark and are happy with them, but are holding on by our fingernails.

Joe Bavido went first to DFA in some sort of employment then on to oversee our national promotion dollars. How are they being spent to help the dairy industry?

Jim Carroll is some executive with DFA.

My health began to fail rapidly and is only recently recovering to where I am up to another challenge.

Kurt Williams, my dear friend has continued the cause, Lanco Penn I believe is the Co-op he formed which he told me last month is now 800 strong. I keep reminding him not to become infested with the greed and corruption that the other Co-ops seem to have caught.

Rich McKee told me one time we were moving towards a more technology based society. I asked him to look around his office and see the raw materials used to manufacture his furnishings and clothing. Economics 101 dictates everything begins with a farmer and a miner. If these industries are not healthy, the very foundation of your economy cannot sustain itself for long.

The Volstead act allows the creation of Co-ops as democracies. When working correctly they are a wonderful entity, but they fall between the cracks of all regulatory agencies that maintain a system of checks and balances. The farmers sign a contract to allow the Co-op to market his milk. He is responsible in that contract for all debts incurred by that Co-op, yet he cannot ask how much he and the other members are paying for salaries and bonuses?

CWT, again an off spring of DFA or DMS or DHG (all seem controlled by the same people just wearing different hats then trading them) does not work because the farmer can restock, while this has now been extended to 1 year, 5 years would be better.

MLC moneys maybe should be tied to lower production levels. Anyone taking Federal Dollars should have to cut their productions by x number percentage and have a milk base that the farmer owns neither the government nor his Co-op.

CCC needs to purchase surplus and use these purchases for disaster relief, food shelters, etc., again tied to a base production system. Items are far less corruptible then cash.

I do not have the answers, but I can tell you the system is reeking of corruption. FSA, as Fanny Mae and Freddy Mac are holding 80-90% guaranteed loans on farms. Unless milk rises quickly, the US Taxpayer will be sitting on a lot of land and buildings that with no capital debt at all, cannot be profitable at this time.
I have tried to make this as brief as I can. There is so much more I can tell. I Pray God will grant you the wisdom to fix this mess and the farmer the strength to continue to hang on.

Sincerely,

Caroline M. Longe

Caroline M. Longe
1178 Heitman Rd.
Bridport, Vt. 05734
(802) 758-2138

The milk pricing system does not work for the dairy farmer.
To survive the extremely low milk prices, my family has to:
  not take any time off
  reduce our health insurance to a $10,000 deductible
  not give to any charitable organizations
  reduce all purchase including groceries
  grow a bigger garden
The farms has had to:
  short cuts on on our cropping (reduce fertilizer, reduce number of cuttings, etc)
  if cows are sick or lame, we cull them because we can't afford vet bills
  short all animals on sawdust
  have not done any projects to make life easier
  many others.

We have cut corners every way possible and still our milk check is several thousand dollars short of paying our expenses and debt service.
We work from 4 am to 7 pm seven days a week (have taken one weekend off in the past year), and still am losing money.
Meanwhile large dairy corporations and dairy coops are reporting record profits. Something is not right. This is an sustainable scenario.

Respectfully,
Ed and Diane McGarry

September 23, 2009

Senator Patrick Leahy
Senator Bernie Sanders

Dear Senators Leahy and Sanders:

The urgency with which you convened the hearing September 19 2009 was heartening until one reflects that the dairy crisis is decades old and that government has had ample time, thus far without effect, to ameliorate it. While Bill Rowell, Paul Doton and Travis Forgues spoke eloquently, there was, amidst all the talk of Justice Department investigations and USDA review of the pricing system, not one word about whether modern dairy farming is sustainable; whether US dairy farming should be encouraged to produce milk for which there is no market; whether it should be allowed to draw so heavily from dwindling, finite world oil reserves making an outsize contribution to global warming; whether it is fair to Vermont's 600,000 people for farming to contribute so significantly to water pollution and natural resource degradation. In short, there was no discussion in St. Albans of whether there is any justification for Vermont dairy farmers to produce 2.6B lbs of milk, virtually all of it surplus, without social, political or economic underpinnings.

Farmers enjoy a position of indisputable respect among Vermonters and few if any would question that farming is integral to Vermont. Mr. Rowell's testimony would have moved anyone: acting in strict conformity to Vermont's Accepted Agricultural Practices, his 1200 cows produce 23M lbs of milk. With assistance from the "Cow Power" program he manages his waste stream by converting manure to methane to lower his electricity costs. But while his operation is extremely efficient and incredibly productive, he is on track to lose $1.4M this year. He noted ruefully that the national surplus—presumably originating from farms other than his own—fixes the price for 100% of his milk and he seemed to imply that the senators should adjust this feature of the FMMO pricing system. He did not mention that his farm alone produces 176% of total Vermont consumer demand, or that the application to his fields of petroleum-based nitrogen and phosphorous fertilizers and the corn and soybean supplements he imports from the Midwest to feed to his cows, are significant portions of his waste stream that are not "managed." That, notwithstanding his and other LFO efficiencies, Vermont's Accepted Agricultural Practices, the August 2002 Missisquoi Bay Agreement and Mr. Douglas' 2003 Clean and Clear Program, with tens of millions in federal funding to remediate their effect, is incontrovertibly how these pollutants arrived at and continue to build up in the lake. Who in Vermont, when the dairy industry produces little or no food for local consumption and when the farmers are themselves losing hundreds of millions, stands to gain by the continuation of these practices? In other words, might not this be the time to consider whether conventional dairy farming meets the priorities of any of state's constituents, including the farmers'?

Yes, the milk processing industry enjoys far too much channel power and a justice department investigation into the relationship between Dean Foods and the "farmer-owned" coops is overdue. Yes, the FMMO pricing system is antiquated and overly complex. But these are symptoms not causes of the crisis: dairy farmers all over Europe are also protesting low milk prices, dumping milk in their fields far from the influence of Dean Foods, American coops and the US government pricing system: obviously, some other factor is responsible for low milk prices.

That factor is a perennial imbalance between supply and demand. And while the grossly unfair, federally mandated 15¢ check-off, costing US dairy farmers $200 million a year, has failed to arrest US per capita milk demand from eroding steadily for thirty-five years, the federal government, if only by passive complicity, has abetted the consolidation of farms in growing the milk supply topping in 2008 190B lbs. It is for these reasons the more remarkable that the high point of Saturday's meeting was the near unanimous affirmation by the farmers present to Senator Sanders' question asking how many now believed that "some sort of" supply management is necessary.

But the question should have been, if it is to be organized by government, will supply management favor the interests of consumers or farmers and if the latter, which farmers, the large, the small and medium or the organic? These all have different cost and profit schedules; and since government's interest is a sufficient surplus of milk to ensure that the consumer price will not be affected, government favors milk made efficiently on large farms in spite of the acknowledged fact that large, efficient farms pollute the lake.

Large farmers and their production associations are keen to adopt the "Growth Management Plan" proposed by Cornell University and the Holstein Association. Putting momentarily aside that the entire supply problem could be corrected by first getting rid of the production-boosting Holstein cow, the plan has three serious flaws.

1) The plan sets a production base [not to be confused with a quota] for individual producers and marginally rewards those who stay within it. But the plan allows progressive farmers to expand if they pay a fine. Only large farmers will pay to over produce ensuring that the net result of the plan, industry wide, will be controlled growth. The authors of the plan appear to endorse the trend that has brought dairy farming to its present state, consolidating production off millions of small "inefficient" farms to a few thousand large "efficient" farms. Simply put, for an industry choking on over capacity, no plan that in its very first word enshrines the concept of "growth" can possibly cut supply. And it does not intend to.

2) The Holstein plan, to be effective, must be universally adopted and mandatory. It requires farmer consensus and government support. Farmers have long rejected supply management, first because consolidation and expansion have been the farmers' only reliable model for survival and second because the largest farmers, who can weather periodic recessions, can continue production while their smaller brethren fall away. But this crisis has done what no previous recession has been able to do: $11/cwt milk has brought even the largest, most efficient farmers to the table.

And (3), government and farmer consensus will both take months if not years to achieve. Long before that, the market will have done for all the dairy farmers in the northeast. Let us all be crystal clear on this point: no democratically elected government official, appears he or she ever so supportive of farmers, is going to implement a program that disadvantages consumers, who comprise 99% of constituents to help the other 1% the farmers. If government, which wants only to assure consumers of a steady supply of cheap milk, mandates supply management, supply will be reduced just enough, let us say 1-1.5%, to nudge farm prices up $1-2.00/cwt. That will satisfy large farmers and keep consumer prices low. But it will exacerbate water pollution problems and let small to medium farmers go to the devil. If, on the other hand, farmers were themselves to organize supply management to favor the interests of the small and the large alike, they would reduce supply by a minimum of 5%, or 9B lbs. With consensus implemented and enforced by their coops and handlers, supply reduction could be effected if all farmers would voluntarily ship 500,000 sick and under performing cows, raising the allowable somatic cell count in milk shipped to US plants from its current 750,000/ml to 200,000/ml. Farm prices would immediately rise above $23/cwt, retail prices would double and consumers would get a cleaner product.

In conclusion, no one should expect the government to intervene in time or with sufficient motivating force to save the dairy industry. Or at least no one should expect that dairy farming will survive 2009 in anything like its former configuration. It is simply not within anyone's competency to restore Vermont dairy farming to viability: there is way too much capacity in the industry, far too much milk in the market, too little consumer demand, to little time, too little political will and virtually no money.

Respectfully,

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Dear Senators Leahy, Schumer, Sanders, Klobucher, Shaheen, Casey, Udall, and Mr. Johnson:

Today's hearing, nominally convened for the purpose of investigating the role of Dean Foods in causing prices paid to dairy farmers to fall below the cost of production, is a grand if not belated exercise but a misprision designed not to correct an injustice by industry or entrenched government bureaucracy against farmers but a cover to avoid tackling the problem at its root, which is over production. If the problem were attributable to Dean Foods or as we so often hear to an antiquated Federal Milk Marketing Order System, it must be explained why dairy farmers all over Europe, where neither Dean Foods nor the FMMO have any influence, are complaining of the very same problem with low prices, dumping milk en masse and similarly demanding more government support? I suggest that the senate, the NMPF and the USDA redirect their efforts to introduce programs that impose strict and effective limits on milk production, not 1 or 2%, so as to protect low consumer prices, but 5% or 9B lbs, to equal consumer demand. The quickest, fairest and most effective means to this end would be to lower the allowable somatic cell count in milk shipped to US plants from 750,000/ml, its present level, to 200,000/ml, not to 450,000/ml as has been suggested so as to protect low consumer prices. This change could be implemented by USDA immediately and it would benefit farmers, whose prices would instantly rise, to consumers, who would get cleaner milk. Long-term, I suggest that steps be taken to phase out of use various tools that were adopted to raise production but which lower prices: rBST, petroleum-based fertilizers, herbicides and pesticides, antibiotics, Lutalace, artificial insemination etc.
Cutting production by this method would achieve a panoply of important national and international goals: restore farming's viability in countries where American surplus food is routinely dumped, lower agriculture's outsized dependence upon oil with its worrisome contribution to global warming and remove the main source of phosphate and nitrogen pollution from our lakes and streams. It would also return local small and medium-scaled farming to profitability in rural America and finally shift the full cost of milk production off the government and onto consumers where it belongs.

Incidentally, the organizers of this hearing have either misunderstood or misused the term "Sustainability," which does not mean assuring the endurability of an antiquated business model irrespective of all other sociopolitical and economic considerations but striking a balance between inputs and outputs on a farm or in an entire farming system with respect to all other sociopolitical and economic considerations.

Respectfully,

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Dear Commissioner Soares, Commissioner Merrill and Secretary Allbee:

I thought of you all this morning as I came across this simple, remarkable idea from a New Zealand wool company: http://bit.ly/iEU7w
The idea is that before retailers ask consumers to pay a little extra, they must be provided assurance that producers are receiving a living wage. That condition, i.e., a living wage, has to be in place before the Fair Trade label is presented. One cannot simply affix the label without first organizing a farming system that provides a living wage to the farmers. This condition does not obtain in the Vermont dairy industry except notably in the organic sector.

One more thing: in the announcement for "Crisis On The Farm: The State Of Competition And Prospects For *Sustainability* In The Northeast Dairy Industry" you have either misunderstood or misappropriated the term "Sustainability," which does not mean having the strength or determination or resilience in adversity to endure. It means that the farm or farm system in question balances inputs like energy, soil nutrients and minerals with outputs, crops, milk, cheese, such that from an ecological standpoint the farm does not consume 4x or 10x more than it yields, that it does not depend for its long term survival upon for example importing from off the farm or outside the farm system a finite resource like corn and soybean supplements grown in Iowa or petroleum-based fertilizers and herbicides manufactured in Alabama, in order to produce milk.

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Dear Senators Sanders and Leahy: The solution to the Vermont dairy crisis is to contract agriculture to balance local demand. The industry has far too much capacity which is how they over supply their markets and why their prices are so low and why the lake is polluted. James Maroney

The New York Times
September 24, 2009
Letters

How to Stop Contaminating the Water

To the Editor:

Re "Health Ills Abound as Farm Runoff Fouls Wells" ("Toxic Waters" series, front page, Sept. 18):

Your article shines light on a persistent problem, the contamination of drinking water by manure, but your sources offer the wrong solution. They maintain that new laws are needed to force farmers to clean up animal waste contamination.

But effective laws, already on the books, are pitifully underenforced by the Environmental Protection Agency. Its administrator, Lisa P. Jackson, admits that the E.P.A.'s clean water enforcement programs have fallen far short of expected effectiveness.

The grace period for hand-wringing and time-wasting is long over, and the last thing we need is more time spent trying to solve problems for which there are already solutions. As your article notes, a strong farm lobby has prevented action on Capitol Hill. This makes new legislation a difficult proposition. It's also perhaps unnecessary.

Simply put: The power of law is there; what the E.P.A. needs is the will to act.

Hannah Connor
Staff Attorney
Waterkeeper Alliance
Irvington, N.Y., Sept. 18, 2009

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To the Editor:

I am a dairy farmer about 30 miles from the farms that were the subject of your article. There is an alternative way to dairy farm — it's called managed grazing. It's a lot more environmentally friendly than the confinement farms run by my friends and neighbors.

On our farm, dispersing cows on thick, perennial pastures keeps manure from running off or contaminating wells. In winter, our cows' manure is composted, not liquefied and spread.

Two forces drive farmers toward confinement systems: millions in federal money is available to dig those big manure pits, and farmers want to get large enough to afford hiring a farm manager so they can take a day (or weekend) off once in a while.

While grazing is growing as an alternative farm management system, it is hampered by a playing field tilted toward confinement by our federal farm bill.

Valerie Adamski
Seymour, Wis., Sept. 19, 2009

The writer is executive director of GrassWorks, an organization that promotes managed grazing.

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To the Editor:

It's mind-boggling that in spite of overwhelming evidence that the consumption of animal products is directly responsible for a host of human diseases, greenhouse gas production and indescribable animal suffering, the general public continues to satiate its taste buds and support factory farming.

Instead of complaining about it, we need to examine and revise our own diets. A plant-based diet is better for human health, the environment and, obviously, the animals.

Rina Deych
Brooklyn, Sept. 20, 2009

The writer is a registered nurse.

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To the Editor:

Thank you for covering the important issue of protecting our drinking water from pollution. But the article barely addressed one key solution to this problem.

EcoCombustion Energy Systems, located in Brown County, Wisconsin, the region your article focuses on, has developed the Elimanure system on a 2,000-head dairy farm. This system dries the manure, burns it and generates up to 600 kilowatts of renewable energy capacity, enough to power 600 homes. The manure volume is reduced by 98 percent, and the remaining ash byproduct is a fertilizer. Nitrogen is returned to the air, and all harmful pathogens are killed.

This system is a win-win for the farmer and neighbors and produces needed renewable energy. It offers a comprehensive solution to the animal waste problem.

Paul J. Schneider
Brett Hulsey
Kaukauna, Wis., Sept. 18, 2009

The writers are, respectively, chief executive of EcoCombustion Energy Systems and president of Better Environmental Solutions.

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To the Editor:

How irresponsible it is to spread manure on frozen ground and let the runoff pollute streams and wells, one might think. Little known to the nonfarming community is the reality: few farms have adequate resources to build lagoons of sufficient size to store manure for more than six months. Spreading manure is not by choice, but by necessity, because of the limited storage capacity.

Technological solutions are possible to handle manure in an environmentally sound way. Anaerobic digestion and pyrolysis both produce renewable energy while destroying infectious agents in manure. But deployment of such technologies is beyond the means of most dairy farmers.

Compared with the price of many beverages, milk is a bargain. Consumers must be willing to pay more for milk or support policies that foster technology development and adoption. Environmental regulations alone will simply drive more farmers out of business.

Let's not forget that the 41,000 cows in Brown County produce milk as well as byproducts like cheese and butter that are indispensable to our daily lives.

Zhengxia Dou
Kennett Square, Pa., Sept. 19, 2009

The writer is an associate professor at the University of Pennsylvania School of Veterinary Medicine.

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To the Editor:

Your article about contaminated rural groundwater was well researched but fell short of a comprehensive snapshot by omitting reference to antibiotics and the attendant antibiotic-resistant bacteria that are routinely found in cattle and swine manure lagoons.

Antibiotics of both the human and animal variety can attain therapeutic levels in such muck, a testament not only to the astoundingly high levels administered to animals whose tissue and milk will arrive shortly on our dinner tables, but also to their ability to persist outside the animal's body and potentially in groundwater — again with the resistant bacteria.

Paul Mack
Warrenville, Ill., Sept. 18, 2009

The Honorable Patrick J. Leahy
United States Senate Judiciary Committee
Dairy_Hearing@Judiciary-dem.senate.gov

September 29, 2009

Dear Senator Leahy,

I am pleased to submit written testimony as part of the official record for the Senate Judiciary Committee's oversight hearing held in St. Albans, Vermont on September 19, 2009. I am Ralph McNall, dairy farmer and member of the St. Albans Cooperative Creamery, Inc.

I operate a one-hundred cow dairy in Fairfax, Vermont with my two sons, David and Glenn. Our family farm in Fairfax has taken a lot of pride in producing high quality milk for the past 38 years. I serve as the president of the St. Albans Cooperative Creamery, Inc. and have been involved in many aspects of the dairy industry over the past 20 years.

As a dairy farmer I recognize the importance of the Capper Volstead Act. This Act authorizes various kinds of agricultural producers such as me to form voluntary co-operative associations for purposes of producing, handling and marketing farm products - that is, it exempts such associations from the application of the antitrust laws. Under this authority cooperative associations can be formed and are an organized extension of dairy farmers to leverage their marketing and purchasing power. Cooperatives are led by Boards of dairy farmers that are elected by the membership. Cooperatives are responsible for marketing and manufacturing milk and milk products desired by their customers and ultimately consumers. They often own and operate manufacturing plants that assist in balancing the market when there is an oversupply of milk. In addition, cooperatives provide many services to their members such as laboratory testing, field service, risk management programs and programs to reduce farmers input costs. None of the benefits farmers receive from cooperative membership would have ever been made available if it were not for the Capper Volstead Act, which was passed into law back in 1922.

As the Committee well knows, dairy farmers are facing the most difficult times that they have experienced in my many years in the business. As a result of troubling global economic conditions, the U.S. dairy industry is estimated to have a milk surplus of approximately 6.5 billion pounds of milk. Our dairy farmer leaders have been working diligently to improve market conditions so that milk prices can return to levels that, at a minimum, cover a farms operational cost.

Unfortunately, the current supply and demand imbalance, both domestically and internationally, is not in our favor at the moment. We are in a global marketplace. The levels of imports and exports from the U.S. have a greater impact to today's dairy industry and farmer pay prices. When exploring opportunities to improve the industry we must consider U.S. trade policy. We must also keep in mind that not all trade agreements bring a benefit to dairy farmers.

Our dairy policy is national in scope and does not account for regional differences or ensuring minimum levels of dairy production in all regions of the U.S. This creates many challenges in bringing dairy farmers and farmer organizations together to develop solutions with such a diverse number of stakeholders in the industry.

Producers throughout the U.S. have different competitive advantages based on their geographic location. As a Northeast dairy industry we need to continue to work to make adjustments to the Class I price and changes to the pricing structure that would fully account for higher feed costs in the region. I would ask that the Committee consider new pricing formulas for Class I milk. These new formulas could set a minimum Class I price or could establish a minimum price based on the Consumer Price Index (CPI) or on a dairy farmers cost of production. This would provide an opportunity to create more stable pricing to dairy farmers and consumers. I believe that the Class I price should not be dictated by the production of commodity dairy products. The current financial crisis, which is a result of low milk prices, can be attributed to both the pricing structure and the excess production and inventory that are over the current demand for dairy products.

I believe that the Northeast dairy industry has demonstrated leadership, collaboration and innovation in representing the interests of dairy farmers. We work with our Congressional Delegation, Commissioners and Secretaries of Agriculture, dairy farmer groups and organizations working on behalf of dairy farmers. The Northeast is unique and well organized. We need other regions of the country to come together and be willing to become engaged in discussing possible solutions that will benefit all dairy farmers.

The U.S. dairy industry needs to work together if we are going to make sweeping changes to the milk pricing system. I am committed to working with others in identifying and making changes to our milk pricing system that will create greater stability and farm viability to ensure that we have future generations on the family farms that have provided so much to our State and National economies. This is possible if dairy farmers take a united stance and we get the support of USDA and Congress to enact change.

I would again like to thank the Committee for the opportunity to submit this written testimony.

Sincerely,

Ralph McNall

Ralph McNall

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September 19, 2009

Honorable Sen. Leahy
Members of the Senate Committee of the Judiciary

The consolidation, in the late 1990's, of the fluid milk bottlers in Federal Milk Order #1 has caused harm to St. Albans Co-op producers! The lack of competition has kept prices too high in the retail stores when farm prices are at below rock bottom. More milk would be sold if the retailers would lower their prices. If more fluid milk were sold in Order #1 the blend price in the Order would be much higher. St. Albans Co-op could not but is working on receiving fuel surcharges hence at this time the farmer pays them.

The consolidation leaves only a few choices...not healthy competition. (Oligopsony: Very few buyers, possibly collusive for large number of sellers; control of the purchase of a commodity or service in a market by a small number of buyers.)

I am in agreement with some of the studies done by Ronald Cotterill, Food Marketing Policy Center.

Monopsony: existence of one buyer forcing sellers to accept a lower price than the socially optimal price.

I have operated a farm with my wife and daughters for 32 years. I have been on the St. Albans Co-op Board for 17 years.

Respectfully,

David R. Montagne

NAJ Equity Newsletter August 2009

Vol. XXXV, No. 5

Nonfat Solids Standards for Fluid Milk

As low milk prices extend into the second half of 2009, producers and dairy organizations are taking closer looks at policy and programs to fix current issues and prevent longer-term problems. Interestingly, one of the best options available may also be one of the oldest: raising the minimum solids-not-fat (SNF) standards for fluid milk.

Minimum standards for the majority of the U.S. are 8.25% SNF for fluid milk at retail. In 1962, the state of California first adopted higher minimum standards, which today are 8.7% SNF for whole milk, 10% for reduced fat (2% fat) milk, 11% for low fat (1% fat) milk and 9% nonfat solids in skim milk. Table 1 illustrates the differences between the national and California minimum solids standards and the resulting differences in protein and calcium content.

When National All-Jersey Inc. initiated Project Equity in 1976, higher minimum standards were one of its cornerstones. Numerous organizations have advocated for higher standards in past decades, with Congress requesting reports on the impact of increasing standards nationwide in both the 1980s and 1990s. There was a provision in the dairy title of the 1996 Federal Agriculture Improvement and Reform Act, but it was removed after opposition from dairy processors through the International Dairy Foods Association (IDFA). In 1999, the National All-Jersey Inc. (NAJ) board of directors adopted their current resolution advocating higher nonfat standards for fluid milk that remains in place today. A more recent attempt at a nationwide standards increase was thwarted when record-high product prices made fortification too costly.

Table 1

	Nonfat Solids		Protein		Calcium	
	Federal	California	Federal	California	Federal	California
Whole Milk	8.25%	8.70%	7.5 g	7.9 g	261 mg	276 mg
2% Milk	8.25%	10.00%	7.5 g	9.1 g	261 mg	317 mg
1% Milk	8.25%	11.00%	7.5 g	10.0 g	261 mg	348 mg
Skim Milk	8.25%	9.00%	7.5 g	8.2 g	261 mg	285 mg

The Impact of Higher Standards

While 8.25% SNF is the minimum required by federal standards, the vast majority of milk produced in the U.S. exceeds this level. Fluid processors remove butterfat from farm milk to bring the retail product within the allowable ranges for butterfat. However, they are not in the practice of removing SNF from farm milk to adjust bottled milk down to the minimum allowable nonfat solids levels. As a result, most milk sold in the U.S. has SNF levels that fall between the federal and California minimums.

To illustrate, 2008 Class I sales through plants operating in the Federal Milk Marketing Order (FMMO) system are estimated to have averaged 8.78% SNF. Whole milk sold in FMMOs exceeded the California standards, and skim milk was within 0.22% SNF of the higher levels. Only reduced fat and low fat milks would require significant SNF fortification to meet higher nationwide standards.

Fluid milk can be fortified using either nonfat dry milk or condensed skim milk, with condensed skim preferred by processors. Earlier this year, independent analyses done by Western United Dairymen and Dairy Farmers of America estimated an additional 280 million to 300 million pounds of nonfat solids would have been required in 2008 to fortify FMMO 2% and 1% milks to the California standards. That equates to approximately 3.5 billion pounds of producer milk, or roughly 2% of U.S. annual production.

Improved nutrition is the primary reason to increase the SNF in bottled milk. Compared to FMMO Class I sales, California reduced fat milk (2%) has a 14% advantage in protein and calcium per serving. Low fat (1%) milk has a 25% advantage in protein and calcium over FMMO milk. According to the USDA, 70% of teenage boys do not have enough calcium in their diet. That number jumps to 90% in teenage girls. The dairy industry has programs working to boost consumption among children and teens, and increasing the nutrition in each serving of milk could accelerate that success.

Along with improved nutrition, academic studies show consumers prefer the taste of milk with higher solids. J.E. Devero of the United Dairy Industry Association found an increase of solids-not-fat had a greater taste impact compared to additional fat, and products with added nonfat solids were preferred to average market products because of "cleaner, sweeter flavor."

From a policy side, fortifying fluid milk would move more milk solids into bottling plants, resulting in less nonfat dry milk being produced by balancing plants. In times of depressed prices, the government's Commodity Credit Corporation would purchase less nonfat dry milk, resulting in less taxpayer expense for buying and storing excess product.

Processor Perspective

Fluid milk processors have historically opposed increasing minimum nonfat solids standards. The primary concern is the additional cost for the condensed skim itself and the plant equipment required to store and handle it. When implementing higher standards, California instituted a fortification allowance through their producer pool to credit processors for part of the additional handling and product cost. The cost-sharing arrangement with producers lessens processors' total cost obligation while still giving producers the market signal to produce more milk solids.

Another processor concern is that higher SNF standards would result in higher retail milk prices. A California Department of Food and Agriculture (CDFA) survey in 2002 found that California retail milk prices were competitive with milk prices in the rest of the country. California prices for higher solids milk were neither the highest nor the lowest prices for reduced fat milk.

Higher milk prices could also strain USDA nutrition program budgets. However, if higher SNF standards lead to lower CCC nonfat dry milk purchases, that money could be diverted to nutrition programs and targeted for milk purchases.

A newer processor concern is that additional solids would raise the calorie content of fluid milk at a time when the dairy industry is fighting to keep good-tasting flavored milks within calorie and sugar content guidelines for schools. While the calories may increase, so do the levels of protein and calcium, providing students with a better nutrient package. The National Dairy Council through the Nutrient Rich Foods Coalition is working to move consumers beyond simply counting calories to making sure those calories are nutrient rich.

Processors also point out that some bottlers have produced higher solids or higher protein milks as specialty products. None of these specialty milks have captured significant market share, therefore processors assume consumers have voiced their preference for basic milk. However, specialty milks are usually priced significantly higher than conventional milk; higher minimum standards would not increase price to the level of these specialty products.

The Next Steps

Higher minimum nonfat solids will not fix all the dairy industry's current problems, but now is the time to raise the standards. Consumers will get more nutrition and taste from each glass of milk at a time when a majority of teenagers are calcium deficient. Higher demand for milk solids will also decrease the product surplus being purchased and stored by the government.

NAJ will partner with industry organizations to raise minimum standards through regulation. In addition, NAJ members need to ask their co-op boards and members of Congress to support the issue and to work toward its adoption. NAJ will also work with processors to demonstrate the added nutrition and flavor in All-Jersey® milk. Higher solids milk leads to higher profitability for processors, higher nutrition and taste for consumers, and more demand for high solids farm milk.

NCFC.

NATIONAL COUNCIL OF FARMER COOPERATIVES

NATIONAL COUNCIL OF FARMER COOPERATIVES
STATEMENT SUBMITTED TO THE
SENATE JUDICIARY COMMITTEE
ST. ALBANS, VERMONT

September 19, 2009

The National Council of Farmer Cooperatives (NCFC) appreciates the opportunity to submit this statement in response to the field hearing, Crisis on the Farm: The State of Competition and Prospects for Sustainability in the Northeast Dairy Industry.

Since 1929 NCFC has represented the interests of America's farmer cooperatives. There are nearly 3,000 farmer cooperatives across the U.S. whose members include a majority of our nation's more than two million farmers. We believe farmer cooperatives offer the best opportunity to achieve farmer-focused agricultural policy because farmer cooperatives allow individual farmers the ability to own and lead organizations essential for continued competitiveness in both the domestic and international markets.

America's farmer-owned cooperatives provide a comprehensive array of services for their members. These diverse organizations handle, process and market virtually every type of agricultural commodity produced. They also provide farmers with access to infrastructure necessary to manufacture, distribute and sell a variety of farm inputs. Additionally, they provide credit and related financial services including export financing. Earnings derived from these activities are returned by cooperatives to their farmer-members on a patronage basis thereby enhancing their overall farm income.

America's farmer cooperatives also generate benefits that strengthen our national economy. They provide jobs for nearly 250,000 Americans with a combined payroll of over $8 billion. Many of these jobs are in rural areas where employment opportunities are often limited.

Farmer cooperatives are an essential part of the agricultural economy because, acting independently, individual farmers are too small and too numerous to deal effectively with larger agribusinesses in the supply, processing, and marketing sectors of agriculture. Like today, these problems were prevalent in the late 19th and early 20th centuries, when American farmers first joined forces to form cooperative associations. However, because some of those activities would subject farmer cooperatives and their members to criminal antitrust enforcement, the Capper-Volstead Act was enacted in 1922. The Act gives agricultural producer organizations limited antitrust immunity "in collectively processing, preparing for market, handling, and marketing" their products, and permits such organizations to have "marketing agencies in common." (7 U.S.C. § 291.)

The Act does not give unlimited antitrust immunity. The Secretary of Agriculture has authority to prevent cooperatives from using their market power to unduly enhance the price of the products they market. Subsequent decisions have made clear that agreements between cooperatives and non-cooperatives are subject to the antitrust laws and that in order to receive Capper-Volstead protections, the cooperative's voting members must be producers.

The protections provided by the Capper-Volstead Act are essential to the economic well-being of farmers in today's economy. Indeed, the Capper-Volstead Act frequently is referred to as the Magna Carta of farmer cooperatives. Without limited antitrust immunity for cooperatives, family farmers would find it more difficult to compete in a business economy in which farmers lack bargaining power in dealing with relatively few, large buyers, and would lack the ability to integrate into agricultural processing to compete with those entities.

Congress also has declared its support for agricultural production and cooperatives through the Agricultural Marketing Act of 1939. In that Act, Congress declared the policy of Congress to be:

> [T]o promote the effective merchandising of agricultural commodities in interstate and foreign commerce so that the industry of agriculture will be placed on a basis of economic equality with other industries, and to that end to protect, control, and stabilize the currents of interstate and foreign commerce in the marketing of agricultural commodities and their food products . . . by encouraging the organization of producers into effective associations or corporations under their own control for greater unity of effort in marketing and by promoting the establishment and financing of a farm marketing system of producer-owned and producer-controlled cooperative associations and other agencies. 12 U.S.C. § 1141(a).

Congress further supports associations of agricultural producers through the Agricultural Marketing Agreement Act of 1937, 7 U.S.C.§ 608b-c, which grants the Secretary of Agriculture authority to enter into marketing agreements with associations of producers and to thereby help stabilize market conditions and assure consumers of adequate supplies of commodities. Marketing orders for dairy, poultry, fruits, vegetables, and livestock currently are in place.

The benefits of agricultural cooperatives are so self-evident that each of the fifty states has enacted legislation authorizing the cooperative form of organization and providing limited immunity from the state's antitrust laws. This is not a case of a narrow interest group obtaining some immunity at the federal level -- it is well-established and longstanding federal and state policy in recognition of the unique characteristics of agriculture.

As an organization with many dairy cooperative members, we share the widespread concern over what current market conditions are doing to the economic viability of this country's dairy farmers, and we support a broad range of policy efforts at the national level to help address this crisis. However, the staggering economic hardships currently being experienced by dairy farmers are not related to the limited antitrust immunity provided to farmer cooperatives. Milk prices are set by the federal marketing order and subject to the classic economic influences -- supply and demand. Removing the limited antitrust immunity provided by the Capper-Volstead Act would not change the basic economic conditions at work in determining milk prices and, in fact, would damage farmers' ability to join together to market their product.

Repealing the Capper-Volstead Act would do irreparable harm to the nation's dairy cooperatives. Especially in these trying economic times, dairy cooperatives are providing essential services to their members. As the U.S. Department of Agriculture has recognized:

> The Nation's dairy cooperatives have shown their ability to successfully adapt to changes in the marketing environment and offer a wide variety of avenues for dairy farmers to market their milk. Their success has allowed milk producers to maintain the independence of their farm firms. Thus, in contrast to some other livestock sectors, dairy farmers have been able to maintain their autonomy while gaining some "muscle in the marketplace" through their cooperatives. *USDA, Cooperatives in the Dairy Industry, Cooperative Information Report 1, Section 16 (Revised September 2005).*

<u>Conclusion</u>

Thank you for the opportunity to share our views. NCFC looks forward to working with the Committee to address the ongoing crisis in the dairy industry. We appreciate this statement being included in the official hearing record.

Dear Senators Leahy and Sanders: Anyone who believes the dairy crisis is due to anything other than over supply or that the dairy industry will as usual heal itself as prices recover at cycle's end, should read the story at this link and think very carefully about what effect this technology, when added to all the other production-boosting technologies already in the dairy business model, will have upon our little corner of the world.

http://www.nytimes.com/2009/09/29/business/29dairy.html

September 29, 2009
The New York Times

From Science, Plenty of Cows but Little Profit

By WILLIAM NEUMAN

HANFORD, Calif. — Three years ago, a technological breakthrough gave dairy farmers the chance to bend a basic rule of nature: no longer would their cows have to give birth to equal numbers of female and male offspring. Instead, using a high-technology method to sort the sperm of dairy bulls, they could produce mostly female calves to be raised into profitable milk producers.

Now the first cows bred with that technology, tens of thousands of them, are entering milking herds across the country — and the timing could hardly be worse.

The dairy industry is in crisis, with prices so low that farmers are selling their milk below production cost. The industry is struggling to cut output. And yet the wave of excess cows is about to start dumping milk into a market that does not need it.

“It’s real simple,” said Tony De Groot, an early adopter of the new breeding technology, who milks 4,200 cows on a farm here in the heart of this state’s struggling dairy region. “We’ve just got too many cattle on hand and too many heifers on hand, and the supply just keeps on coming and coming.”

The average price farmers received for their milk in July was $11.30 for 100 pounds, down from $19.30 in July 2008. The retail price of milk has not dropped as much, but it is down 24 percent in a year, to an average of $2.91 a gallon for milk with 2 percent fat.

Desperate to drive up prices by stemming the gusher of unwanted milk, a dairy industry group, the National Milk Producers Federation, has been paying farmers to send herds to slaughter. Since January the program has culled about 230,000 cows nationwide.

But the sorting technique, known as sexed semen, is expected to put 63,000 extra heifers into milk production this year, compared with the number that would be available if only conventional semen had been used, researchers estimate.

That number will jump to 161,000 next year, and farmers fear it could double again in 2011. While that is a fraction of the 9.2 million milk cows nationwide, the extra cows this year and next could roughly equal those removed from production by the industry's culling program.

Economists expect milk prices to recover only gradually, which has farmers worried about the impact of so many extra heifers and the milk they could produce.

"Just as the industry starts to recover from these difficult times, we're going to see these heifers enter the marketplace," said Ray Souza, president of Western United Dairymen, which represents farmers who produce about 60 percent of the milk in California. "At the very worst it could certainly stop the recovery altogether and send us into another price recession."

The sorting technology relies on slight size differences between the Y chromosome, which produces male offspring, and the X chromosome, which produces female offspring and has a slightly larger amount of genetic material, or DNA.

After it is collected from a bull at a stud farm, semen is mixed with a dye that sticks to DNA. A machine detects the extra dye sticking to X chromosomes and sorts the sperm. The sorted semen is frozen and sold to farmers who use it to inseminate their livestock.

(A fertility institute outside Washington is studying whether the same technique can be used safely in people. If it won approval from the Food and Drug Administration, the technology would let parents choose their baby's sex.)

When the technology was first marketed widely to farmers in 2006, it represented a long-awaited breakthrough, and was embraced because global milk demand was outstripping supply.

A typical Holstein herd using conventional breeding methods will produce 48 percent female offspring and 52 percent male. The male calves are usually sold for little money to be raised as meat, and the females are raised as milk producers. But the sorted sperm produces 90 percent or more female offspring, allowing farmers to expand their herds more efficiently.

At Mr. De Groot's farm on a recent afternoon, a worker removed a slender pink tube of sexed semen from a liquid nitrogen canister, where it was kept frozen. He passed it to a colleague who inserted it into a heifer's body. The cow munched on feed, seemingly oblivious. If the insemination took, her calf would almost certainly be female.

The technology's impact is being felt now, at the depths of the dairy industry's hard times, because of the long lag time in raising cows born of sexed semen to the point that they have calves of their own and thus enter milk production.

Mr. De Groot, 74, first turned to sexed semen during the long economic boom because he wanted to expand his herd.

"When the world was short of milk we were all told, 'We need more milk!' Everybody was crying for more milk," he said in his farm office, decorated with trophies for the high quality of his milk.

But his plans were interrupted by the economic crisis, which caused booming dairy exports to dry up and curbed demand at home, sending prices tumbling. At the same time, feed costs remained high, squeezing farmers from both sides.

Mr. De Groot, who has used the technology with only a portion of his livestock, estimated that he would get up to 350 additional heifers a year by using sexed semen. But he cannot expand his herd because dairy processors will not buy the extra milk.

So for the time being, as the sexed semen offspring come of age, he will put them into the herd in place of lower-producing animals. That will drive up output too, though not as much as expanding the total number of cows.

Scott Bentley, dairy product manager at ABS Global, in DeForest, Wis., a major producer of sexed semen, said that in the long run, the technology should be a boon. But first, the industry has to get through its worst economic crisis in decades.

"This is a really exciting thing," Mr. Bentley said of the technology. "And this is very difficult times. And you combine the two and realize it didn't work as well as we hoped."

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>Crisis on the Farm
>
>We are second generation dairy farmers residing in Franklin County, Vermont. Since childhood, my husband has worked the land that he loves. After the sudden loss of his father, my husband and his mother worked the farm together for the next 18 months prior to us purchasing the farm from her in January of 1996. As our family expanded, we expanded our farm from 60 milkers to where we are at today, 180 milkers. The additional cows enabled us at the time to hire an employee and allowed my husband a day off per week to spend time with our family.
>
>Fast forward to 2009, our children are growing up and they spend time in the barn with their father. The children are learning their way around the cows and equipment, learning a work ethic that will carry them into adulthood. At their young age, they have experienced what many kids never will, the excitement of watching a newborn calf make its way into the world, the disappointment when the calf doesn't make it. They learn the circle of life, how to be a caretaker of the land.
>
>The American Farmer is starving to death. The United States is spending billions of dollars taking care of the people of other countries but is not helping it's own, the dairy farmers of the United States.
>
>The backbone of the United States is agriculture. Every day, American Farmers produce the food that feeds America. Then with their profits they spend money in their communities. In my opinion, part of the collapse of the national economy is a direct result of farmers not receiving a fair price for their product.
>
>Farmers don't have the luxury of down time. The cows need to be milked every day on a set schedule and crops need to be harvested when they are ready. In order to accomplish this, they need equipment that does not break down and employees to run that equipment. Therefore, farmers are willing to invest their money in new equipment and not have to worry about having old equipment that is prone to breakdowns. This cannot happen when they do not have the money to support the purchase. When the money is not there, this creates a detrimental effect on the local economy.
>
>Since the late 1990's, more specifically, when the change in the milk pricing system occurred, the volatility in the milk price has had a horrific effect on the Nation's agriculture community. We have experienced significant lows that have required us to borrow against our equity and have unpaid bills and then a full swing to extreme high prices. The higher prices never seem to last long enough to pay off the debt incurred during the lows.
>
>During the last year farmers have seen once again unprecedented low milk prices. During this same time period, Dean Foods has recorded record profits. These profits have come at the expense of the farmers and also the consumers. The American consumer is still paying over $3.00 per gallon of milk when the famer is receiving less than $1.00 per gallon.
>
>Dean Foods and H.P. Hood have the majority of the fluid milk market in New England. Dean Foods controls approximately 70% of the market. Why is it that in other industries monopolies at not allowed, but that doesn't hold true in the

dairy industry? Dean Foods was asked to come to Vermont and speak, they refused, what cowards.

>

>On our farm, we are barely hanging on. At any moment, the straw that breaks the camel's back could happen. We have watched friends and family make the difficult decision to leave farming, thus having to leave their home. For some of them it was the end of a dream, a dream of working side by side with their young sons, teaching them the way that their father taught them on that same farm. I don't know what the future holds for our farm, whether I will be in my home a year from now or not. For us, it is not only a farm that we may lose, but our HOME, as our home is on farm property, the only home that my husband and children have ever known.

>

>I thank you for the opportunity to submit this. For us, these last few years have been very stressful on our marriage, health and our children. The children are not immune to this, they know how tough it is, and it affects them too. I dread the day the milk check comes in the mail because I know I have to figure out whom to pay, who not to pay. Yesterday the milk check came in the mail, the pay price, $11.78 per hundred weight. Roughly the same price as decades ago.

>

>Lynn Paradis

>Vermont

>

Mr. Maroney

Its a concise analysis of the problem and the macro solution. Now lets get down to the nitty gritty. How do we decide which farms should not be producing milk? Ask for volunteers? Random selection? Tell everyone to get rid of 3% of their cows?

The system we have definitely has its deficiencies. But what should be the alternative? Less federal control...eliminate the federal pricing program and let the market take over entirely? Or should we have total government control that will tell farmers to dump some of their milk when we have a surplus?

What do we lose when we give up our current system? One aspect is the protection of dairy farmers to have a market where they are guaranteed that someone will take their milk. Maybe not at the price they want.
Can you imagine being a dairy farmer and getting a call from your processor that tells you that they don't need your milk for the next week. What is the farmer to do then? Dairy farmers are unique in that they produce a highly perishable non-storable product. Imaging a nice hot day in July and having to bargain with someone to come to get your milk. The farmer has no market power and the processor has all the power. I can't image that situation and hope we don't see it with elimination of federal market rules.

Should we limit production? We have seen experiences where a drop of 2% in demand or an export market results in milk prices dropping like a rock. We have also seen how ethanol has driven up feed prices. We can help dairy farmers quickly by eliminating the subsidy for ethanol and not require ethanol to be mixed in gasoline. Maybe we should also eliminate corn programs that permit overproduction of corn, making it easy to feed to dairy cows, beef, chickens, and pigs, thus making all of those products more expensive.

How to limit production? Give everyone a quota based on historical production? Create a marketable quota like Canada has? Gives high milk prices. Provides a stable milk price. Farms make profits. Keeps farms smaller. Helps if you can export your extra heifers to a country south of the border. And 50% of your farm assets are tied up in a quota. Damm expensive to get enough quota to bring in a family member. Want to get iinto dairy? Not without quota! There are ways to create non-marketable quotas. Maybe go that angle.

There are some who think we should ban technology. Against rBST because it makes more milk. Now we have sexed semen. Let's see how this works. Farmers contribute to CWT to have money available to buy herds to send to slaughter to reduce cow numbers and raise milk price while and at the same time used sexed semen to create more heifer calves that grow into more cows to produce more milk to increase supply even more and lower the price even more so we can increase the contribution to CWT to buy even more cows to reduce the milk supply to raise milk prices... .

But lets throw more blame around. Its the processors fault. Besides, shouldn't they pay more for milk when the farmer's price is so low?
Don't forget the coops. How have they helped their farmer-members?

They are accused of being in bed with the processors. But maybe prices would be even lower if we didn't have coops? Not sure who is correct.

There is plenty of blame and "fair" solutions are all in the eyes of the beholder. Easy solutions don't exist. Feasible solutions are few. Get rid of some milk seems easy.

But I can see it now...we set up a supply management system. Then we have a drought in the far west. Large dairies have to ration water to their dairy herds. Milk production tumbles. We get shortages of milk in some regions. Milk doesn't stay on grocery shelves. Prices take off as demand far exceed supply. Parents call their members of congress demanding to know why the government is involved in reducing milk supplies during such an emergency. Just what congress doesn't want...citizens complaining about food costs. The dread of all politicians.

So as we go through this, we need to remember that solutions are not simple. Coops and other farm groups are proposing possible solutions that will be difficult to sell to other farmers, the industry, and Congress. Not because they are bad plans, its because each plan has positive and negative points.

The industry does know what the problem is. But the biggest challenge is to find a "fair" solution.

- Bob Parsons

Attached is an op-ed peice crafted in 2003. Julie Brill at the Vt Attorney General's office (who was assigned to the Hood merger issue) provided some of the information contained in this peice. Additional research, such as that relating to campaign contributions was obtained on-line from credible sources.

According to the Free Press article Sunday, 250, or nearly 1/5th of Vt. dairy farms have gone under since this op-ed peice was published. A tough minded, smart and persistent leader is needed in Washington to make sure there is a level playing field in this industry so vital to the heritage and character of Vermont. Senator Leahy, given his positions on Judiciary and Budget Committee's in clearly in the position to craft better outcomes then have occurred over the past six years. Similarly, a passionate and persistent voice is need in the media to make sure our elected leaders stay focused on this matter and convey to the public the results, or lack thereof, of our elected leaders. Time is of the essence as the agricultural culture of Vt. is being worn down by inaction. Good luck with this anti-trust effort. It is a worthy case.

Tom Pelham

Texas Messes With Vermont's Farmers

Should it matter to Vermont's snow mobilers that "Tex" Beshears played golf with Gregg Engles 10 years ago? Or, after a day of cross country skiing, snow shoeing or deer hunting, should the wood stove conversation mull the fact that Tracy Noll changed jobs? Should Vermont's tourist businesses care that John Kaneb, a Gulf Oil magnate, directed $502,600 to President Bush's, Senator John Ashcroft's (now the nation's Attorney General) and other Republican efforts during the 2000 election?

I believe the answers to the above are yes. If Vermont is to retain its unique rural culture and environment, carved from Vermont's hillsides and valleys over generations of endurance and resilience, it's important to understand how these four men control the fluid milk market in New England.

They've been called Dairy's Dallas Cowboys. In 1993, after a round of golf, "Tex" Beshears, of Southland Dairy Company, and Gregg Engles, a Texas ice manufacturer, formed Suiza Foods Corp., a dairy processing company. Also joining them as Chief Financial Officer was Southland's Tracy Noll. From 1993 until 2001, Suiza grew and grew, buying and consolidating dairy processing operations across the country.

By 2001, Suiza was big enough to absorb Dean Foods (although they kept the Dean Foods name) and become the nation's largest dairy processor with over $10 billion in sales. (From snowplow to social worker, the entire budget of the state of Vermont is only $3.5 billion.) In merging with Dean Foods, however, Suiza ran into anti-trust problems with the Clinton Administration and some state Attorney General's, including Vermont's. The merger was allowed, but Dean Foods was required to divest some dairy processing operations.

And they did divest, to a newly formed company called National Dairy Holdings (NDH). But does this divesture pass the "straight face" test when NDH's Chief Executive Officer and Chief Financial Officer are none other than "Tex" Beshears and Tracy Noll, formerly top executives of Suiza? I'm more than suspicious.

So today, we have another merger to comprehend. This time H.P. Hood, which is controlled by John Kaneb and owns Booth Brother's locally, is jumping in bed with NDH, now the #4 ranked dairy processor in the country. Included in the Hood merger are exclusive supply agreements with Dairy Farmers of America (DFA), a large cooperative and 50% owner of NDH. DFA also has exclusive supply agreements with Dean Foods. If the NDH-DFA/H.P. Hood merger is allowed, this new corporate entity and Dean Foods will control 90% of the fluid milk processing in New England.

As the link between farmer and food shelf, these corporations controlled by Gregg Engles, "Tex" Beshears, Tracy Noll and John Kaneb can, along with the large corporate food retailers, squeeze the farmer on one end and the milk consumer on the other. It should be no surprise that with the demise of the New England Dairy Compact, the price paid to our farmers has tragically dropped from about $1.46 per gallon to less than $1.00 while the price paid at the store remains close to $3.00 per gallon.

If we don't seek a different course, the road we now head down inevitably leads to huge corporate farms supplying huge corporate dairy processors supplying huge corporate food retailers. As the Vermont farmer struggles to survive in this monopolistic world, some will seek efficiencies and market share via consolidation and corporate farming while many others will fall by the wayside. As they fall, the lands and rural cultures these families have brought together over generations and which are the soul of Vermont's rural heritage will be disassembled. With this disassembly, users of Vermont's rural landscape, from snowmobiler, to hunter, to snowshoer to birdwatcher will also be pushed aside.

As Vermonters, we can take together another road. One that respects our rural heritage, preserves our rural enjoyments and retains access to dairy and other food products brought to us by small and moderate scale farmers and processors. At the national level, our congressional delegation might possibly recover from their Dairy Compact defeat to find the votes necessary to restore this effective milk price regulation. Realistically, this angle is probably a long shot as the last two national elections have enhanced the powers of large campaign contributors like John Kaneb while diminishing those of our congressional delegation. Our congressional delegation can also stay hot on the tail of now Attorney General John Ashcroft and the Justice Department to ensure effective enforcement of our anti-trust laws as well as make sure the FDA ensures that food products labeled "cheese" are really dairy based cheese.

At the state level, Attorney General Sorrell can intervene to stop the H.P. Hood/NDH merger based on anti-trust requirements. We can support the calls of Governor Douglas and State Senator Kittell to raise the standing of agriculture in Vermont's government. Creating a Secretary of Agriculture and lifting the status of the Agriculture Committee in our state senate will provide forums to create and pursue agricultural strategies. Governor Douglas, in his budget address this week, can offer farmers a cash down payment on a renewed focus on Vermont's agriculture. He can call for the elimination of school property taxes on farm, forestland and buildings enrolled in current use. The surpluses in our Education Fund are by far sufficient to allow these tax cuts as well as an across-the-board cut in the state property tax rate for all Vermonters. Both the Governor and Attorney General can encourage Vermont and other states to craft and submit "anti-slotting" legislation. Large corporate food retails now require "slotting" fees in order for a product to obtain shelf space. These fees are barriers to the market for all but the large corporate food processors like Dean Foods.

But most of all, we can inform ourselves on how food gets to our table and the role the farmers in our communities have in this effort. Once understood, I believe most Vermonters will make the political and consumer decisions that help sustain the agricultural and rural heritage we all enjoy.

Tom Pelham is the State Representative from Calais, Marshfield and Plainfield

PLAINS COTTON COOPERATIVE ASSOCIATION □ P.O. BOX 2827 □ LUBBOCK, TX 79408 □ PH: (806) 763-8011 □ FAX (806) 762-7333

September 30, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member, Senate Judiciary Committee
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

I am writing today on behalf of the 25,000 members of Plains Cotton Cooperative Association (PCCA) in Texas, Oklahoma and Kansas to express our concern about possible attempts to weaken or eliminate the Capper-Volstead Act. The recent focus on antitrust enforcement seems to have resulted in some confusion regarding the antitrust protections provided to farmer-owned cooperatives.

The Capper-Volstead Act gives farmer cooperatives such as PCCA limited antitrust immunity in collectively processing, preparing for market, handling, and marketing their products. Without this limited immunity, farmers would not be able to cooperate in the marketing of their products for their mutual benefit. Furthermore, these farmers would find it much more difficult, if not impossible, to compete in an economy in which they lack bargaining power and the ability to integrate into agricultural processing to compete with other entities.

PCCA is a fully vertically-integrated farmer cooperative. Our members produce cotton in three states, and our staff markets this cotton around the world. We also take a portion of our members' cotton and produce denim fabric and denim jeans. The profits from these activities are returned to our farmer-members, helping boost their income from beyond the farm gate, and this income then flows through to their local communities and aids the rural economy. Without the Capper-Volstead Act, many farmer cooperatives would cease to exist, and the farmers and their communities would suffer irreparable harm.

As the debate over antitrust enforcement continues, please let us know if we can provide additional information about the vital importance of the Capper-Volstead Act.

Sincerely,

Wallace L. Darneille
President & CEO

cc: Senator Kay Bailey Hutchison
Senator John Cornyn
Congressman Randy Neugebauer
Congressman Mike Conaway

> As will become immediately clear, I'm afraid, I am almost completely
> ignorant about dairying, except from the vantage point of a consumer.
> So at the risk of well-deserved ridicule I'm going to go ahead and
> suggest what I think may be a novel approach to improving the
> situation for small dairy farms. Unless I am very much mistaken,
> uniformity of product is the number one objective in the processing of
> milk, coast to coast That's why you see almost nothing but Holsteins
> wherever you go in dairy country, whether it's California, Wisconsin
> or Vermont. I would venture a guess that even those many thousands
> (millions?) of head of Holsteins are all descended from just a few
> great producers. The object of selective breeding was to maximize
> yield of milk that was uniform and had the best butterfat profile for
> conventional dairy purposes. Probably a smart approach at the
> outset; but the very success of that model is now threatening dairy
> farmers ability to make ends meet. Even the co-ops that originally
> promised security for dairy farmers had to observe the rule of
> uniformity in order to satisfy market conditions. Finally, the small
> dairy farmer is nothing but a bit player in a super-giant dairy
> conglomerate presided over by rich guys who don't get out much. That
> is problem #1
>
> I think problem number two may be a sustainability issue that is being
> over-looked because of problem #1. Anyone who is familiar with
> biodiversity issues in food crops can easily extrapolate what that
> threat might look like with regard to dairy herds. Hint: it's black
> and white and bred all over.
>
> While we are considering the plight of the small dairy farmer today,
> perhaps we should also be looking at the plight of the future American
> dairy consumer. What happens if we continue to undervalue the
> nutritional role dairy plays in our diet, further diminishing the
> ability of small farmers to sustain their herds. Milk production
> becomes more and more concentrated in the hands of a very few
> super-herds; and when further mechanization can't satisfy the demand
> for cheaper and cheaper product, perhaps outsourcing can. Finally, we
> become dependent for what is a significant part of the American diet
> on sources hundreds and thousands of miles away. Then let's say a
> superbug, a "Holstein Hepatitis," comes along. The cows are confined
> in such large groups that the virus quickly spreads and wipes out the
> entire herd in the Western Hemisphere. There aren't any more Jerseys,
> Guernseys, or Brown Swiss cows anywhere to be found because no one
> bothered to preserve those herds, or at least not a sufficient number
> to fill the dietary void left by the dying Holsteins. It may sound
> far-fetched, but why not? I'd wager that the vast majority of dairy
> cows are already eating exactly the same food. Probably made by
> Cargill...which is a division of Monsanto...which is a division of
> McDonald's. I'm kidding, of course.
>
> Anyway, perhaps instead of concentrating on subsidies and surplus
> strategies, Congress should be looking at ways to encourage smaller,
> more biodiverse herds. We should be focussing on local sustainable
> food supply as the goal, rather than corporate overkill in the

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> marketplace. MORE is not necessarily BETTER. Take a page from fruit
> and vegetable growers who have discovered a new market for heirloom
> varieties and exotics. Rather than selling the bland uniformity of
> milk, why couldn't we be marketing the sensual differences in color,
> flavor and texture available with herd diversity?
> Imagine the "value added" potential!
>
> Why can't we pay farmers to provide food security for their immediate
> communities by gradually reducing their holdings of Holsteins, and
> replacing them with less individuals of other varieties?
>
> It's just a thought. Now I will quietly find the exit before I am
> escorted from the building.
>
>

Sue Prent
St. Albans
524-5814

P.S. As Rama Schneider has added to my posting, besides converting some small dairy operations to smaller biodiverse herds, we need to be looking at ways to convert pasture to food crops and reducing American's over-consumption of dairy

Green Mountain Dairy Farm
P.O. Box 86, Highgate, Vt 05459
Office – 802–868–3221
Cell – 802–309-4900

September 15, 2009

2009 Crisis on the Farm:
The State Of Competition and Prospects for Sustainability in The Northeast Dairy Industry
United States Senate
Committee on the Judiciary
Senator Leahy
Members of the Senate Committee on the Judiciary

Testimony of Willard Rowell

I operate a farm with my brother Brian and his family in Franklin County, Vermont. Green Mountain Dairy was Vermont's 2008 Dairy Farm of the Year and operates as a large farm under rules administered by the Vermont Agency of Agriculture.

We produce 23,000,000 lbs of milk annually, our herd numbers 900 lactating Holsteins, 150 dry cows, and 650 replacement heifers. Our waste stream is processed through an anaerobic digester, which offers the farm multiple benefits.

Cropland for the dairy consists of 1000 acres of corn, and nearly 500 acres of hay land. We utilize best management practices and operate the farm in an efficient manner.

Today we find ourselves in yet another dairy crisis and recognize that dairy farmers nation wide are producing milk well below their cost of production. Here in the Northeast the cost of production is approximately $ 18cwt, the pay price for raw milk was $10.25cwt and is presently $11.25cwt, which leaves our farm over $2.5 million dollars short of last year's income. In fact, these rates will find us $1.6 million dollars short of breaking even for the year.

Our national annual milk production in the US amounts to 190 billion lbs and depends on export markets to achieve a balance between supply and demand to ensure fair pricing for our product. The world economy is in recession, consumer demand is down at home and abroad, last

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year's export markets of 11% have dwindled to 5 ½ % this year and the market has been over supplied with milk by about 4%.

The Market oversupply or surplus determines the pay price for 100% of milk produced which has created an untenable situation for the dairy farmer.

During the first six months of this year dairymen have converted $4 ½ billion worth of equity to loans and continue doing so at a rate of $800 million per month. Upcoming months will prove disastrous for many as equity is depleted and survival of the fittest plays its role. Presently, there is no dairy farm in the US supplying raw milk to the market at a profit to the farm.

The need to balance supply with demand seems obvious since the over supply determines pricing on all milk. During the past several years this country has struggled with the concept of supply management versus producing for an open market, our inability to recognize the role played by surplus milk today has us working for less than half of last year's price in other words we are producing 50% of our product for nothing by not recognizing the surplus.

Regarding the matter of balancing supply with demand, producers from across the nation are expressing interest in a plan developed by Holstein USA and The Milk Producers Council. The Dairy Price Stabilization Program (DPSP) provides for the establishment of a national 15 member Producer Board. The US Secretary of Agriculture shall appoint members to the Producer Board after considering nominations by any interested party. In addition, the Secretary shall appoint one dairy economist to advise the Board. The Board shall then advise the secretary on administration of the program. The program calls for producers to establish a Production base. The Board will meet annually to determine a production forecast, which will be revised through quarterly meetings. The Board will determine a market access fee to be levied against

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producers who exceed their production base and distribute the proceeds among those who did not exceed their production base.

The Dairy Price Stabilization Program is a budget neutral supply management tool by which the supply of milk can be balanced with demand through a National Producer Board representative of the dairy industry to stabilize milk prices. The program is currently being drafted as a Bill and will soon be introduced to the Senate.

As a member of the St. Albans Dairy Cooperative, I am very encouraged with a recent board decision, which endorses the concept of a National Supply Management Program to stabilize dairy pricing.

The matter of antitrust being pursued by Senator Sanders' office through the efforts of Assistant Attorney General for Antitrust, Christine Varney and Dr. Joseph Glauber, Chief Economist, US Department of Agriculture, is of vital importance, ensuring the dairy industry the opportunity to function on a level playing field in a competitive environment, which will prove to be of great benefit to the industry and the consumer.

Finally, to ensure stability in the Dairy Industry, there should be a comprehensive evaluation of Federal Milk Marketing Orders (FMMO); to determine if they function as intended, to determine the effectiveness of their design and to determine if they are representative of today's needs.

Senators, it is rather humbling to look at all the decent hard working people associated with agriculture and then have to recognize the state of our dairy industry. Today's world consists of 6.4 billion people, 9 billion will have arrived by the end of the century and we represent the people who will feed them.

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We extend our gratitude to Senator Leahy and the Federal Delegation for conducting these hearings and providing responsible leadership.

Respectfully submitted,

Willard "Bill" Rowell

Dear James,

I have just finished reading your electronic response to Senators Leahy and Sanders offered as testimony to the Senate Judiciary Committee on Dairy. I offered testimony based upon my experience in the dairy industry, not as an analysis of the testimony of others. I find your interpretation of my testimony significantly different from mine, perhaps due to our fundamental objectives.

Your perspective on our state of affairs and your response to our effort is critical instead of constructive and proves distracting. While listing a number of points recognized as being of value to the equation, you have overlooked the importance of sustaining our human population here in the Northeast, effectively leaving us out of the picture and subsequently reducing your great detail to conjecture.

My family has participated in agriculture in this country since 1637 and here in Vermont since the late 1700's. Through those many years and of the generations who persevered countless challenges according to information passed down to the present, a good year then as now is when eating the herd doesn't become a necessity.

In years past there have been opportunities for the export of milk and milk products, export markets of today largely result from misfortune elsewhere and our system currently relies too heavily on export markets to achieve the balance necessary between supply and demand.

Our failure to recognize an oversupply of milk on the world market, which diminishes the opportunity for export, leads to an oversupply of milk on the domestic market reaching a surplus of approximately 4.5% this time around.

The importance of the role played by surplus milk is that it determines the price for 100% of milk produced, a surplus of as little as 2% will reduce the price paid to farmers by nearly one half.

Today we recognize a repetitive cycle of volatile price swings that prove disastrous to the farm community and results from a market surplus for which every farm supplying the market is responsible.

Historically we have produced milk for an open market unwilling to recognize the value of supply management. Since 1970 farm numbers have declined from 648,000 to our present 54,000 farms nationally, supply management appears more attractive to an increasing number of farmers enduring this repetitive cycle.

The Dairy Price Stabilization Program (DPSP) is a budget neutral supply management tool capable of balancing supply with demand thereby stabilizing dairy prices to the benefit of the industry, the consumer and our government.

The DPSP does not favor a large farm or a small farm, nor does it favor one region of the country over another it also does not determine price, the market is responsible for that detail.

The matter of Antitrust is of importance to ensure the dairy industry an opportunity to function on a level playing field in a competitive environment, something I believe we all expect yet many take for granted. Additionally I feel a comprehensive evaluation of Federal Milk Marketing Orders (FMMOs) would help ensure stability in the dairy industry by determining whether they function as intended, by determining the effectiveness of their design, and determining if they are representative of today's needs.

Our country faces great challenge from every sector of the economy; our political leaders are under tremendous pressure to find solutions. Our obligation to the process is to offer insight through a positive response to develop an acceptable solution for everyone. You are well spoken; your reflective thought in the context of finding a practical path forward would be much appreciated. Thank you for participating.

Respectfully,

Bill Rowell

ALVIN SALZMAN 269 Burnor Rd Fairfield VT . 802-524-5057 . salzman@surfglobal.net

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE IN ST ALBANS VERMONT ON SEPT.19 2009 SENATOR PATRICK LEAHY, CHAIR

The crisis of Vermont's dairy farmers is a symptom of a systemic failure of the American economy and cannot be resolved in isolation. Hardworking Americans and hardworking farmers have been bludgeoned by the oligarchies of the banking, insurance, oil, energy and agricultural industries. The problems,in large part,are due to the evisceration of our regulatory agencies. Here, in Vermont our dairy farmers are under assault by profiteering processors. Dominating processors like Dean and Hood have realized huge profits while hard-working farmers are earning about $11 per hundred weight for milk which is about $5 under the cost of production, inevitably leading to failure and bankruptcy. Obviously, the MILK program(milk income loss contract) has helped but is no solution.

One hundred and nineteen years ago the Sherman Anti-Trust Act was enacted into law to counter the same rapacious behavior of John D. Rockerfeller and his Standard Oil Trust. Rockerfeller and his corporate thugs used bribery and physical intimidation to consolidate Standard Oil into a huge monopoly. Among the three Senators who fought for anti-trust legislation was George Edmunds of Vermont along with John Sherman of Ohio and George Hoar of Massachusetts. Senator Sherman, defending the act which bears his name, told his colleagues: "The problem was the inequality of wealth and opportunity caused by the concentration of capital into vast combinations!" Senator Hoar added: "I have studied the grave evil of vast fortunes in the hands of great corporations. The Sherman Anti-trust Act ought to be directed against the organized force of wealth and money which extorts wealth which ought to be generally diffused over the whole community!" Astonishingly, all three Senators advocating a redistribution of wealth were Republicans!

Beginning with Ronald Reagan and continuing with Bush, Clinton and Bush II , the anti-trust regulatory agencies have been eviscerated by ideological sabotage and underfunding. Both Republicans and Democrats have been enablers for the consolidation of the oil, finance and agricultural industries. There is a direct causal relationship between the plight of the Vermont dairy farmer and the failure of strong regulation. Even after the near collapse of our economy, triggered by unethical financial instruments like Credit Default Swops, little has changed on Wall Street nor for the Vermont dairy farmer. Sadly,some of the very people implicated in the financial debacle and who vigorously argued against tighter regulation, are now In President Obama's inner circle of financial advisors; Robert Rubin, Timothy Geithner, Lawrence Summers and David Gensler. Despite our financial difficulties born out of ethical and criminal violations there seems to be little political will to dismantle the oligarchies of finance, energy and agriculture. Even as we speak, Wall Street is 'bundling' insurance policies in the same process of 'securitization' which led to the near collapse of the economy. And,as reported in The New York Times of Tuesday Sept.14, federal judge Jed S. Rakoff issued a 'scathing ruling, against the Securities and Exchange Commission for it's 'failure in its roll as Wall Street's top cop' by 'going too easy on the Bank of America' and 'the lax regulation in Washington which permits excesses to flourish!' Ultimately, the ' trickle down' effect of these shenanigans, is felt in the barnyards and milking parlors of my neighbors in Fairfield. Commodity futures speculation in oil and energy, a la Enron, not supply and demand, has driven up the cost of running farm equipment and milking machines putting the dairy farmer between a rock and a hard place.

The critical questions to be asked are:
1- What is being done to strengthen federal regulatory enforcement against monopolistic behavior? 2- With time of the essence, when can the Vermont dairy farmer and Vermonters generally expect relief? 3- In a few years time will the Vermont dairy farm be extinct? Finally, 4- What is this committee doing to forestall what appears to be inevitable? Dairy farmers and all Vermonters await your answers! Time is short!!

Al Salzman

I have had the pleasure of growing up on a dairy farm in Montgomery County, Maryland. I am still proud to be living on the farm along with my two sisters and their families, and our parents (retired dairy farmers). I am the fifth generation, and my daughters, and nieces and nephew's are the sixth generation to live on this beautiful farm at the foot hills of Sugarloaf Mountain.

My father, grandfather and great grandfather etc. worked like hell to keep this place going. Unfortunately with the inheritance taxes in 1973 and the declining milk market in the 1980's it was more than the farm could continue to support. My parents decided to take the government offer for a "buy out" in 1985. I think that was the first time I recall seeing my father cry when those cows had their faces branded to mark them all for slaughter. Since that time they have had to sell parcels of the farm to cover taxes and living expenses for themselves. Dairy farming is a hard life and takes its toll physically as well as mentally. How much willl the corn and soybeans produce? Will the market hold? What machinery will need to be repaired or replaced? Will I have reliable help to get the job done? Housing and health insurance for the mselves and the hired help? All of these play a factor. No one is in God's hands more than a farmer. When we start relying on foreign markets like with anything else it's the little man that suffers first and the hardest.

Please consider all those who love the life and hard work hard that goes into the prodution the milk that we all drink and the products that come from it. This is a beautiful way of life, one that many are not able to pass on due the hardships that come along with it.

Sincerely,
Mary Schneider, RN
PO Box 327
Barnesville, MD 20838
(Farmers daughter, granddaughter, greatgranddaughter, great great granddaughter and a part-time farmer in my own right)

The belief held by some, that the dairy industry in Vermont should be allowed to die is a dangerous and misguided one. The fallacy lies in the long-held belief that real added-value businesses can be done cheaper and better elsewhere. In the case of dairying, the expressed belief is that Wisconsin and California can do it better and cheaper with their large landmasses and supposed economies of scale. However, agricultural economists have long argued that scale plays little in agricultural economics. Profit and benefit are more accurately determined on a per-cow basis and on the quality of farm management, and that the accelerating costs and food safety risks of long haul transport now and in the future will outweigh any geographic economies of scale.

For several generations now, this economic argument and the remote availability of cheaper labor have leached Vermont and other states of their indigenous added-value manufacturing and processing businesses and infrastructure and the destructive results are now being felt. It is given even greater urgency by the recent work done by the Vermont Council on Rural Development in their thorough study of Vermonter's values and the components that make up their perception of quality of life in Vermont. The number one value expressed by over 5000 Vermonters sampled from a broad range of social and economic sectors was the working landscape characterized by both farm and forest. For some reason, however, many Vermonters and their leaders seem not to have made the connection between the economic engines of agriculture, tourism marketing and the cherished beauty of the working landscape.

Consider the following facts:

Vermont agriculture for the last 100 years has been the defining element of Vermont's working landscape and its economy.

The new American consciousness of food safety, food quality and proximity to market is driving massive changes in our food systems, as is an emerging appreciation for locality (terroir) and artisan production methods in which Vermont is an internationally recognized leader.

The real economic impact of all farming in Vermont amounts to $3B annually, of which dairy accounts for $1.89B, according to a 2001 study done by the University of NH in which the radiant economic impact on a per cow basis was found to be $1400. With 135,000 cows, this amounts to $1.89B in dairying alone. The figure includes energy and fuel consumed, agricultural support industries, total employment and taxes paid, as well as intrastate economic market activity. It does not include the evident spin-off effects of tourism. Count the number of images in Vermont Life or other tourism publications that are of Vermont's working landscape and its people. 15,300 Vermonters are employed directly or indirectly in agriculture, of which 7500 are on farm and 7800 are in agricultural support industries like feed supply, transport, equipment, veterinary etc.

Vermont produces 63% of the New England milk supply, over 2.5 billion pounds of milk a year.

The jeopardy to Vermont dairying and to our expressed vision of ourselves is quite simply that Vermont farmers, like their colleagues in Wisconsin and California, are paid less for their milk than it costs them to produce it. Solve this problem and we have killed three birds with one stone. We will have preserved the working landscape, which Vermonters value so highly see (insert VRDC link), we will have preserved a major element of Vermont's waning economy, and we will have maintained the defining elements of Vermont's powerful brand.

William Schubart

As the wife of a dairy farmer, I feel compelled to let you know how inhumane the low dairy prices are. Not only now but for many years. During the "good" years we could hope to pay off loans made to do the usual business in the bad years. We are always cautious with our money, we rarely get to go on vacation.(Twice in our 36 year marriage) Our house could use some basic repairs, but there is no money to do that. We have decided to keep our health insurance, but know of farmers who have decided to drop coverage to use that money to pay bills. Our buildings need painting, machinery needs replacing and we would love to be able to make our farm more energy efficient- but this all takes money, and we are not paid enough for the bare essentials. If we would cut back on feeding the cows we would be targeted by the animal rights nuts. Everyone we do busines with have increased their prices significantly over the last few years, yet we are not deemed worthy to make a dime. We have been trying to get your attention for some time about how bad things are, but it seems something else is always more important. The same questions are heard over and over again with no answers. How can MPC's be used if they are not approved for human consumption? Do MPC's hurt American Dairy farmers? You looked at those questions at the national review of dairy policy in 2001. Your main concern at that time was to abolish Dairy Compacts and minimize the costs of dairy programs. You (lawmakers) spoke about the same problems we have today. Some recognized that a global pricing policy would only ensure low quality, and we would become a dumping ground for milk from other countries. Not only has that happened but it is the dairy farmer that is now expected to sudsidize cheap milk for everyone and I mean everyone. When milk powder was sold in large quantities for lower than world market prices we subsidized others. When coop leaders are flying around on their jets and living the life of Riley, we are susidizing that while not having access to knowledge of what salaries or bonuses are being paid. Too many dairy farmers do not have the time to seriously study what is going on. My husband doesn't. He's too busy working himself to death 365 days a year and 366 on leap years, with every work day much longer than eight hours. It doesn't matter if it is Christmas, New Years,the birth of a child, or the day after surgery. The cows and crops need special attention. You can't tell them it will have to wait because we are having a generous recess. It's time for everyone in America to decide if they want any food produced here. We can no longer afford to play by your rules and be robbed and tormented. We have families that we must take care of. We have needs just like every other family does. Where are we supposed to get the money to survive? Every day that you fail to provide us with reasonable prices you dig our hole deeper. If you think the answer is to supply us with low interest loans make sure you also sell us some swamp land to go along with the deal. We do not have loans with the USDA. Where is the relief for the people who deal with farm credit system? It will take us many years to pay off the debt created this year, while processors are having the perfect "sunny day". We also need the processors to be audited. How can we be assured that they are honest with their inventories when they claim excess dairy products? We need a full investigation into price manipulation and corruption in the dairy industry immediately. We also need reasonable laws. Where is the logic to collect monies for advertising from imported products at half of what we have to pay and then allow them to get it all back at the end of the year. (Then they even get to help decide how that money is spent) I could write testimony of hundreds of pages of how we are cheated out of decent wages, but will close with one example of how our prices are manipulated. On our 25th wedding anniversary we went on a cruise.(One of those two vacations) It was at a time when calf prices were so low that many farmers were receiving bills from the auction house instead of checks for calves sold. We met an auction owner telling friends how bad he felt for farmers and that he wasn't sending them bills, but knew other auction owners were. He knew the low prices were due to price fixing because he heard the buyers agreeing not to bid against one another so they could get rock bottom prices. Now that wouldn't happen if there were enough players in the market. Would it? I'll answer that for you- never.It's no different in the milk market. I ask that you withhold my name because I fear our milk processor would retaliate.

Sincerely,
Trudy Seyfert

Senate Judiciary Committee oversight hearing in St. Albans - Crisis on the Farm - state of competition and prospects for Sustainability in the Northeast Dairy Industry

I wont be able to attend this event. I did want to be able to be counted as a Vermont Dairy Farm in crisis. This is the first year in 16 years where we have needed an operating loan for our small dairy farm. We have no hired help and I work off the farm as well. We have always been cost conscious though with our equity in the animals being so low and the price for milk so low - how can even the most frugal farmer not be scared of losing everything.

Lisa Terrier

It is obvious that there is little ; if any , competition amongst milk processors , especially in the Northeast. This lack of competition for milk supplies has undoubtedly allowed cooperatives and processors to " Take Advantage " of Dairy Farmers.

The Dairy Farmers in this country are suffering through incredible financial losses , forcing them to acquire additional equity loans ; with no real comprehensible means of repaying these huge dollar amounts ; whilst milk processors are recording record profits. -
It doesn't take a Philadelphia lawyer to figure out that something is corrupt with this real life scenario.

Here's the Big Picture : There are thousands and thousands of well managed Dairy Farms across this country , each with millions of dollars of debt , and millions of dollars of additional "equity debt " accumulated , in effort to compensate for losses since the beginning of 2009.

If or when the line of credit has ended for these thousands of farms , banks are going to find themselves in a situation where the liquidation of assets associated with these farms will in no way match the debts.

Thousands and thousands of people who work directly on these farms will be unemployed , not to mention the thousands and thousands of jobs that will be lost by the people in occupations that depend on the vitality of these farms . The trickling effect of the loss of revenue in communities across the nation from losing Dairy Farms will be devastating to say the least.

-- This negative economic future being projected from the loss of Dairy Farms , while processors prosper from the lack of competition for milk supplies , is an injustice which should be stopped immediately.

We need supply management for raw milk , and we need a new " up to date" system for milk pricing in this country in order to help an economy in need , and to secure the safe food supply we have here in the United States. It's time we get behind the people who work hard to provide these safe foods and put an end to the manipulation of milk prices given to Dairy Farmers. I support DFWT.

Thank You ,

Kris Trainer

DEPARTMENT OF JUSTICE

Statement of
Christine A. Varney
Assistant Attorney General
Antitrust Division
U.S. Department of Justice

Committee on the Judiciary
United States Senate

Field Hearing on Dairy Issues
Franklin County, VT
September 19, 2009

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I. Introduction

Mr. Chairman, I am pleased to appear before you today and be here in Vermont to discuss the importance of competition in today's agriculture marketplace, particularly with regard to the dairy industry. In my remarks today, I will briefly provide the Antitrust Division's perspective on the state of the marketplace and our ongoing effort to better understand the industry and what role public policy—including antitrust enforcement—can play to protect and promote competition.

Competition issues affecting agriculture have been a priority for me since I was confirmed last spring as Assistant Attorney General for the Antitrust Division. In a reflection of that priority, the Department announced in August a partnership with the U.S. Department of Agriculture to co-host an unprecedented series of workshops to examine the state of competition in agriculture markets.[1] These workshops will provide us with an important opportunity to learn first-hand from those participating in these markets and evaluate a series of issues, ranging from the effects on competition of concentration in relevant sectors (including dairy), concerns about buyer power, and the economic impact of vertical integration, including contractual relationships between producers, distributors, and retailers.

In these brief remarks, I will take a few minutes to discuss the state of the marketplace and some themes we will be exploring in our upcoming workshops.

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[1] *See Justice Department and USDA to Hold Public Workshops to Explore Competition Issues in the Agriculture Industry* (Press Release dated August 5, 2009) (available at http://www.usdoj.gov/atr public/press_releases/2009/ 248797.htm); *see also* Philip J. Weiser, Deputy Assistant Attorney General, *Toward a Competition Policy Agenda for Agriculture Markets*, Remarks as Prepared for the Organization for Competitive Markets (August 7, 2009), *available at* http://www.usdoj.gov/atr/public/speeches/248858.pdf.

II. Buyer Power and Vertical Integration Are Particular Concerns in Agriculture and Dairy Markets.

As I noted before, two particular issues – buyer power and vertical integration – are ones we have already heard about and are interested in exploring in our workshops. Let me explain what these terms mean to competition officials, for those not versed in antitrust jargon.

A number of dairy producers are concerned about the exercise of what economists call monopsony power or, to use a more descriptive term, "buyer power." Traditional monopoly power concerns a dominant producer of goods or services that may be able to charge supracompetitive prices. Monopsony is the other side of the coin. When there are a number of producers in an "input market" and a dominant buyer or buyers of those products, like a dominant dairy processor, the buyer under certain circumstances may exert its power to press the prices lower than would be the case if the buying market were more competitive—i.e., if the sellers had more choices of where and to whom to sell their products. In analyzing developments in dairy markets, we are cognizant of the fact that competition is frequently local or regional in nature, meaning that the nature and extent of competition-related concerns will differ across different parts of the country. Thus, national statistics can be misleading. Parts of the dairy industry have experienced extensive consolidation in recent years, with fewer processors and therefore fewer buyers of dairy products. As a result of consolidation, the potential for an exercise of buyer power has increased.

We are also aware that agriculture markets, including dairy, have become more vertically integrated over the last 15-20 years. Vertical integration occurs when a manufacturer also participates in other parts of the supply chain such as distribution of its products or supply of its inputs. Vertical integration frequently involves ownership at multiple stages, though it may be

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achieved also through contractual commitments. Vertical relationships in dairy markets would include, for example, a processor entering into exclusive agreements with a specific cooperative to buy raw milk.

In many cases, such activities can lead to greater efficiencies and savings for consumers. And, indeed vertical integration is widespread in our modern economy. Under certain conditions, however, vertical integration may alter the incentives of parties and thereby facilitate the exercise of monopoly or monopsony power. A careful review of these arrangements is merited and is thus one of the areas our review will focus on.

As a related point, increased vertical relationships also implicate the transparency of economic conduct in agriculture markets. I am a firm believer in what Justice Brandeis said in another context "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."[2] Markets work better and attempted harms to competition are more likely to be thwarted when there is increased transparency to consumers and government about what is going on in an industry. A question we will thus be asking is whether agricultural markets would perform better with greater transparency. To the extent that trading in agricultural markets has shifted from organized exchanges to a greater reliance on vertical integration and bilateral trading, transparency may be lessened and efficiency potentially reduced.[3] To the extent that these changes in trading raise competition concerns, we will welcome suggestions and strategies for promoting greater levels of transparency.

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[2] Louis D. Brandeis, OTHER PEOPLE'S MONEY 92 (1914).

[3] Although increased transparency is most often a good thing, there are instances where increased transparency can actually facilitate anticompetitive coordination, such as in markets with homogeneous products and high concentration. The Division previously filed comments highlighting this very concern with the Federal Energy Regulatory Commission, see http://www.usdoj.gov/atr/public/comments/223049.htm.

III. A Description of the DOJ-USDA Workshops

Finally, I want to say a few words about the series of workshops we have planned with the USDA. The Department of Justice and the USDA published a notice in the Federal Register in August setting forth our plans for a series of jointly run workshops in 2010 to address the dynamics of competition in agriculture markets. In the workshops, we will examine whether changes in the marketplace, including increased consolidation and vertical integration, have generated efficiencies, or whether they have led to increases in monopoly or monopsony power. We are also actively soliciting input through the end of this year from farmers, ranchers, economists, lawyers, consumer groups and processors about their views and experiences. In particular, we are asking for their perspectives concerning the application of the nation's antitrust laws to agriculture markets, their personal experience with conduct that impacts competition in those markets, and their suggestions for issues that should be addressed at the workshops. Some of the potential topics for the workshops proposed in the initial Federal Register publication include the impact of agriculture concentration on food costs, the effect of agricultural regulatory statutes on competition, issues relating to patent and intellectual property affecting agricultural marketing or production, and market practices such as forward contracts, market transparency, and increasing retailer concentration.[4]

The goal of the workshops is to promote dialogue among interested parties and foster learning with respect to the appropriate legal and economic analyses of these issues, as well as to listen to and learn from parties with real-world experience in the agriculture sector. I am already aware from feedback the Division has received so far that two areas likely to receive attention at the agriculture workshops are the specific competitive issues facing the dairy industry as well as the

4 *See* note 1, *supra*.

share of income generated by the retail sale of agricultural products that goes to farmers. The Antitrust Division invites all contributions to the workshop process and looks forward to active participation.

IV. Conclusion

Mr. Chairman, the Antitrust Division recognizes there has been considerable change in agriculture markets, including dairy. We take seriously concerns about the competitive consequences of those changes. At the same time, we are open to the fact that some of those marketplace and technological changes may promote efficiencies and benefit consumers. The Antitrust Division intends to engage in a careful evaluation of the relevant market conditions, informed by input from those in the agricultural community who live with these developments every day. We are interested in hearing from the stakeholders in these markets both through the workshops and in more informal settings. We will approach the matters that come before the Division and the upcoming workshops without any preconceptions and cannot promise any particular answers or results. I can assure you, however, that we are committed to a careful and comprehensive examination of the marketplace.

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Agri·Mark

Crisis On The Farm: The State of Competition and Prospects For Sustainability In The Northeast Dairy Industry

U. S. Senate Judiciary Committee Hearing
St. Albans, Vermont on September 19, 2009
Testimony by Robert D. Wellington
Sr. Vice President, Agri-Mark Dairy Cooperative

Time is running out for many dairy farmers and for much of the dairy industry if nothing is done to improve farm milk prices so I will get right to the point.

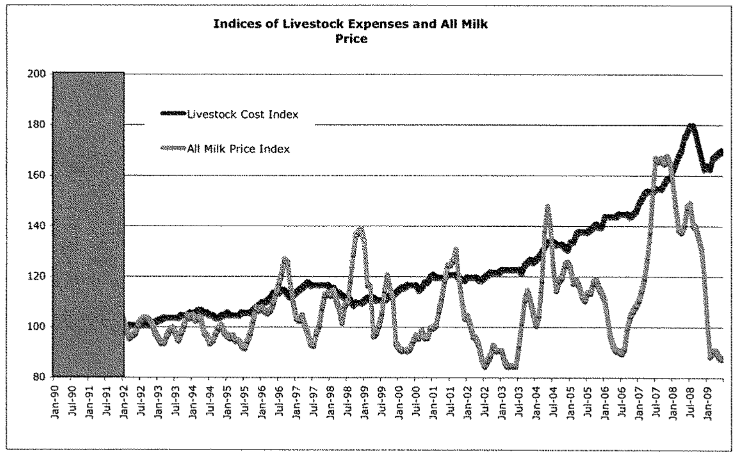
Prospects for sustainability in the Northeast dairy industry are falling rapidly due to the severe financial crisis faced by dairy farm families in the Northeast and throughout the nation. If a farm can not cover its costs and return a fair return for the investment and labor of its owners than all other aspects of sustainability become irrelevant. If farmers are not buying the inputs needed to run their operations and their milk is not flowing to processing and manufacturing plants, then the other non-farm parts of the Northeast dairy industry also can not be sustained.

It has been estimated that each cow grazing on a hillside generates more than $13,000 of economic activity. This means that an average size farm in the Northeast milking about 100 cows results in over $1.3 million of economic activity. It has also been estimated that every 9 cows support one job in the dairy economy (from the farm inputs to the farm itself to the use of the milk and other products from the farm). If that average family farm is forced out of business, $1.3 million of economic activity and eleven jobs go with it.

This past January a number of dairy industry representatives went to Washington to warn legislators of the crisis looming on the horizon. The Vermont delegation listened and understood but other areas of the country remained in denial. When we explained that an industry supporting over a million jobs and far over $100 billion dollars in economic activity was at risk due in great part to the national and worldwide recessions, Congress and the Administration still refused to provide any relieve for the dairy farming community in either the Stimulus Package or the supplemental appropriations bill despite support for that relief from the entire Vermont delegation and others.

Now the situation has hit home and dairy farmers are facing the worst financial situation since the great depression. They are receiving 1979 milk prices but paying 2009 production costs. The result is thousands of dollars of losses per month on small farms up to hundreds of thousands of dollars losses per month or more on larger multi-family farms.

The following chart was put together by Dr. Mark Stephenson of Cornell. It shows a milk cost index versus a milk price index for the past twenty years. The situation has progressively gotten worse and is the most severe in 2009.



The causes of farm milk price volatility are many but a primary one is the misalignment of supply and demand for milk and dairy products. It has been shown all too often that a mere two or three percent misalignment can move prices tenfold, that is, twenty to thirty percent. This is a terrible problem when prices are moving down but a wonderful opportunity on the upside!

The immediate problem today is cash on the farm. Either market prices need to rise dramatically immediately or else another source of money needs to reach the farm. A doubling of the MILC payment levels as well as increasing the cap retroactive to February 2009 would be extremely helpful for most farms in the Northeast. Measures to enhance market prices like the $350 million additional price support allocation in the 2009/2010 agriculture appropriation could be even more helpful if used appropriately.

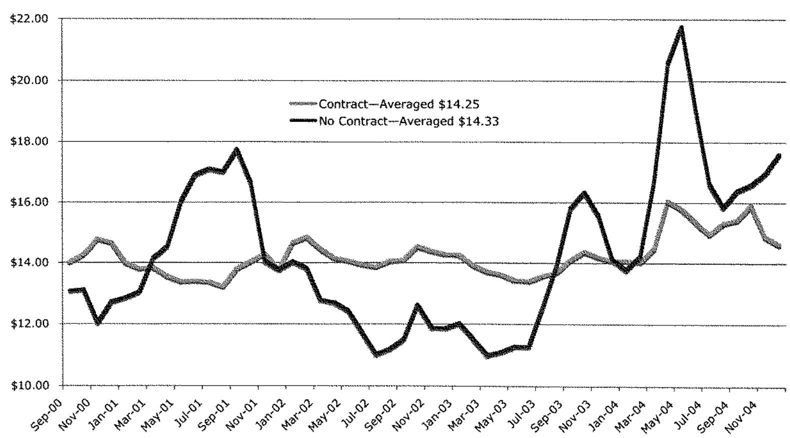
One of my major concerns is that cheese prices were below the support price for much of this year as it was this week, but no product was removed from the marketplace. This was the worst of both worlds. The support price created a benchmark price to depress market prices but it never resulted in any surplus product being removed from the marketplace. That cheese surplus is sitting in private warehouses and is a major factor why cheese prices are far less likely to recover very much this autumn. USDA needs to actually buy product to balance supply and demand!

Market prices will eventually recover as more producers leave and milk supplies tighten but this is a long, painful and terrible process. Low prices have gone on much longer and gotten much lower than anyone had foreseen a year ago and now it may take until well into 2010 before acceptable price levels are reached. However even once milk prices recover it will take a long time for farmers to repay the debt accumulated and equity lost in just the past nine months. The one certainty appears to be that prices will likely fall back to the pattern shown in the above table in 2011 or 2012 if nothing is done.

We are looking at alternative long term pricing and programs to reduce volatility and low net income levels. The problems are many and include reaching a consensus among many strongly opinionated dairy farmers.

Farmers have funded a supply/demand management endeavor know as CWT (Cooperatives Working Together) for several years. It works well when small surplus' developed but has yet to fully impact the current dairy crisis despite conducting three herd buyouts this year. This is a voluntary programs funded by dairy farmers producing about 70% of the milk in the country. However non-participants, often called free-riders, gain the same benefits without paying a 10-cent assessment. Some cooperatives would like to see a mandatory, government authorized CWT program. While that could eliminate free riders, it would also result in other problems that must be addressed.

Some people would use the futures markets to address the price volatility problem. While that could work, it would not necessarily improve farm income over time and could depress it. The following chart for the years 2000 through 2004 (also prepared by Dr. Stephenson) shows the average futures contract value over the period versus the actual Class III final price for each month. Volatility was reduced, but the average contract price received was less than when using no contracts.



Some people have suggested using some type of farm revenue insurance. While this might help, one must keep in mind that insurance premiums are usually affordable because the event that one is insuring against is rare. If one out of every 1000 houses burns down each year, the premium rate can be low. However if every house burned down every three years, the premiums would be huge and likely unaffordable. Milk prices have been burning down every three years for all dairy farmers!

Supply control programs such as those proposed by the National Holstein Association have merit but only if dairy farmers are agreeable to the restrictions set therein. Whatever plan that is brought to Congress must enjoy an overwhelming consensus of dairy farmers if it hopes to have a chance of passage in my opinion.

We do not to find the right method to send the appropriate signals to dairy farmers when too much milk is going to severely depress milk prices. Farmers are going to do what is best for their operation and their family and rightfully so. However when milk prices rise, farmers often increase production to capture more revenue and hopefully profit but then when milk prices fall, farmers often increase production to maintain cash flow and minimize losses. Farmers' reaction when prices fall is bad for market prices but appropriate for the farm operation. Farmers must be told when marginal, additional milk has less value and given an incentive not to produce it.

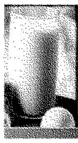
For example, the U.S. produces about 190 billion pounds of milk. At $12 per cwt., that milk is worth $22.8 billion. If U.S. farmers produced 5% less or $180.5 billion pounds, it is estimated that their milk price could be $18 per cwt. That price would produce $32.5 billion dollars even through less milk was sold. If you took the revenue difference ($22.8 billion less $32.5 billion or -$9.7 billion) and divided it by the extra milk produced (190 billion pounds less $180.5 billion pound or 9.5 billion pounds), you would get a value of -$102 for each surplus cwt produced. If farmer income was reduced by $102 per cwt (which is effectively what has happened in the past year) for that 5% of their production, I am sure they would find a way not to produce or market it.

Finally Federal order pricing reform is needed to raise Class I differentials and floor those prices. Volatility in cheese markets should not have to produce volatility in fresh drinking milk markets.

Thank you for the opportunity to address these issues and for all the help you have provided dairy farmers over the years. I would be happy to provide further details or thoughts as needed.

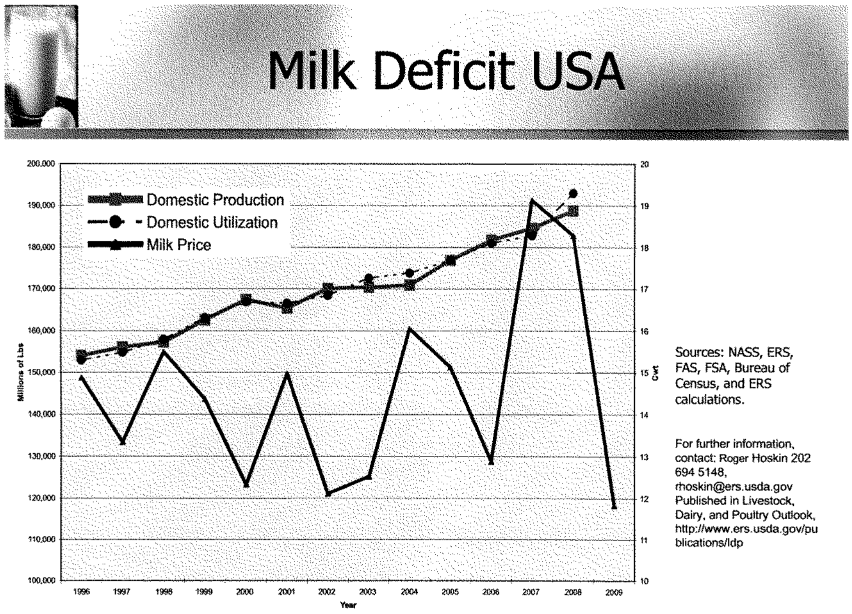
Attached please find an international article on the world monopolistic activities taking place in this dairy industry off the backs of hard working dairy farmers. We are constantly being told there is too much domestic supply that drives our price down below our cost of production. Yet, these graphs show domestically, U.S. dairy farmers are not over producing. Our milk processors are importing products that displace our product. The law of economics is not being played out in this industry. When our price goes down at the farm, it should go down to the consumer. "Big Food" Corporations should not reap record profits off the back of middle and low class Americans. Profits must be fairly distributed in this industry to protect our local fresh food supply for national security and also lower our carbon food print.

Deb Windecker



Milk Deficit USA

- 4 billion lbs. milk deficit in U.S. since 1996
- **Slight increases in imports drastically reduces farmers' milk price**
- Since 1996, domestic production increases are offset by consumption increases
- Conclusion: There are not too many cows.


Milk Deficit USA
Domestic Production
Domestic Utilization
Milk Price
Millions of Lbs
Cwt
Year
Sources: NASS, ERS, FAS, FSA, Bureau of Census, and ERS calculations.
For further information, contact: Roger Hoskin 202 694 5148, rhoskin@ers.usda.gov Published in Livestock, Dairy, and Poultry Outlook, http://www.ers.usda.gov/publications/ldp

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September 1, 2009

Milk : Via Campesina proposes ways out of the global crisis

Around the world the price of milk at the farm gate has dropped dramatically (1), threatening to put millions of producers out of business. As a result, milk producers have been protesting in many parts of the world. Since the beginning of the year, thousand from Via Campesina member organisations have joined protests in Brussels and Strasburg (EU), Madrid, Berlin, Galicia, France, Belgium, Germany, Portugal, Switzerland, Indonesia, Dominican Republic, and all across the United States.

Although a very small part of the milk produced worldwide is traded at the international level, the "liberalization" of this market has lead to the dependency of all milk producers upon world prices. The WTO pits dairy farmers around the world against each other in a race to the bottom as global food processors like Nestlé, Fonterra, Kraft benefit from access to the cheapest milk. The price is mainly influenced by the low costs of production in some exporting countries such as New Zealand and Australia, and the dumping of US and EU surpluses on the world market. However, instead of reducing their production, the EU and the US have recently reactivated their export subsidies pushing the price even lower.

Everywhere in the world, the current price is far too low for producers to make a living. This does not benefit consumers either because the price of dairy products in supermarkets have remained high since the food price crisis in 2007/08. The milk industry and big retailers are making huge profits at the costs of farmers and consumers.

The European Union has decided to liberalise further the milk market by putting an end in 2015 to its supply management system (quotas), and by increasing quotas by one percent per year until 2015. This policy has led milk producers, women and men, to an unprecedented state of crisis and could end up in a social and environmental disaster.

In the United States, free traders and dairy processors continue to demand further deregulation of milk markets and emphasize the need to be "globally competitive" and export oriented. Milk pricing is largely determined by the price of cheese at the Chicago Mercantile Exchange, which is easily prone to manipulation by a few corporate entities. In December 2008, Dairy Farmers of America, the nation's largest dairy cooperative, was fined $12 million for price manipulation at the CME. DFA was also under investigation for two years by the U.S. government for antitrust abuses in monopolizing markets and forcing dairy farmers to become part of their cooperative. In many parts of the country, dairy farmers have few alternatives other than DFA to sell their milk to.

Thanks to a trade loophole from the WTO, U.S. dairy farmers have also been hurt by the dumping of cheap foreign milk protein concentrates, mainly from New Zealand, that has displaced U.S. farmers milk while cheapening the quality of dairy products for consumers.

The WTO agreement of 1994 and the IMF conditions for credit pushed governments to deregulate their milk market. Except for a few countries such as Canada, milk supply management mechanisms have disappeared.

Milk is a fresh, nutritious product which gives economic value to millions hectares of grasslands in the world, promoting rural development and employment as long as it is produced by many sustainable family farms. However, as a result of trade liberalisation, industrial milk production has massively replaced small dairy farms. This has had devastating consequences: industrial production depends on expensive inputs (feedstuffs, energy...), it contaminates the environment (manure, methane, transport of imported feedstuffs...), and leads to social disasters (dairy family farms disappear, workers face often bad working conditions in industrial farms...).

In January 2009, the Indonesian Peasant's Union (SPI) demanded the government to protect local dairy farmers from complete bankruptcy. The transnational company Nestle, one of the main buyer of milk in the country, had started lowering the price at the farm gate even though dairy products were sold at an exceptionally high price to the consumers. All milk processing companies followed the move. This seemed to be the last straw for the domestic dairy sector that had been hit by 25 years of deregulation. In 1983, under IMF regulation, the government dismantled the legislation forcing companies operating in Indonesia to buy a certain percentage of milk to local breeders besides imported milk used as their main ingredients. In 2003, the Indonesian government went further by reducing tariffs on imported milk from 5% to 0%. As a result, 70% of the milk consumed in Indonesia is imported from Australia and New Zealand and farmers are wondering if they will be able to maintain their activity.

To urgently solve the crisis, Via Campesina asks governments to act:

- To maintain and develop in all dairy regions a sustainable farmers based milk production, which is based on local fodder;
- To (re)introduce public supply management policies to keep the production in balance with the demand, so that producers and consumers can get fair prices;
- Farm gate dairy prices have to cover the costs of production, including the remuneration of work;
- To stop the WTO obligation to import at least 5% of milk products
- To ban any export subsidy and to allow all countries or unions to introduce tariffs to protect their own milk production.
- To maintain high standards of identity for dairy products to insure the integrity of the definition of milk and prevent the dumping of inferior milk substitute products.

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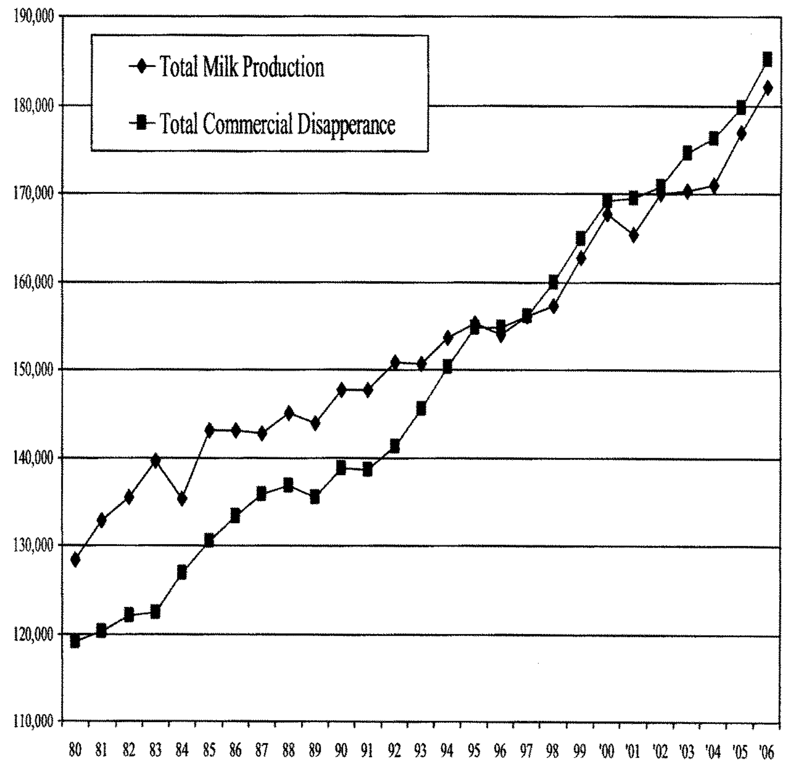
Total U.S. Milk Production and Total Commercial Disappearance, 1980-2006



Sources: *Agricultural Statistics*, NASS, USDA & *Livestock, Dairy & Poultry*, ERS, USDA