

Ms. Deborah A. Garza, Chairman
Antitrust Modernization Commission
1120 G. Street, N.W., Suite 810
Washington, D.C. 20005

October 10, 2006

Dear Ms. Garza and Commission,

The guest editorial “Dairy’s Tragedy of the Commons”¹ generated numerous requests for suggestions and ideas on how we should go about making the changes we need to make. As firmly as I believe that our industry has experienced a tragedy of the commons, I also believe that we stand at the threshold of a new opportunity! What our dairy industry desperately needs can be summed up in one word—decentralization.

The insightful Alexis DeTocqueville, when comparing America’s new decentralized economic system to other centralized economic systems, said: “A central power, however, enlightened and wise one imagines it to be, can never alone see to all the details of the life of a great nation. It cannot do so because such a task exceeds human strength. When it attempts unaided to create and operate so much complicated machinery, it must be satisfied with very imperfect results or exhaust itself in futile efforts.”² Until our milk marketing system is decentralized, we will continue to exhaust ourselves in futile efforts to operate so much complicated machinery!

Forty-four years ago, the Secretary of Agriculture requested a very comprehensive study of the milk marketing system. The study commission recognized that the centralized milk marketing system created winners (“ins”) and losers (“outs”). The commission recognized that conflicting interests would eventually need to be reconciled and that this reconciliation would require fundamental change. According to the commission, reconciliation could not “be achieved by maintaining the status quo to the extent that pressures from the “outs” cause the system to break down.” Likewise, this reconciliation could not “be achieved by allowing the competitive forces of completely free trade to place the considerable investments of the “ins” in jeopardy without provision for transition.”³ More than ever before, our industry needs to reconcile the winners and losers. **This cannot be accomplished by maintaining the status quo or without a provision for transition.**

Few dairy industry participants may be aware that in response to a 1990 invitation from the Secretary of Agriculture,⁴ the United States Department of Justice (DOJ) proposed fundamental change together with a provision for transition. Does any other institution better understand the American legal and economic system? Can any other institution

¹ The Cheese Reporter, August 25, 2006, Guest Editorial, Dairy’s Tragedy of the Commons, pg. 2

² Democracy in America, Alexis DeTocqueville, p.91

³ The Nourse Report, <http://www.cpdmp.cornell.edu/CPDMP/Pages/Publications/Pubs/Nourse.pdf>
pg. 80

⁴ Advanced notice of proposed rulemaking, Federal Register, Vol. 55, No. 64, April 3, 1990.

more ably provide an unbiased and impartial judgment of our dairy marketing system and its affect upon the public interest?

The DOJ proposed fundamental change. “It is time that the USDA consider seriously and thoroughly the means by which this crucial industry can, like virtually all vital industries, be freed from archaic and inefficient economic regulation. Conditions affecting milk marketing are vastly different than they were when the marketing order program was established. These changed conditions indicate that a pervasive regulatory scheme is no longer necessary to assure a healthy dairy industry with orderly market conditions and adequate supplies of fluid milk, particularly when that scheme imposes substantial costs to society.”⁵

The DOJ proposed a simple but effective provision for transition—reduce and eventually eliminate centrally determined class I differentials. “Moving decisively toward a free market, rather than perpetually re-engineering the current regulatory scheme to compensate for its shortcomings and misincentives, is the most effective way to make milk marketing more efficient and to improve the welfare of American consumers.”⁶ Although, “lowering or eliminating minimum Class I differentials ... would have only a minor effect on the average U.S. milk price received by dairy farmers”,⁷ DOJ’s proposal was rejected for the status quo.⁸

Ten years ago, Congress mandated fundamental milk marketing reform. This massive attempt again essentially capitulated to the status quo. Is it not time to “move decisively toward a free market, rather than perpetually re-engineering the current regulatory scheme?” Is it not yet evident that the status quo is no longer adequate and that we must initiate and follow a provision for transition?

The longer we delay decentralization, the more our precious resources and efforts are wasted. Fixed and centrally determined class I differentials are at the root of almost all of our milk marketing problems from the abusive use of concentrated market power to finding and maintaining appropriate make allowances, from price maximization and volatility to pooling issues, from conflicts between the regulated and unregulated to minimizing transportation and marketing costs, from state, national, and international competitiveness and trade to class and dairy product definitions. A disciplined process of reducing and eventually eliminating fixed and centrally mandated Class I differentials would gradually allow the market to determine Class I differentials and make allowances for each and every dairy product and marketing area from local and regional to national and international.

⁵ Comments of the Department of Justice, May 31, 1990.

<http://www.usdoj.gov/atr/public/comments/200599.htm> pg. 2 and pg. 5

⁶ Reply Brief of the Department of Justice, May 14, 1991.

<http://www.usdoj.gov/atr/public/comments/200631.htm> pg. 2-3

⁷ Dairy, Background for the 1990 Farm Legislation, USDA, Economic Research Service, Commodity Economics Division, March 1990 Staff Report AGES 9020, by Richard F. Fallert, Don P. Blayney, and James J. Miller, <http://www.ers.usda.gov/publications/ages9020/ages9020.pdf> pg. 40

⁸ Proposed Rule, Recommended Decision, Federal Register, Vol. 56, No. 226. Nov. 22, 1991. pg. 58986 and Proposed Rule, Final Decision, Federal Register, Vol. 58, No. 42. March 5, 1993. pg. 12650

The 2007 Farm Bill presents a new opportunity for positive and fundamental change to our milk marketing system. Pertaining to opportunities for change, Helen Keller said: “When one door ... closes, another opens; but often we look so long at the closed door that we do not see the one which has been opened for us.” Let us not again fail to cross the threshold of opportunity because we are so preoccupied with incessantly banging on a closed door!