

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Senate Committee on
Agriculture and
Environmental
Resources
(SC-AER)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- Appointments ... Appt
-
- Clearinghouse Rules ... CRule
-
- Committee Hearings ... CH
-
- Committee Reports ... CR
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- Executive Sessions ... ES
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- Hearing Records ... HR
- 97hr_sb0002_pt01
- Miscellaneous ... Misc
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- Record of Comm. Proceedings ... RCP
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JAN 21 1997

NATIONAL CHEESE EXCHANGE, INC.

130 EAST WALNUT STREET

P. O. BOX 1844

GREEN BAY, WISCONSIN 54305-1844

PHONE 414-432-2336

RICHARD J. GOULD
PRESIDENT

March 22, 1996

TO ALL MEMBERS OF THE NATIONAL CHEESE EXCHANGE, INC.

The National Cheese Exchange (NCE) is again being subjected to a flurry of unfavorable media and press releases emanating this time from the Wisconsin Department of Agriculture (Department), Senators Kohl and Feingold and other politicians.

As a result of a four-year study of the National Cheese Exchange prepared for the Department, for the purpose of determining whether there existed possible unfair trade practices or methods of competition in the pricing of cheese, the Department has released a 265-page report hypothecating that Kraft, through domination of the industry and its buying and selling cheese at NCE trading sessions, has manipulated prices for its own benefit and that NCE, as presently organized, appears to facilitate market manipulation.

Kraft has strenuously denied any attempt to manipulate trading at the Exchange as well as other adverse statements in the report and NCE feels that Kraft is more than capable of defending itself. However, the allegation that the NCE appears to facilitate market manipulation cannot be left unchallenged.

The quality of this Department report and the manner in which its release was timed and orchestrated with press conferences, press releases and obviously advance releases of the report to the press and politicians demonstrates that the Department had a predetermined desired result from this study and obviously felt that media hype was necessary in the hope that it would divert the public and law makers away from a careful reading of this report which would reveal the unsubstantiated charges based upon weak hypothecations of the professors who prepared the report, none of whom appear to have had any experience or background in the cheese industry.

After four years of work on this report, these professors admit they have failed to produce any facts to substantiate these charges. They come up with hypothecations.

According to Webster's Dictionary, the word hypothesis implies insufficient evidence to provide more than a tentative explanation.

The Department has demonstrated basic unfairness in the manner in which it has hyped this report as though there have been

Members of National Cheese
Exchange, Inc.
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substantial revelations with respect to improper trading practices of its members. Unwarranted attacks such as this result from the average person's poor understanding of the NCE. For example, the Milwaukee Journal-Sentinel reported that the Department attributes to this investigation an increase in recent years' NCE trading activity. Such a ridiculous assertion hardly deserves comment.

It should be made clear, first and very importantly, that this study emphasizes that no evidence of collusion among cheese companies was found. Secondly, the authors of this report expressly state that they did not presume to determine whether Kraft's alleged conduct met the standards of legal proof required for a finding of price manipulation under the federal or Wisconsin antitrust and unfair competition statutes. We cannot believe that the Department lawyers did not review the hypotheses of the authors. We submit that had the Department lawyers been able to find legal proof, the report would have so stated. Further, Professor Mueller, who we understand was the principal author, is touted as an antitrust expert and one would expect him to be able to recognize illegal antitrust and/or unfair competition activities had it existed. Despite the disclaimers by the authors of finding any evidence sufficient to charge any member with price manipulation, the Department, in a press release, has stated that this report "raises serious concerns" about the National Cheese Exchange and the report states that the study found a need to "replace the Exchange or enhance its competitive performance." Other than the hypotheses of the authors, there is no factual basis for these maligning statements. This language again plays on the lack of understanding of the public as to what is fact and what is opinion. Unfortunately, no matter what is now published in defense of the Exchange, its reputation has been tarnished based upon the mere opinion of the professors, who profess to speak for the Department. One would expect that a major arm of the state government would act more responsibly.

The report recognizes that this Exchange does play an important role in the pricing of bulk cheese. NCE is and has always been aware of this fact and has acted responsibly and appropriately to protect its integrity and has enacted rules for the purpose of prohibiting price manipulation by any member. In the past the Exchange has suspended and reprimanded members for conduct that had even the appearance of price manipulation. However, neither this Exchange nor any responsible unit of government would charge an individual or corporation with market manipulation on the basis of the hypotheses of university professors such as has been done in this so-called study.

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The Exchange provides the facilities for those who have cheese to sell to dispose of it and for those who have need for cheese to acquire it. That is its only function. The fact that it is felt by most members of the industry that it is an accurate barometer of the value of cheese is an unintended side effect. The Exchange does not express an opinion as to the value of cheese. No one is required to accept Exchange transactions as a pricing mechanism. NCE has come to be used as a pricing mechanism because of its reputation for integrity, of which it is proud and which it jealously guards.

Through the release of this Department of Agriculture report and the accompanying press releases and press conferences, the Department has given the impression of wrongdoing at NCE trading sessions by one of its members. A cursory reading of the report reveals that the authors found no evidence of collusion and they admit that they have not determined whether the alleged "trading against interest" by Kraft meets the standards of legal proof required for a finding of price manipulation. This is unfair to both the Exchange and to Kraft and appears to be a pandering to those who persist on claiming that cheese prices (when they decline) are determined by some sort of illegal activity at the National Cheese Exchange trading sessions. No one should be publicly accused of any wrongdoing on the basis of hypotheses.

NCE cheese prices are determined by the laws of the marketplace. It is the avowed purpose of the directors of the NCE that paying and selling prices of cheese should be based on the law of supply and demand in a free marketplace. As presently constituted, NCE provides the framework for pure competition and there can be no worthwhile substitute for selling and paying prices based on competitive bidding and selling by knowledgeable, responsible people who know that they have to pay for in full and deliver promptly that for which they bid for or offer. If a demand for cheese exists, the price will go up. When the opposite is true, prices go down.

The Exchange has in the past been attacked by those who irresponsibly use it as a scapegoat--politicians and critics in the media who spew invalid opinions and negative statements to support baseless attacks and to advance their own agendas.

It is time that NCE members speak out against spurious attacks such as this. We should not let these attacks affect our resolve to continue to improve our operations and continue to serve the cheese industry as we have in the past. We should continue to go ahead with our plans for electronic trading and for protecting the

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anonymity of our traders, which we are pleased to note the Department study now recommends. Above all, we should try to provide explanations to the public of the true manner in which we operate to eliminate the misunderstandings created by this latest "study."

Yours very truly,

NATIONAL CHEESE EXCHANGE, INC.
By Its Officers and Directors

R. J. Gould, President and Director

Bernard Golbach, First Vice
President and Director

Donald Kelly, Second Vice President
and Director

John L. Zehren, Secretary and
Director

Fred Davis, Treasurer and Director

Lee Davis, Director

Don Menzner, Director

RJG/bsh

cc: Governor Tommy Thompson
Secretary of Agriculture

Horrified by drop in cheese prices

As a dairy producer, I watched in horror as the price on the Green Bay Cheese Exchange fell at record levels. I question why prices would drop at a time when national production is down 1 percent and consumer demand is high. Will this drop in price mean another 5 or 10 percent of dairy farmers will go out of business?

We also learned that within hours of the price drop Governor Thompson's task force rejected a proposal that would have stopped this dramatic drop. This makes you wonder just whose interest they are working for!

I suggest to every dairy farmer in Wisconsin that when the three dollar drop appears on the milk check you figure out just how much money you lost based on recorded number of pounds of milk sold, put it in the form of a bill and send it to Governor Thompson, and expect payment. Carbon copies of your bill and accompanying letter could also be sent to your legislators and local newspapers.

In regard to Wisconsin Secretary of Agriculture Alan Tracy and his companions spending taxpayer money to recruit California dairy farmers to relocate in Wisconsin: It seems to me it would be better to work with the dairy families already here. They are the ones that have paid for and maintain our entire Wisconsin dairy industry.

Sincerely,
John F. Buol, Sr.,
Belleville

Says a bad idea could be worse

The National Cheese Exchange may be a terrible discovery mechanism for farm prices, but there is still a worse idea: letting the processors discover prices all by themselves.

If you think that could never happen, pay careful attention to the words issuing out of the Wisconsin Federation of Cooperatives and other Upper Midwest processor groups.

These people would like to turn their own predatory procurement practices into law.

As every farmer knows, the major cooperatives and proprietary plants already track each other's pay prices, to the penny.

Sharing marketing information is nothing new. But under the banner of reform, processors are trying to convince government officials that spot checks of pay prices would be a new and better gauge of supply and demand than NCE prices. In short, they would like to pay producers whatever they decide to pay, based on whatever they decided to pay.

Fifteen or 20 years ago, milk prices followed cheese prices according to the 10-times rule. Cheddar cheese at \$1.40 per pound translated into \$14 per hundredweight milk. That is no longer true, despite that just as much milk is required to make a pound of cheese. After seven months of steady gains, the basic formula price still lagged \$1.50 per hundredweight behind the 10-times rule. But on the way down, milk prices are fully (and briskly) responding to the NCE price crash of the last several weeks. For this we have to thank the processors. The law does not make them do it, nor does supply and demand. they do it because they can.

Until farmers begin pricing their own milk, nothing good will come out of the present wrangling over a better price discovery mechanism. Those with the power, use it. But the day is soon coming when farmers will be able to throw off the yoke placed around their necks by organized business and organize their own business.

Sincerely,
Francis Goodman

Disappointed by efforts of task force

Speaking for dairy farmers from all across Wisconsin, we are very disappointed in the Wisconsin National Cheese Exchange Task Force's unwillingness to seriously confront real problems in the National Cheese Exchange - problems that concern milk producers.

The task force has refused to acknowledge that producers are a vital part of the overall dairy industry, and that the prosperity of farming is as important as processing and manufacturing. This amounts to nothing less than a corruption of the fair and impartial government process.

As recently demonstrated, the law of supply and demand does not adequately apply to milk marketing. Farm milk price gains over the last seven months were eliminated in a mere three days of Green Bay cheese trading, yet national milk supplies remain low. Even noted economists were unable to explain this. Also, milk price reductions are not passed along in lower retail prices, so consumers are gouged on one end of the market, farmers on the other. Yet, this committee sees nothing wrong with this.

When the NCE president complains that traders will not trade if "trading against interest" rules are imposed, we ask you to consider how farm prices are traded on the NCE every time a carload of cheese is dumped. Why should farmers agree to play by these rules? Would Kraft agree to have its retail prices controlled by unregulated trading among farmers? Would Schreiber Cheese agree to have its profits adjusted on a national farmers' market? We have repeatedly asked you to consider the unfairness of this situation, but you have repeatedly refused.

If the price of our milk is to be manipulated on the NCE and in the offices of the biggest processors, then there is nothing left for farmers but to form their own national milk pricing agency, put a price on our milk and sell it to those willing to pay for it. Then cheese traders can do as they like.

There could be no better endorsement for such a program than the recent actions of the NCE and the non-actions of the task force.

Sincerely,
John Kinsman,
Family Farm Defenders,
LaValle

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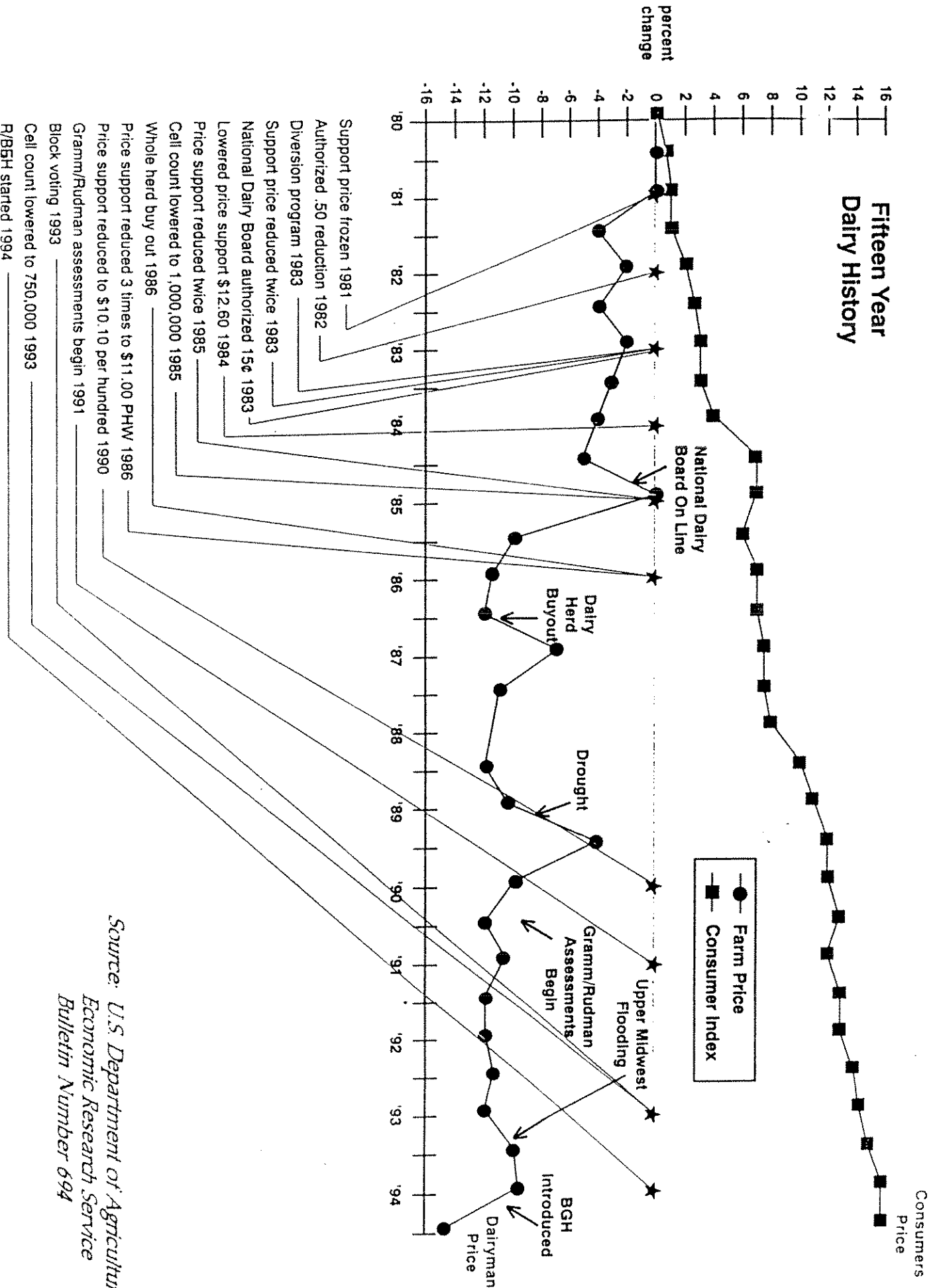
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Retail Index and Farm Milk Price, Percent Change 1980-1994

Fifteen Year Dairy History



Source: U.S. Department of Agriculture
Economic Research Service
Bulletin Number 694

January 18, 1997

Testimony of John Kinsman on AN ACT to create 100.053 of the statutes; relating to regulation of various trading practices on the National Cheese Exchange.

My name is John Kinsman and I am a life-long dairy farmer, presently milking 35 cows in Sauk County. I ship milk to the Cedar Grove Cheese plant in Plain, Wisconsin.

When the National Cheese Exchange was first organized, someone should have foreseen that "trading against interests" could be a problem. With national cheese and federal order milk prices tied directly to NCE trading, two concerns should have been addressed: 1. NCE trading might not truly reflect economic conditions in the larger market; 2. well financed trading interests might find it easy to influence prices on the small NCE, which would then reverberate throughout the entire national cheese and farm economy.

For about a decade, farmers have complained that Kraft was manipulating national cheese prices by trading on the Green Bay Exchange. In 1990-91, a group of farmers and church leaders met with Kraft representatives and explained they wanted the multinational company to cease trading on the Exchange. Kraft refused. Another group attempted to force Kraft to stop trading on the Exchange through a shareholder action. This also failed. Finally, in 1992, the Wisconsin Dept. of Agriculture, Trade and Consumer Protection decided the charges of price manipulation warranted a closer look.

A half-million dollar grant from the USDA funded the study, and two University of Wisconsin economists (with subpoena powers borrowed from the state of Wisconsin), forced Kraft to divulge some of its trading records. After three and one-half years of study, the economists concluded that Kraft dominated the NCE, was responsible for over 70% of NCE trading, and sometimes sold cheese cheaper on the Exchange than elsewhere, thereby lowering its overall procurement costs. They also noted that Kraft did not pass on lower procurement costs to consumers. As soon as the report was available, the Wisconsin DATCP proposed a NCE ban on "trading against interest."

The present bill would implement that proposal. Short of doing away with the NCE altogether, it seems the only reasonable thing to do. Allowing the present situation to continue would be a slap in the face to the farmers who for years have understood their interests were being compromised. "Trading against interest" should have been banned from the very beginning.

It would be preferable if all U.S. dairy farmers had their own organization or corporation to represent their interests in the market, and I understand there is an attempt now to create a national pricing agency for raw milk, but until that time the government is compelled to take an active role in regulating dairy markets.

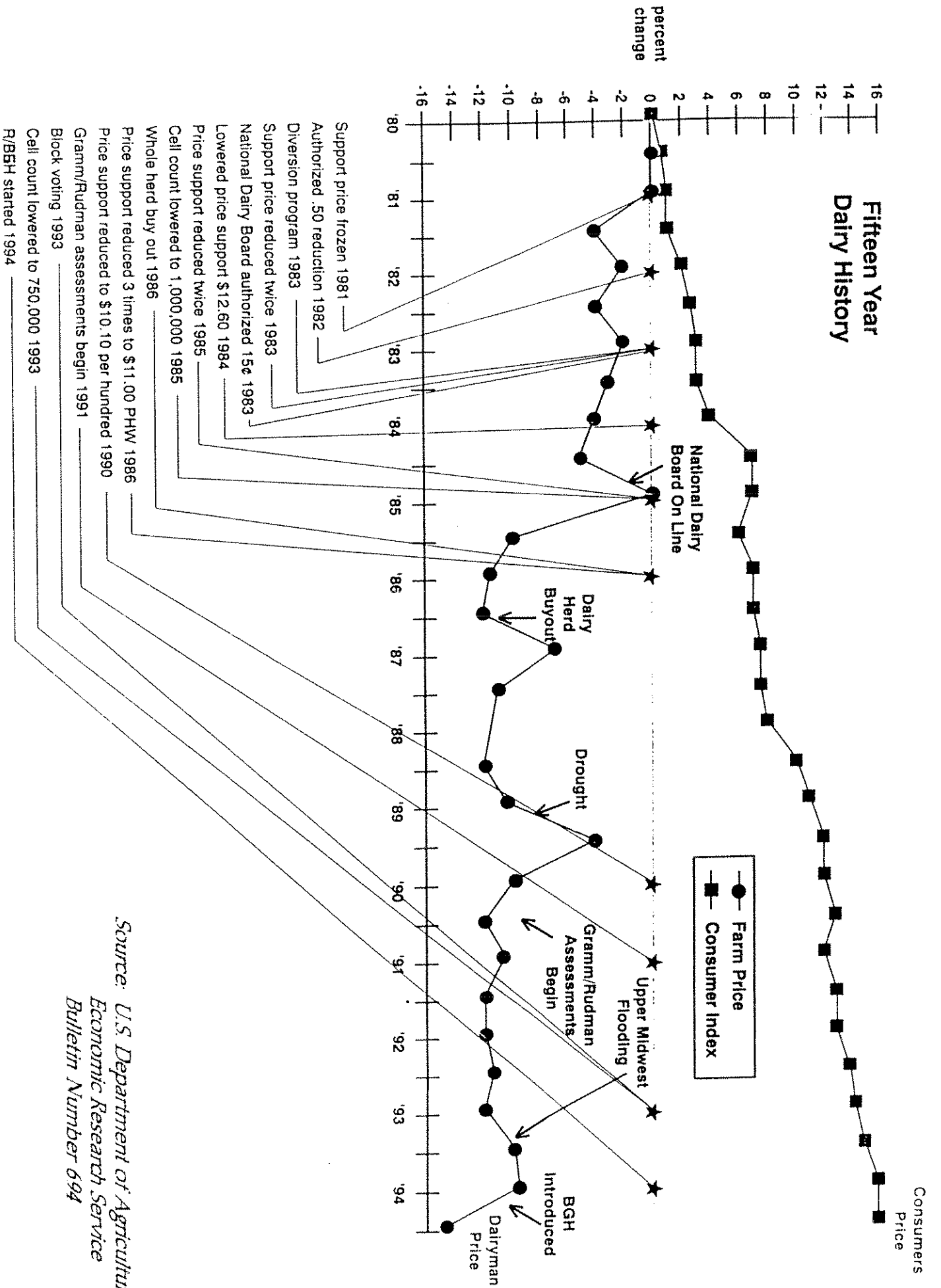
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609 986 3815

E 2940 Hwy 4
LAVALLE WI 53941

Retail Index and Farm Milk Price, Percent Change 1980-1994

Fifteen Year Dairy History



Source: U.S. Department of Agriculture
Economic Research Service
Bulletin Number 694

For Immediate Release

From The Family Farm Defenders
Box 581, Hillsboro, 54634

Contact:

John Kinsman 608-986-3815

Philip Morris Corporation Milks U.S. Dairy Farmers For Billions

One of the tobacco giant's subsidiaries, Kraft General Foods -- the largest cheese trader in the U.S. -- has been manipulating cheese prices through trading on the National Cheese Exchange. A study released March 18 in Madison, Wisconsin documents how Kraft -- usually a buyer of bulk cheese -- used the NCE to selectively sell cheese, lowering overall bulk cheese prices nationwide. Although NCE trading amounts to less than 1% of national cheese sales, the NCE is used as a "price discovery mechanism" for 95% of the nation's bulk cheese.

The study focused on 1988 through 1993, was funded by a \$500,000 grant from the USDA, took nearly four years to complete, and was authored by University of Wisconsin economists with subpoena powers from the Wis. Dept. of Agriculture. The 310 page report explains how Kraft dominated the NCE, accounting for 74% of sales, and sold cheese on the NCE even when it had no surplus cheese to sell and when the same cheese could be sold at higher prices off the exchange. Through lowered procurement costs, each penny decline on NCE prices gave Kraft an extra \$10 million in annual profits, the report says.

Looting the Farm

Farm milk prices are also determined, in part, by federal formulas which track the price of manufacturing grade cheese on the NCE. When cheese prices fall on the exchange, farm milk prices fall nationwide. UW dairy economist Ed Jesse (not one of the study authors) estimates farm prices were lowered by as much as fifteen cents per hundred pounds of milk during the 1988-93 period. *That means Kraft used its sheer size to bleed \$1.3 billion from the farm economy over six years.* Wisconsin Senators Russ Feingold and Herb Kohl have called for a federal antitrust investigation. Other legislators are calling for other investigations. If a class action suit is filed by farmers and a bona fide price fixing collusion can be proved, federal laws would make Kraft liable for triple damages. But no penalty is too high for farmers forced out of business due to low prices in 1988-93.

Larger Questions

If it takes \$500,000 and four years to lend credibility to farmers' complaints about the structure of their economy, what other ugly parasites will remain hidden due to the cost of overturning the rocks they hide under? How long will it take the USDA to establish that the three beef packing companies controlling over 80% of the beef market are manipulating beef prices? How long will it take to do the same for pork producers? How long will it take to prove that the largest dairy cooperatives have for years been moving milk and milk powder from one end of the country to another in order to manipulate farm prices? Who will tackle the bigger problem of vertical integration and the antitrust issues surrounding the four largest multinational grain traders that control over 90% of world grain trade?

"The question we all need to ask ourselves," said John Kinsman, dairy farmer from LaValle, Wisconsin, "is why we ever allowed these corporations to grow so large and powerful. As a free people we need to take a clear and calm look at these greedy financial monsters and decide if we want to let them to continue growing. Their success is not due to increased efficiency in the market, but rather to their power of manipulation."

End

American Raw Milk Producers Pricing Association, Inc.

P.O. Box 134

Waunakee, WI 53597-0134

1-888-276-7720 (toll free)

Information Sheet

Overview of Pricing Agency

In a free market there are many layers of business activity. In milk marketing, most activity presently takes place after the milk leaves the farm, and has led to the increased prosperity and consolidation of the processing and manufacturing industry. However, little activity has focused on farm gate prices, an area formerly seen as the responsibility of federal orders and farm programs. As the government withdraws from its role of milk marketing, new opportunities are created.

ARMPPA will place a new layer of business activity between the milk producer and the processing and manufacturing industry. Just as individual producers bargain with local milk handlers to obtain the best price, so will ARMPPA work for its members. In its efforts on behalf of milk producers, ARMPPA will direct member milk to the most advantageous milk markets, pricing raw milk at the very best possible point.

ARMPPA is strictly a pricing agency. ARMPPA will not take possession of milk or process dairy products. ARMPPA has no allegiance to any cooperative or corporation. Its sole purpose is to obtain optimum milk prices from already-existing milk handlers, plants and manufacturers. When sufficiently established, ARMPPA will announce milk prices based on cost of production data. As costs of production rise, price announcements will rise accordingly. Processors unwilling to pay the announced price will lose control of ARMPPA member milk.

The advantage of an ARMPPA membership over an individual milk producer attempting to obtain the best possible price for his/her milk, is in the volume of milk. Just as the largest producers are able to obtain higher prices than smaller producers, so will ARMPPA have more bargaining power as more members pool milk through the agency.

Historically, the biggest obstacle faced by producers has been the perishable nature of milk. Unlike grain farmers, who can (at least in theory) hold grain and wait for better prices, milk must be shipped daily. ARMPPA solves this problem by giving ARMPPA members an alternative place to ship milk when buyers refuse to pay fair prices. In other words, the goal of ARMPPA is to end the status quo. ARMPPA members will no longer be forced to accept whatever processors decide to pay for milk; ARMPPA will announce a price and processors will either buy or lose ARMPPA member milk. With a sufficient pool of milk represented by ARMPPA, members will achieve their goal because processors need milk as badly as producers need to move it out of their bulk tanks.

Beginning The Agency

A number of producers are already organized to work toward establishing a pricing agency, representing a sizable pool of milk. The pool of milk needs to be bigger, however, in order to significantly influence milk prices. About 20% of national milk production is needed to achieve "critical mass."

The first objective of ARMPPA is to build national membership. Members are needed from every major milk producing region. The \$20 membership fee will be used for the general purposes of the association, subject to the Board of Directors. The funds will primarily be used to establish a minimum staff and build a stronger national organization.

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American Raw Milk Producers Pricing Association, Inc.

P.O. Box 134
Waunakee, WI 53597-0134
1-888-276-7720 (toll free)

Why is a Pricing Agency needed?

- (1) U.S. milk producers are being forced out of business nationwide.
- (2) Raw milk prices have not kept pace with rising costs of production.
- (3) Despite progressively higher retail prices for dairy products, less money returns to producers.
- (4) The consolidation of the processing and manufacturing industry has put producers at a disadvantage.
- (5) Government price supports have fallen to insignificant levels, and will soon be phased out.
- (6) Current federal milk marketing orders do not equalize the economic imbalance between producers and processors.
- (7) Global trade is bringing U.S. milk producers into competition with nationally organized (and subsidized) producers in other countries.
- (8) A pricing agency will strengthen the role of farmer-owned cooperatives and compliment one of their fundamental principles: cooperation among cooperatives.
- (9) If milk producers do not make a business out of their business, no-one will do it for them.

Frequently Asked Questions:

What kind of organization is ARMPPA? -- ARMPPA is strictly a membership pricing agency. ARMPPA does not and will not process or manufacture dairy products. ARMPPA has no allegiance to any existing milk handler, cooperative or corporation. Its sole purpose and mission is to obtain optimum milk prices from already-existing milk handlers, plants and manufacturers.

What advantages does an ARMPPA membership offer? -- All producers who believe that producers -- not milk buyers -- should set minimum milk prices, can pool their milk through ARMPPA. Through ARMPPA, small and moderate-sized dairy producers can survive as independent businesses, and avoid vertical integration.

How will ARMPPA work? ARMPPA works by placing a layer of business activity between the producer and milk buyer. No longer will milk buyers deal with isolated producers one at a time. ARMPPA members will have a national agency to bargain prices for them.

Is ARMPPA legal? Yes, the U.S. Capper-Volstead Act was established in 1922. It allowed farmers to collectively bargain for fair prices in the marketplace.

How will Federal Orders influence ARMPPA? ARMPPA prices will be established independent of federal order prices. So long as ARMPPA members are paid the announced ARMPPA base price, the federal government and processors can tinker all they want with prices that exceed the announced price.

Will ARMPPA write milk checks to producers? No. Marketing agents with which ARMPPA has marketing agreements will issue milk checks, as well as keep annual production records and perform other administrative accounting procedures. This allows ARMPPA to operate efficiently and concentrate on its sole purpose: pricing member milk to buyers.

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NATIONAL CHEESE EXCHANGE, INC.

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PHONE 414-432-2336

RICHARD J. GOULD
PRESIDENT

January 20, 1997

TO: The Honorable Members of the State Senate
Madison, Wisconsin

RE: Senate Bill 2

Dear Senator:

Senate Bill 2 would create criminal and civil penalties as well as private rights of action with punitive measures of damages for trading activities on the National Cheese Exchange. These penalties and remedies would be imposed on the basis of restraints on trading which are extraordinary and unprecedented. No free market could function under such restraints. If Senate Bill 2 becomes law, the NCE will have no choice but to dissolve and reincorporate in another state.

The bill is virtually identical to a regulation proposed by the Wisconsin Department of Agriculture, Trade and Consumer Protection last March. We are attaching a copy of a letter we sent to the Department at that time, setting forth our views in more detail. Two brief examples of the bill's flaws are the following:

1. The bill would prohibit sales of cheese on the NCE at a price lower than could be obtained off the NCE at approximately the same time. This provision fails to recognize that there is no other market or source of information from which a seller could learn whether a better price is available elsewhere. The only way to avoid violating this law would be for sellers to make continuous rounds of calls to every potential cheese buyer in the United States up to the very moment that trading begins on the Exchange. This is utterly impractical, so the net effect would be that no one could sell cheese on the NCE without fear of violating the law. The same would apply to buyers, who would be prohibited from buying cheese on the NCE at a price higher than could be obtained off the NCE at approximately the same time.
2. The bill also prohibits members from acting primarily as a buyer of cheese on the NCE while acting primarily as a seller off the Exchange, and vice versa. This would mean, for example, that if a cooperative which primarily sells cheese off the Exchange found itself short of cheese for a month or two, it could not turn to the Exchange as a source of cheese

The Honorable Members of the State Senate
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without running the risk of both civil and criminal liability. We do not understand why such ordinary business activity, fully lawful on every other Exchange in the United States, should be declared unlawful for one Exchange in one state.

Finally, we respectfully suggest that, prior to taking any action on this bill, the Senate should seek counsel and advice from experts who are familiar with the operation and regulation of commodity exchanges, for example, representatives of the Commodity Futures Trading Commission, the Chicago Mercantile Exchange and the Chicago Board of Trade.

Yours very truly,

NATIONAL CHEESE EXCHANGE, INC.

By:



R. J. Gould

RJG/dlj
Enclosures

NATIONAL CHEESE EXCHANGE, INC.

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GREEN BAY, WISCONSIN 54305-1844

PHONE 414-432-2336

RICHARD J. GOULD
PRESIDENT

April 3, 1996

Board of Agriculture,
Trade and Consumer Protection
P. O. Box 8911
Madison, WI 53703-3238

The National Cheese Exchange (NCE) has been advised that the Board of Agriculture, Trade and Consumer Protection will meet on Tuesday, April 9, 1996 at LaCrosse, Wisconsin, and that among the items on its order of business is a proposal to create ch. ATCP 107 relating to trading on the National Cheese Exchange and the alleged manipulation of market prices for milk and cheese.

The substance of these proposed rules is as follows:

A member cannot sell cheese at the NCE at a price that is lower than the seller could have received for the cheese, at the same approximate time, off the Exchange.

A buyer cannot purchase cheese at the NCE at a price that is higher than the price at which he could have purchased that cheese, at the same approximate time, off the Exchange.

A member cannot act primarily as a seller on the Exchange while acting primarily as a buyer off the Exchange.

A member cannot act primarily as a buyer on the Exchange while acting primarily as a seller off the Exchange.

Our comments on these rules will follow.

It should be understood that NCE has no fundamental objection to reasonable regulations by an appropriate agency. In fact, a number of years ago NCE requested that it come under the jurisdiction under the Commodity Futures Trading Commission (CFTC). At that time, we were advised that because NCE did not deal in futures, NCE transactions were not within CFTC's regulatory power. However, it now appears NCE has become subject to the regulatory authority of CFTC. (See page III-9 of Report.)

In connection with the recently released report on a study of the National Cheese Exchange prepared for the Wisconsin Department of Agriculture, Trade and Consumer Protection (Report), ATCP

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circulated a document entitled "Summary Remarks" dated March 19, 1996. This document states in part as follows:

"The cheese market is a national market. No state, acting by itself, can effectively resolve market problems that are national in scope. Nor can government resolve perceived problems in the cheese market without the effective support and cooperation of the market participants. At this time, there is no effective alternative to the Exchange as a price discovery mechanism for bulk cheese. All market participants, including the Exchange members themselves, are to some extent 'captives' of current market arrangements. Real solutions will require national action, and broad industry support."

Amongst its recommendations, ATCP recommends that:

"USDA and the Commodity Futures Trading Commission should review this report to determine whether they should take action to regulate business practices related to the marketing of cheese, including activities on the National Cheese Exchange."

It cannot be disputed that NCE is in reality a national organization and the State of Wisconsin should not attempt its regulation. The Commodity Exchange Act (CEA) gives the CFTC jurisdiction over the cash market with future contract markets and we respectfully submit that further regulation by the State of Wisconsin is not only unnecessary but would be chaotic. An exchange cannot be subject to regulation by the state and federal governments. We seriously question the constitutionality of any attempt by the ATCP to regulate NCE when in fact its regulation has been preempted by the United States.

As we are sure you are aware, the National Cheese Exchange is a non-stock, non-profit corporation organized and operating for the purpose of providing those who deal in cheese an alternate market for the sale and purchase of cheese in carload lots. A member who has a surplus of cheese can offer that cheese at a trading session and be reasonably assured that he will be able to dispose of that cheese. A buyer of cheese, who needs cheese because of sales commitments, uses the Exchange to purchase cheese with which to fill those commitments. Because of the concentration of buyers and sellers, traders can reasonably be assured that they will be able to sell or purchase cheese. NCE is totally independent from its members. It conducts trading sessions every Friday morning using the open outcry method as auctions are conducted. Thirty minutes

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has been found to be adequate for its members to complete their business. If trading is active, the presiding officer has authority to extend trading for whatever time it takes to come to rest.

Many companies use Cheese Exchange transactions in formulating their buying and selling prices. It should be kept in mind that NCE does not now and never has claimed that its transactions reflect the value of cheese at any particular time and that the Exchange itself does not issue quotations or opinions. Most importantly, sellers and buyers of cheese off the Exchange are not compelled to accept Cheese Exchange transactions as part of any formula used in arriving at selling or buying prices. The pricing of cheese is negotiated between buyers and sellers, a process in which the NCE does not participate. The Exchange, however, is intent on providing a free marketplace where the law of supply and demand can function unimpaired. Its rules prohibit market manipulation by any trader and any suggestions to ensure the accomplishment of this objective have always been welcome.

With respect to the proposed rules, we have the following comments:

It is the opinion of the Board of Directors and other responsible members of the NCE that the aforesaid proposed rules will discourage and stifle trading.

Under these proposed rules, a seller of cheese on NCE must be prepared to establish that the price at which he sells is not less than that which he could have received for that cheese, at the same approximate time, off the Exchange. A buyer of cheese on the NCE must be prepared to establish that the price at which he purchases cheese is not higher than that which he could have obtained for that cheese, at the same approximate time, off the Exchange.

It is conceded by the authors of the Report that there is no reliable price discovery mechanism other than NCE for the cheese industry. How, then, can a buyer establish that his selling or buying price on the Exchange was no higher or no lower than that for which he could have sold or bought his cheese off the Exchange?

In addition to the inability for a trader to determine what he could have obtained or sold cheese for off the Exchange, the term "at the same approximate time" is vague and uncertain. Does it mean the day of the NCE trading session? The day before the NCE trading session? During the week preceding or following the NCE trading session? Or some other period of time?

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Why would anyone attempt to buy or sell cheese on the Exchange subject to regulations that are vague, uncertain, with unreasonable burdens of proof and subject to severe penalties if violated.

A violation of these regulations will subject traders to possible court injunctions, civil forfeitures, criminal penalties, and lawsuits for recovery of double damages, costs and attorneys fees.

No serious buyer would attend a trading session and bid for cheese if he knew that he might have to prove at a later date that every bid he made was at the same or higher level than he could have purchased it for off the Exchange "at the same approximate time."

No serious seller would attend a trading session if he knew that he might have to prove at a later date that every offer he made was at the same or higher level than he could sell it for off the Exchange "at the same approximate time."

Further, no serious seller of cheese would attend a trading session if he knew that it might be claimed at a later date that off the Exchange he was engaged primarily as a buyer of cheese. No serious buyer of cheese would attend a trading session if he knew that it could be claimed at a later date that off the Exchange he was engaged primarily as a seller of cheese. Our members are dealers. Market conditions determine whether or not they sell or buy. Members of this industry are not categorized as primarily buyers or primarily sellers. Such a rule is incapable of being intelligently and fairly enforced.

At NCE, when a trader wants to buy cheese and none is offered, he will bid for the cheese and state the price he will pay. If no one present at that trading session fills that bid at that price, the trader may increase his price and so on until he bids his maximum price or at a price acceptable to a seller resulting in a sale. If a seller wants to sell his cheese, he will adjust his offering price downward to his lowest acceptable price or until a buyer is found. It is nothing more than an auction.

If these regulations are enacted, we are certain that our members will conclude that attempting to trade on NCE will not only be a useless act but, in addition, subject traders who bought or sold cheese at prices above or below transactions off the Exchange to prosecution by ATCP.

We are aware that there is considerable political pressure to replace NCE. The NCE has received recently and in the past, much negative publicity through press releases and newspaper headlines.

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We enclose copy of a letter dated March 22, 1996, which the NCE Directors sent to its members and to others in response to the Report. The bottom line of this Report is that the authors of the Report feel that there is a need to either replace the Exchange or enhance its competitive performance. The authors of this Report admit that, after four and one-half years of study, they found no evidence of collusion of price fixing amongst its traders. The authors express nothing more than a hypotheses that one of its members, Kraft, may have engaged in price manipulation.

We respectfully submit that this Report has no factual basis that would sustain adopting these proposed regulations, the result of which will be to eliminate the only cash market for cheese in the United States.

Yours very truly,

NATIONAL CHEESE EXCHANGE, INC.

By:

R. J. Gould, President

RJG/bsh

NATIONAL CHEESE EXCHANGE, INC.

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RICHARD J. GOULD
PRESIDENT

March 22, 1996

TO ALL MEMBERS OF THE NATIONAL CHEESE EXCHANGE, INC.

The National Cheese Exchange (NCE) is again being subjected to a flurry of unfavorable media and press releases emanating this time from the Wisconsin Department of Agriculture (Department), Senators Kohl and Feingold and other politicians.

As a result of a four-year study of the National Cheese Exchange prepared for the Department, for the purpose of determining whether there existed possible unfair trade practices or methods of competition in the pricing of cheese, the Department has released a 265-page report hypothecating that Kraft, through domination of the industry and its buying and selling cheese at NCE trading sessions, has manipulated prices for its own benefit and that NCE, as presently organized, appears to facilitate market manipulation.

Kraft has strenuously denied any attempt to manipulate trading at the Exchange as well as other adverse statements in the report and NCE feels that Kraft is more than capable of defending itself. However, the allegation that the NCE appears to facilitate market manipulation cannot be left unchallenged.

The quality of this Department report and the manner in which its release was timed and orchestrated with press conferences, press releases and obviously advance releases of the report to the press and politicians demonstrates that the Department had a predetermined desired result from this study and obviously felt that media hype was necessary in the hope that it would divert the public and law makers away from a careful reading of this report which would reveal the unsubstantiated charges based upon weak hypothecations of the professors who prepared the report, none of whom appear to have had any experience or background in the cheese industry.

After four years of work on this report, these professors admit they have failed to produce any facts to substantiate these charges. They come up with hypothecations.

According to Webster's Dictionary, the word hypothesis implies insufficient evidence to provide more than a tentative explanation.

The Department has demonstrated basic unfairness in the manner in which it has hyped this report as though there have been

Members of National Cheese
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substantial revelations with respect to improper trading practices of its members. Unwarranted attacks such as this result from the average person's poor understanding of the NCE. For example, the Milwaukee Journal-Sentinel reported that the Department attributes to this investigation an increase in recent years' NCE trading activity. Such a ridiculous assertion hardly deserves comment.

It should be made clear, first and very importantly, that this study emphasizes that no evidence of collusion among cheese companies was found. Secondly, the authors of this report expressly state that they did not presume to determine whether Kraft's alleged conduct met the standards of legal proof required for a finding of price manipulation under the federal or Wisconsin antitrust and unfair competition statutes. We cannot believe that the Department lawyers did not review the hypotheses of the authors. We submit that had the Department lawyers been able to find legal proof, the report would have so stated. Further, Professor Mueller, who we understand was the principal author, is touted as an antitrust expert and one would expect him to be able to recognize illegal antitrust and/or unfair competition activities had it existed. Despite the disclaimers by the authors of finding any evidence sufficient to charge any member with price manipulation, the Department, in a press release, has stated that this report "raises serious concerns" about the National Cheese Exchange and the report states that the study found a need to "replace the Exchange or enhance its competitive performance." Other than the hypotheses of the authors, there is no factual basis for these maligning statements. This language again plays on the lack of understanding of the public as to what is fact and what is opinion. Unfortunately, no matter what is now published in defense of the Exchange, its reputation has been tarnished based upon the mere opinion of the professors, who profess to speak for the Department. One would expect that a major arm of the state government would act more responsibly.

The report recognizes that this Exchange does play an important role in the pricing of bulk cheese. NCE is and has always been aware of this fact and has acted responsibly and appropriately to protect its integrity and has enacted rules for the purpose of prohibiting price manipulation by any member. In the past the Exchange has suspended and reprimanded members for conduct that had even the appearance of price manipulation. However, neither this Exchange nor any responsible unit of government would charge an individual or corporation with market manipulation on the basis of the hypotheses of university professors such as has been done in this so-called study.

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The Exchange provides the facilities for those who have cheese to sell to dispose of it and for those who have need for cheese to acquire it. That is its only function. The fact that it is felt by most members of the industry that it is an accurate barometer of the value of cheese is an unintended side effect. The Exchange does not express an opinion as to the value of cheese. No one is required to accept Exchange transactions as a pricing mechanism. NCE has come to be used as a pricing mechanism because of its reputation for integrity, of which it is proud and which it jealously guards.

Through the release of this Department of Agriculture report and the accompanying press releases and press conferences, the Department has given the impression of wrongdoing at NCE trading sessions by one of its members. A cursory reading of the report reveals that the authors found no evidence of collusion and they admit that they have not determined whether the alleged "trading against interest" by Kraft meets the standards of legal proof required for a finding of price manipulation. This is unfair to both the Exchange and to Kraft and appears to be a pandering to those who persist on claiming that cheese prices (when they decline) are determined by some sort of illegal activity at the National Cheese Exchange trading sessions. No one should be publicly accused of any wrongdoing on the basis of hypotheses.

NCE cheese prices are determined by the laws of the marketplace. It is the avowed purpose of the directors of the NCE that paying and selling prices of cheese should be based on the law of supply and demand in a free marketplace. As presently constituted, NCE provides the framework for pure competition and there can be no worthwhile substitute for selling and paying prices based on competitive bidding and selling by knowledgeable, responsible people who know that they have to pay for in full and deliver promptly that for which they bid for or offer. If a demand for cheese exists, the price will go up. When the opposite is true, prices go down.

The Exchange has in the past been attacked by those who irresponsibly use it as a scapegoat--politicians and critics in the media who spew invalid opinions and negative statements to support baseless attacks and to advance their own agendas.

It is time that NCE members speak out against spurious attacks such as this. We should not let these attacks affect our resolve to continue to improve our operations and continue to serve the cheese industry as we have in the past. We should continue to go ahead with our plans for electronic trading and for protecting the

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anonymity of our traders, which we are pleased to note the Department study now recommends. Above all, we should try to provide explanations to the public of the true manner in which we operate to eliminate the misunderstandings created by this latest "study."

Yours very truly,

NATIONAL CHEESE EXCHANGE, INC.
By Its Officers and Directors

R. J. Gould, President and Director

Bernard Golbach, First Vice
President and Director

Donald Kelly, Second Vice President
and Director

John L. Zehren, Secretary and
Director

Fred Davis, Treasurer and Director

Lee Davis, Director

Don Menzner, Director

RJG/bsh

cc: Governor Tommy Thompson
Secretary of Agriculture

**MARATHON CHEESE CORPORATION**

304 East Street
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Marathon, Wisconsin 54448-0185
715-443-1211

January 20, 1997

TO THE SENATE COMMITTEE ON AGRICULTURAL AND ENVIRONMENTAL RESOURCES

Dear Madam Chairman:

Marathon Cheese Corporation was founded in 1954. We package 140 million pounds of natural Wisconsin cheese every year to support our customers and the farmers of the great dairy state of Wisconsin.

Marathon Cheese has always supported the Wisconsin farmer and fully understands the need for a strong dairy industry -- an industry that is founded on creating a just reward for producers. Believe me, we are keenly aware that all segments of the dairy industry must be healthy. If one segment of this industry is hurting, the entire industry hurts.

As a packager of natural cheese in the State of Wisconsin, Marathon Cheese has no objection to reasonable regulations. However, the proposed regulation under consideration will negatively impact the cheese industry, and potentially the farmers of Wisconsin. A viable cash market for cheese is crucial to the dairy industry. The existing National Cheese Exchange (NCE) provides that cash market for the sale and purchase of cheese.

In my twenty-five years as a member of the National Cheese Exchange, I have never seen, nor have I ever sensed anyone "manipulating" the market. I sincerely feel that it is impossible for someone to manipulate the market as the trading sessions are comprised of buyers and sellers -- farm cooperatives, proprietorships, and stock companies -- whose names comprise all segments of this industry from large to small companies across this great nation. It is truly a national exchange.

Marathon Cheese supports concepts that will improve trading on the NCE. The National Cheese Exchange is actively pursuing electronic trading in the near future. This trading will be anonymous, such as suggested by the Governor's Task Force committee; and I am confident that other additional measures can be taken to reduce volatility. The Cheese Exchange welcomes further suggestions. More time is necessary to improve and refine this democratic process.

It is our belief that passage of this bill will not only curtail trading and encourage stagnation within a market that must reflect true supply and demand; but will in effect, make it virtually impossible for anyone to trade on the National Cheese Exchange. A viable cash market is not only necessary, but vital to people within our industry.

We at Marathon Cheese Corporation strongly oppose this bill.

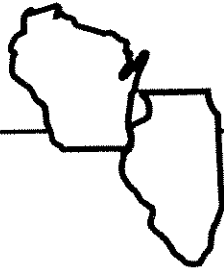
Respectfully yours,

MARATHON CHEESE CORPORATION

D. F. Menzner
Chairman and CEO

DFM:mkm:155

MIDWEST



EQUIPMENT DEALERS ASSOCIATION

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Mailing Address: P.O. Box 44364 • Madison, Wisconsin 53744-4364

January 20, 1997

Senate Committee on Agriculture and
Environmental Resources
State Capitol
Madison, WI 53706

Re: *Statement in Support of SB 2 Relating to Regulation of
Trading Practices on the National Cheese Exchange*
Our File No.: 1011.000

Senator Clausing and Members of the Committee:

The Midwest Equipment Dealers Association, Inc., is a trade association representing the approximately 200 farm equipment dealerships located throughout Wisconsin. On behalf of our membership, we would like to register our strong support for the trading regulations put forth in SB 2.

Equipment dealerships have long been tied to the health of the dairy industry in Wisconsin. When dairy prices are low, as they now are, the impact of those low prices is felt throughout our industry. Many farmers do not have the confidence they need under current pricing, to make the necessary capital investments in their farms to stay competitive.

While we accept the fact that, as in any industry, prices can fluctuate, the State of Wisconsin cannot simply stand by and permit large buyers or sellers to artificially manipulate dairy prices for their own private benefit and to the detriment of the Wisconsin dairy industry. Recent studies we have seen show this may well have been the case with the National Cheese Exchange.

Competition in the market place can only work if it is fair competition. SB 2 is a step towards making competition on the National Cheese Exchange fair and to that end, deserves the support of the legislature and should be made law. Trading against interest and other market manipulation by large traders should not be permitted.

*Serving Farm, Industrial, Dairy, Farmstead Mechanization,
and Outdoor Power Equipment Dealers throughout Illinois and Wisconsin*



AFFILIATE OF NORTH AMERICAN EQUIPMENT DEALERS ASSOCIATION

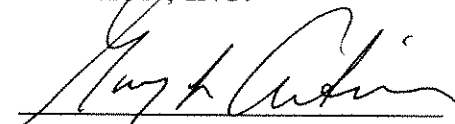


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Thank you for this opportunity to support passage of SB 2.

MIDWEST EQUIPMENT DEALERS
ASSOCIATION, INC.

By:


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Wisconsin Dairy Products Association, Inc.

TESTIMONY ON SENATE BILL 2
Senate Agriculture Committee
January 21, 1997

Presented by: Brad Legreid, Executive Director
Wisconsin Dairy Products Association

I am testifying today on behalf of Wisconsin Dairy Products Association in opposition to Senate Bill 2, legislation that would attempt to regulate trading practices on the National Cheese Exchange. We are opposed to this bill for a number of reasons:

- 1) The issue of cheese and milk pricing is a national, not state, issue. Any recommendations for modifying the National Cheese Exchange should come from the federal level. The Exchange is a pricing mechanism for the entire country, not just Wisconsin. It is not appropriate for Wisconsin to propose laws that will impact dairy companies throughout the United States.

Last year the Wisconsin Dept. of Agriculture, Trade & Consumer Protection (DATCP) issued a report on the National Cheese Exchange (this is not the Governor's Advisory Committee report). In its narrative of this proposed rule (p.4, second paragraph) the Dept. states that "*the problem*

is national in scope, and solutions will require broad government and industry support on a national level".

- 2) Since this is a national issue, a number of hearings on the federal level have already been held. USDA, Congress and the Justice Dept. all held separate hearings on this issue. These forums are the appropriate ones for addressing this national issue.

- 3) Dairy companies, both state and national, have been publicly supportive of the Exchange. A number of proprietary and cooperative organizations have issued statements in support of the Exchange. In fact, an unprecedented number of cooperative and proprietary dairy companies have jointly signed a dairy industry statement supporting the National Cheese Exchange and the initiatives being undertaken by the Exchange to refine and enhance trading techniques.

- 4) Finally, Wisconsin should not attempt to regulate a pricing mechanism that is national in scope. We should not try and impose our standards on the rest of the country. When the New England states created the Northeast Dairy Compact, Wisconsin fought hard to defeat it because it would allow individual states to change national pricing mechanisms.

However, we're trying to do the same thing here. This proposed bill would basically eliminate a pricing mechanism that would affect the entire country.

The National Cheese Exchange has begun the process of reviewing possible alternatives to address concerns being raised about the existing markets. There are a variety of alternatives that will be thoroughly analyzed. In addition, the Governor's Task Force has issued their final report that suggests various alternatives. Governor Thompson will be taking a delegation to Washington D.C. next month to meet with USDA Secretary Dan Glickman and discuss these proposals.

In addition to the NCE's self-examination and the Governor's Task Force proposals, USDA is in the process of undergoing major changes in the federal order system. As mandated by last year's Farm Bill, USDA will be drawing up new federal milk marketing regions and making revisions to the rules regulating the pricing of milk and dairy products. USDA will be giving serious consideration to the possibility of eliminating the Basic Formula Price (BFP) which currently is the benchmark for establishing monthly prices. Since the National Cheese Exchange is part of the formula used to figure the monthly BFP, USDA will be carefully scrutinizing whether or not the National Cheese Exchange prices are a viable and realistic part of the pricing equation.

There is a great deal of focus and attention being paid to the National Cheese Exchange on a federal level. That is where changes should be made. Dairy policy is a national issue, not state issue. Total chaos would reign if every state attempted to establish their own pricing laws for dairy products. USDA has the expertise and knowledge to handle these types of issues. Since they have already begun their review process, it would be extremely prudent for Wisconsin and other states to allow USDA to complete their assigned tasks without being encumbered by individual state legislation.

We all realize that the recent price decreases at the National Cheese Exchange have been quite troubling to the dairy industry. However, prices on the Exchange have already begun to rise and all dairy economists predict that 1997 will see the second highest pay price on record.

Since prices are starting to rebound and USDA and the National Cheese Exchange are already involved in comprehensive reviews, it would not be prudent to pass this type of legislation which would have a stifling effect on the entire dairy industry. The industry needs a functioning, credible cash market and that's what the National Cheese Exchange offers.

Therefore, the Wisconsin Dairy Products Assn. respectfully requests that you do not pass this proposed legislation.

Thank you.