



**MEMORANDUM**

**TO:** Jerry Kozak, President and Chief Executive Officer of National Milk Producers Federation

**CC:** NMPF Board of Directors, House Agriculture Committee, Senate Agriculture Committee

**FROM:** Dairy Subcommittee of the National Family Farm Coalition

**DATE:** December 9, 2008

**SUBJECT:** Jerry Kozak's October 30 Speech on Future of the Dairy Industry

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The Dairy Subcommittee of the National Family Farm Coalition read National Milk Producers Federation CEO Jerry Kozak's recent speech from October 30, 2008 and were greatly dismayed by his radical deregulatory vision for our dairy industry. Kozak's irresponsible proposals would only further the consolidation and concentration of our markets that have already caused thousands of dairy farmers to go out of business. Only 60,000 dairy farmers remain in the United States. The dairy industry is in crisis due to the continued volatility of milk pricing and skyrocketing costs of production for farmers. National Milk Producers Federation has failed to fight for any positive change for dairy farmers and continues to favor only the interests of its corporate associate members, such as Kraft, Dean Foods and Fonterra and dairy cooperatives such as Dairy Farmers of America that are under investigation by the Department of Justice and Commodity Futures Trading Commission.

Below are critiques of Kozak's suggestions for radically overhauling dairy policy that should greatly trouble dairy farmers fighting for their survival and facing a Class I base price that for November 2008 was \$15.43 cwt, down \$4.61 from the price in December 2007. Meanwhile, cost of production has skyrocketed to over \$30 in many parts of the country. Nowhere in his speech does he address the two core issues impacting the livelihoods of dairy farmers:

- A pricing formula that allows dairy farmers an adequate cost of production while eliminating the need for ineffective government subsidy programs such as the Milk Income Loss Contract (MILC).
- Cracking down on antitrust abuses running rampant in the dairy industry due to the collusion of dairy cooperatives and processors

Here are some specific responses to Kozak's suggested changes in dairy policy.

***KOZAK SUGGESTS REFORMING FMMO BY LETTING PROCESSORS PAY WHATEVER THEY WANT FOR MILK***

*KOZAK: "I believe we need to seriously reform the Federal Milk Marketing Order program. It's clear that the structural changes made by the 1996 Farm Bill, which resulted in the formulation of make allowances, have created more bad than good...Therefore, I believe we need to consider replacing the make allowance structure with a competitive pay price that will allow processing plants to pay what they must for the milk they procure. Some will pay more than others; that's the inevitable result of competition, and where we need to go. After all, isn't it the fundamental purpose of cooperatives to negotiate an adequate price for their members' milk?"*

NFFC believes Kozak's suggestion to reform the FMMO and allow for a "competitive pay price" structure exposes NMPF's agenda that mainly advocates for the interests of processors and has no interest in helping dairy farmers. A "competitive pay price" would enable processing plants to pay whatever they want to farmers for their milk. In a truly competitive free market system, this could work. However, the dairy industry has become so highly consolidated and concentrated that it has ceased to be a free market for many years now. Whereas dairy farmers once had five or six options for selling their milk, many are now left with only one buyer. Sixty thousand dairy farmers cannot hope to attain a fair price for their milk when three corporations have near-monopoly market power. Dean Foods controls 40% of the fluid milk supply in this country (and 100% in some parts of the country), Leprino Foods controls much of the pizza cheese market while Kraft controls the retail sector for natural and processed cheese use. These powerful entities have in the past come under suspicion for manipulating cheese prices on the Chicago Mercantile Exchange to depress milk prices for farmers. Cooperatives like Dairy Farmers of America and Land 'O Lakes have already been exposed in media outlets from the *Wall Street Journal* to the *New York Times* as failing to bargain on behalf of their dairy membership. A system that allows cooperatives to bid whatever they like for farmers' milk means milk prices will be driven as low as possible with no hope of recouping a fair price for farmers.

The fact that Kozak never even bothers mentioning cost of production for dairy farmers shows that NMPF is mainly interested in helping processors, the corrupt dairy cooperatives and has no interest in the welfare of dairy farmers. NFFC recommends reforming the FMMO and instituting a new pricing formula for raw milk that will cover a cost of production for farmers. Without a fair price for milk, dairy farmers, regardless if they milk 10 cows or 10,000 cows, will not be able to survive.

***KOZAK ADVOCATES RADICAL DEREGULATION OF INDUSTRY BY ELIMINATING DAIRY PRICE SUPPORT PROGRAM AND MILC***

*Kozak: “Another perennial problem we’ve had, stretching back even more than a decade, is determining what constitutes the proper nature of a government safety net...I think in the next Farm Bill, we should consider asking Congress to end both programs [Dairy Price Support Program and MILC], and replace them with programs that will benefit the entire industry in a new global marketplace. For those who believe they will not be able to operate successfully without these government supports, and will feel compelled to exit the business, I believe we should look at mechanisms to facilitate that process as other segments of agriculture have done both here and abroad.”*

NFFC has long said that a true cost of production that allows farmers to earn a fair price from the marketplace would make the need for government subsidy payments irrelevant, but eliminating the price support program and the Milk Income Loss Contract (MILC) without putting in place any mechanism to ensure farmers are paid fairly would completely wipe out most dairy farmers. NMPF seems to think farmers enjoy relying on government payments when prices crash for our milk. This is an insult to dairy farmers, who have always said we want to be paid from the marketplace, and not from taxpayers. NMPF, instead of fighting for a true competitive marketplace for dairy farmers and trying to save our remaining farmers, seems hell-bent on driving us out of business and forcing us to rely on useless private insurance that does not come close to recovering our costs.

Jerry Kozak even suggests helping us exit the industry as quickly as possible if we somehow can’t survive \$9.90 cwt prices! More and more consumers, particularly with the Chinese milk powder scandal, are demanding local, source-verified food. However, NMPF sees no problem with an industrial model for dairy where 50,000 cows in confinement can truck their milk to all of the United States vs. a model where family farmers ship to local regions. Dairy farmers should be outraged by Kozak’s complete disregard for our survival as should consumers interested in access to local dairy products and concerned about foreign imports.

#### *KOZAK TOUTS INEFFECTIVE AND ETHICALLY DUBIOUS CWT PROGRAM*

*KOZAK: “So what exactly should we be considering for the future? First, we should expand the export assistance side of the program by exploring the creation of a U.S. Marketing Agency in Common (USMAC) to take advantage of the enormous untapped potential of our cooperative structure. We should use the vast potential and broad membership of CWT to ensure that we will control our own milk supply, rather than rely on foreign interests whose loyalty will always first be to their own constituents.”*

The Cooperatives Working Together program has proven to be a failure in stabilizing milk prices for farmers while being run with little transparency and oversight. NFFC believes that the expansion of export subsidies and the creation of a USMAC will lead us in the wrong direction and result in lower producer prices nationwide.

According to the American Journal of Agricultural Economics, when the United States elects to increase its world market share through the use of export incentives, it has a small impact. The journal further concluded that in many cases, nonsubsidized commercial exports from the U.S. are displaced by subsidized exports. As a result, the

use of exports subsidies leads to lower world prices. Producers should not be required to pay for the subsidization of dairy exports at the processor level through a USMAC. It is the processor and exporter, not the producer, who benefits most from these sales. Analysts worldwide have concluded that export assistance programs lead to lower world prices and lower producer prices. We believe the exports assistance component of the CWT should be eliminated, not expanded. Because it is funded directly by producers, the CWT should take concrete steps to increase producer prices, not processor prices through expanded export subsidies.

U.S. dairy cooperatives have also been remarkably inept when it comes to marketing our export products. DairyAmerica, an entity set up by the cooperatives to market 80% of nonfat dry milk (NFD) production, allowed Fonterra, the New Zealand dairy cooperative that controls much of the world's dairy export markets, to market export sales of NFD. Such contracts provided a windfall for Fonterra as the world price for NFD rose, but U.S. dairy farmers saw no such rise in their own milk prices and no gains to be had from the "globalized" marketplace. Even worse, long term contracts for NFD signed by DairyAmerica with Fonterra led to price misreporting to USDA for several months. As a result, dairy farmers lost at least \$50 million as dairy prices collapsed in 2006-2007. To this day, no compensation has been offered. It is quite amusing for Kozak to claim that CWT helps dairy cooperatives control our domestic product when foreign companies have been allowed to control our exports.

*KOZAK: "I also think we should consider how CWT can create financial incentives to produce from American milk the type of products, such as casein, various new protein products and cheeses, that our customers want and need, both domestically and internationally. Let me assure you that these ideas are not intended to create competition with our own members, but rather try to fill voids where they exist, avoiding duplication but stimulating innovative and bold thinking for future alternatives."*

NFFC believes that at a time when consumers are demanding quality and safe dairy products, it is extremely disturbing that NMPF continues to push for domestic production of inferior and cheaper dairy products such as caseins and possibly milk protein concentrates (MPC), the latter of which has never been approved as safe by the Food and Drug Administration. Food processors are continually looking to weaken nutritional standards for dairy by allowing ultrafiltered milk and MPCs to be labeled as real "milk" products in cheeses and other food. There is no consumer demand for such nutritionally inferior ingredients which filter out much of the lactose and minerals contained in fresh milk. Food processors use these cheaper ingredients as a way to displace the use of farmers' raw milk. Already, imports of MPCs and caseins from China, India, Ukraine have caused serious harm to U.S. dairy farmers. Domestic production of these ingredients will once again only help processors while diluting demand for farmers' raw milk product.

*KOZAK: "I realize that much of what I have said today might make some uneasy and uncertain of my intentions, but be assured I remain a fervent champion of cooperatives and the producers who own them."*

Many dairy producers no longer feel they “own” their cooperatives and that cooperatives have been allowed to get away with antitrust violations by hiding under the Copper-Volstead Act and going against their membership’s wishes through bloc voting, which allows co-op leaders to make decisions on behalf of the entire cooperative. For these reasons, lawsuits have been filed against Dairy Farmers of America and the Justice Department conducted a thorough and exhaustive two-year investigation into DFA’s marketing power and collusion with Dean Foods and other companies that forced many dairy farmers to either join DFA, or be left with no outlets in which to sell their milk. The recent revelation of DFA’s illegal \$1 million payment to former DFA CEO Herman Brubaker is just further proof of how far removed dairy cooperatives have become from their farmer “owners.”

*KOZAK: “I also want to assure you that I recognize that the herd retirement program must be kept, not as an afterthought, but as a very vital and essential part of our multi-faceted effort.”*

CWT’s “voluntary herd retirement” program which calls for the killing of cows as a mechanism of controlling dairy production has been ineffective at stabilizing the price of milk, which has swung wildly in the past few years. A truly effective supply management program must also account for imports and in recent years, the U.S. has steadily increased the imports of dairy cows from Canada as well as dairy ingredients such as MPCs from foreign countries. Without controls on foreign imports, CWT’s herd retirement program will continue to be a costly failed approach and an ethically questionable one. CWT has recently been pushing for the culling of bred heifers, a morally outrageous approach that should have no place in our society. The United States in recent years has become a dairy deficit nation, importing more than we export. Cow kills and herd retirements at a time when we continue to lose thousands of dairy farms a year is a misguided policy at best and malicious at worst.

### **Suggested Dairy Policy Recommendations**

NFFC believes that if NMPF were to be an effective advocate for dairy producers, they should promote some of the following policies:

- **A real supply management program and cost of production pricing system.** Without a cost of production for dairy farmers, most will go out of business, regardless of the numbers of cows milked. A supply management program would help curtail any overproduction, though the U.S. has been a dairy deficit nation in recent years, importing more than we export. NMPF’s Cooperatives Working Together’s voluntary herd retirement program has been a failure in stabilizing milk prices for farmers while promoting ethically dubious practices such as the killing of bred heifers.
- **Antitrust Investigations into Dairy Farmers of America.** The Department of Justice completed a two-year extensive investigation into the antitrust violations

by DFA that have driven many farmers out of business. The Bush Administration refused to allow the report to be made public. NFFC has been at the forefront of calling for the DOJ to release the findings of the investigation and has requested the Senate Judiciary Committee to hold hearings examining DFA's marketing power and predatory business practices.

- **Transparency in milk pricing.** The entire system of pricing milk in the United States is a byzantine mess that is easily prone to manipulation and fraud. Milk prices depend on both the Chicago Mercantile Exchange (CME), where cheese is traded, and collection of data for butter, cheese, nonfat dry milk prices from the U.S. Department of Agriculture's National Agriculture Statistics Services (NASS). Previous investigations by the General Accountability Office (GAO) and now the Commodity Futures Trading Commission show that the CME, due to a limited number of traders (Kraft, Dean Foods, DFA), can be easily prone to manipulation, and thus drive down milk prices for farmers. Meanwhile, the actions of a few still unnamed companies caused NASS to misreport prices for nonfat dry milk from April 2006-April 2007, underpaying farmers by at least \$50 million. Other than a few tepid statements, fighting for transparency in milk pricing does not seem to be a priority for NMPF. Perhaps not surprising given its membership and associate members.
- **Uphold the integrity of our food standards and limit imports.** NMPF has done little to stop the continued degrading of our food standards. Food processors and dairy cooperatives have allowed the importation of milk protein concentrates (MPC), an illegal product that has never been approved by the FDA, to displace domestic milk production. With MPCs coming from countries with questionable sanitary standards, including China and India, this could pose a serious public health risk. Meanwhile, food processors continually try to allow MPC-derived products to be included in the definition of "milk." NMPF also failed to get dairy included under the new Country of Origin labeling rules. With the recent milk powder scandals in China, consumers more than ever are concerned about where their food comes from. While COOL was a victory for many other American farm sectors, dairy was conspicuously left out.
- **Oppose the World Trade Organization and Free Trade Agreements that Reduce Dairy Farmers' Ability to Earn a Fair Price.** NMPF has pushed for free trade agreement after free trade agreement as well as more "market access" through the WTO. Accessing export markets only helps the corporations who export products while allowing for cheap imports (such as MPCs) to be dumped into the U.S. and undercutting U.S. farmers.
- **Oppose the National Animal Identification System.** NMPF has been one of the biggest supporters of USDA's misguided Animal ID program that will cost dairy farmers a large amount of money and time to tag all their animals with expensive RFID technology to track and report all movement of cows.

The United States has a vested interest in ensuring we have a viable domestic dairy industry. NFFC believes Jerry Kozak's recent speech puts into alarming jeopardy our nation's ability to feed itself at a time when anxiety over the global food crisis and food safety is rising. NMPF should cease claiming to represent dairy producers if it continues to advocate on behalf of food processors and dairy cooperatives at the expense of U.S. farmers facing some of their toughest conditions in decades.