

S. HRG. 107-520

**S. 1157, THE DAIRY CONSUMERS AND PRODUCERS
PROTECTION ACT OF 2001**

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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JULY 25, 2001
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Serial No. J-107-34

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE

80-362 DTP

WASHINGTON : 2002

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S. 1157, THE DAIRY CONSUMERS AND PRODUCERS PROTECTION ACT OF 2001

WEDNESDAY, JULY 25, 2001

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 10:03 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Kohl, Feingold, Schumer, Edwards, Hatch, Grassley, and Specter.

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

Chairman LEAHY. Good morning. This hearing is an opportunity for both sides of the debate on interstate dairy compacts to fully present their cases. This is one of those issues where every member of this committee can agree on the goal, but apparently not how we might get there.

We all want to support our dairy farmers and we all believe that this hard-working segment of our society should be able to earn a decent living. We all want ample supplies of fresh milk at reasonable prices for our States' consumers.

Unlike agricultural commodities like wheat, corn and soybeans, milk is highly perishable. When a dairy farmer brings the milk to market, that milk has to be sold right away or it quickly loses its value. You can't set it aside for the winter in a silo.

For big processors, that is just fine. They can buy milk at distressed prices and store it away to make cheese or powdered milk or ice cream. But that setup hurts farmers, who work incredibly hard just to make a living. It also hurts consumers, who want farmers around to supply fresh milk for the store shelves.

As a Nation, we have tried several remedies to cut through this knot, and the record is proving that regional compacts are the most sensible and workable answer yet. And unlike other legislative remedies that come with price tags, and often hefty ones, compacts cost Federal taxpayers nothing.

We will be talking throughout the summer and into the fall about numerous farm support programs, all of which will cost in the aggregate billions of dollars of taxpayers' money. We will give our speeches on fiscal restraint and balancing the budget and all the rest as we will vote for these multi-billion-dollar farm programs. If we really believe in fiscal restraint, if we really believe in saving the taxpayers' money, if we really believe in helping the

consumer, and if we really believe in helping farmers, here is an easy program. It helps farmers, it helps consumers, and costs the taxpayers nothing.

Milk is one of those unusual foods where the spread between what farmers get paid for their labor and what consumers pay for the product is huge and increasing throughout the Nation. In New England, what farmers get paid has been fairly stable since the Dairy Compact began working in 1997, and that is one of its great successes.

But what processors and stores charge for milk has greatly increased since 1997, not just in New England but in the rest of the Nation. In other words, while farmers are getting about the same price, the processors and the stores are making a lot more.

This will show you the difference, and you will see the farm price and that has stayed pretty stable. But look at the retail price on the top, how that has shot up. We will show that consumer prices are lower in New England than in much of the rest of the country, and that the \$10,000 to \$20,000 in added annual income has helped keep New England farmers in business, farmers who otherwise would have had to leave farming.

I will demonstrate that the hidden risk right now to consumers and farmers in New England and the rest of the Nation is the growing concentration of power of processors in the milk industry.

In New England, Suiza Foods is rapidly trying to cinch a stranglehold on milk supplies. In some parts of New England, they already control 70 to 80 percent of the fluid milk supply. They have swept in, they have bought processing plants in New England, and of course they then closed them, an easy way to get rid of any competition. In fact, the ascent of Suiza is nothing less than stunning. In a few short years, Suiza has gained its dominant position in the milk processing business.

Now, here are the early 1990's. Suiza started in Puerto Rico with three plants, but now look at what it has done just a decade later; look where they cover in the year 2000. The third chart shows the areas where Suiza and Dean Foods exert their massive influence—pretty rapid, but it also explains why a lot of the lobbyists who are sitting here, and you are always welcome, of course, are going to be getting large paychecks from Suiza, directly or indirectly, to block this because they are far more interested, obviously, in how much money they make than how much money farmers may take home.

If its purchase of Dean Foods is approved, a strong case can be made that Suiza is on the verge of becoming a monopoly in the milk processing business. I have asked the Department of Justice and its Antitrust Division to closely monitor Suiza's market dominance, and I again call their attention to the urgency of doing this.

But equally remarkable is the fact that Suiza is also now in the process of consolidating a dominant position as the chief purchaser of milk from farmers. What is happening is Suiza is now dominating both the purchase and the sale of fluid milk. They are becoming all at once both a monopolist and a monopsonist in the fluid dairy marketplace.

Now, you don't often see such a monopsonist in any area, especially in food, in this country. They are a new type of market force.

I have searched our antitrust case law for a name for this type of combined market power. You go through all the antitrust dictionaries and everything else and it is hard to find anything that even amounts to this it is so pervasive. So I think I will call these rare market entities “Suizopolies,” because that is what they are.

How can suppliers and consumers defend themselves from a giant firm, this “Suizopoly,” that controls both the purchase of a product from thousands of suppliers who have virtually no bargaining power and its sale to millions of consumers? Of course, the best way is the Dairy Compact. It gives the public some control over access to milk, it assures fresh local supplies of milk, and it gives farmers some ability to earn a living income.

Let me respond to the seven myths about the Compact that the big processors who have spent millions of dollars to promote through years of lobbying and advertising, and even campaign contributions. They were trumpeting many of these myths before the Compact was enacted. They have not changed their song sheets, even though the Compact has done just what it was supposed to do, proving their arguments dead wrong.

The first myth is that dairy compacts are milk taxes that hurt consumers. Well, as you have just heard, concentration is the major cause of consumer price increases. A recent study funded by USDA determined that industry profit-taking, including profit-taking by Suiza, and cost increases not related to the Compact are responsible for more than 90 percent of the increases in retail prices in New England.

A recent GAO report requested by Senator Feingold and myself says it all. It compares the prices of a gallon of 2-percent milk in Boston and Milwaukee for last year, and you will see that the wholesale price of milk in Boston, which has the Compact, was \$2.03. In Milwaukee, which doesn't have the Compact, it was \$2.08, 5 cents more. The Compact certainly isn't causing the difference.

But Suiza controls around 70 percent of the milk supply in Massachusetts and a greater amount in Boston. The average retail price listed by GAO is \$2.74 in Boston for a gallon of milk, but only \$2.26 in Milwaukee. So the Compact doesn't cause the difference. The wholesale prices in Boston are lower than they are in Milwaukee.

Another myth is that the Dairy Compact has harmed nutritional programs, such as WIC, school lunch and school breakfast, and food stamps. Having helped write many of those programs, I would not want to see that. We find that myth is wrong. In fact, if anything, it has over-compensated the WIC program, as OMB has shown.

A letter from the Massachusetts WIC director says this: “The commission has taken strong steps to protect the WIC Program and the School Lunch program from any impacts due to the compact...Because of this, our WIC Program was able to serve approximately 5,875 more participants with fresh wholesome milk without added costs...” The New England Compact Commission has exempted school breakfast and lunch programs from any pricing impacts.

Commissioner Kassler in Massachusetts tells me in writing that “without the Compact, this [regional New England] milk shed will dwindle and milk would be brought in from greater distances and at greater costs,” ranging from 20 to 67 cents per gallon. So the Compact has helped our WIC programs and our school lunch programs and those feeding programs.

Then there is the myth that dairy compacts are unconstitutional price-fixing cartels. Now, this is my favorite example of the twisted logic that those who oppose it use. I think their argument goes something like this: interstate compacts would be unconstitutional if the Constitution didn’t explicitly contain a clause allowing the creation of interstate compacts with the consent of Congress.

What they are complaining about is that we have done it constitutionally, and because they can’t answer that fact, they call it unconstitutional. There is the Constitution [referring to a graphic], and it makes it very clear that we can do this.

Then there is the myth that dairy compacts are barriers to interstate trade. The fact is, of course, that dairy compacts encourage greater competition in the marketplace by preserving more family farms and increasing trade. The OMB concluded that trade into the Compact region actually increased after implementation. I would also point out that farmers in non-Compact States like New York or even Wisconsin are perfectly free to sell their milk in the Compact region at Compact rates. In fact, New York, as I understand it, is doing just that.

Then there is the myth that dairy compacts encourage farmers to over-produce milk and will lead to a flood of milk in the market. The fact is just the opposite. The Dairy Compact regulatory process includes a supply management program that helps to prevent over-production. In 2000, the Northeast Dairy Compact States produced 4.7 billion pounds of milk, actually a decline from 1999.

You can see that in the nearly 4 years the Compact has been in place that Compact region production has risen by just 2.2 percent. Compare that to other States: Wisconsin, 4 percent; U.S. overall, 7.4 percent; California, almost 17 percent.

Then there is the myth that dairy compacts only help bigger farms at the expense of smaller ones—an easy myth to knock down. Like most commodity programs, the Compact benefits all participants. In fact, 75 percent of the farms in New England have fewer than 100 cows.

Then there is the seventh myth, the one that really gets me, that the Dairy Compact has not been successful. We hear this from the large processors. With all the money they spend, they are just concerned about these small farmers throughout New England and I know they lie awake at night just worrying about them and that it might not be successful. Well, the fact is it has been successful. Thanks to the Northeast Compact, farmers receive higher incomes that help them stay in business.

If one is a proponent of States’ rights, then the Compact is for you. The States initiated it, they ratified it, and they supported it. I will enter into the record a letter that is being delivered today to all Members of Congress from 22 Governors who are endorsing the Dairy Compact bill because it would ratify the compacts their States have negotiated among themselves.

If you support interstate trade, regional compacts are the answer. If you support a balanced budget, then regional compacts are the answer. The Northeast Compact has not cost taxpayers a single cent, unlike most of the other farm programs we vote on.

If you support farmland protection programs, then regional compacts are the answer. Major environmental groups have endorsed it because they know it is going to prevent urban sprawl and preserve open land.

If you are concerned about prices to consumers, then regional compacts are the answer because retail milk prices within the Compact region are lower, on average, than the rest of the Nation.

So the Compact has done exactly what it was established to do. It has stabilized wildly fluctuating dairy prices, it has ensured a fair price for dairy farmers, it has made it possible for farm families to stay in business, and it has protected consumer supplies of fresh milk.

So what we have here is a classic case of David against Goliath. David is the small family farmers. Goliath is mega-corporations like Suiza Foods and others. They are willing to spend millions upon millions of dollars to defeat this. The small dairy farmers are willing to spend their sweat and their toil to keep their family in business and to supply consumers with fresh milk, and incidentally do it at no cost to the taxpayers and a lower cost to the consumers. That is why the Dairy Compact is so important.

[The prepared statement of Senator Leahy follows:]

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

This hearing is an opportunity for both sides of the debate on interstate dairy compacts to fully present their cases.

This is one of those issues where every member of this committee can agree on the goal, but not on how to get there. We all want to support our dairy farmers and we all believe that they should be able to earn a decent living for their families. We all want ample supplies of fresh milk, at reasonable prices, for our states' consumers.

Unlike agricultural commodities like wheat, corn and soybeans, milk is highly perishable. When a dairy farmer brings the milk to market, that milk has to be sold right away, or it quickly loses its value. It can't be set aside in a silo. For big processors, that's just fine. They can buy milk at distress prices and store it away to make cheese or powdered milk or ice cream. But that setup hurts farmers, who work incredibly hard just to make a living, and consumers, who want farmers around to supply fresh milk for the store shelves. As a nation we have tried several remedies to cut through this knot, and the record is proving that regional compacts are the most sensible and workable answer yet. And unlike other legislative remedies that come with price tags, and often hefty ones, compacts cost federal taxpayers nothing.

Milk is one of those unusual foods where the spread between what farmers get paid for their labor, and what consumers pay for the product, is huge and increasing throughout the nation. In New England, what farmers get paid has been fairly stable since the Dairy Compact began working in 1997, and that is one of its great successes. But what processors and stores charge for milk has greatly increased since 1997—not just in New England, but in the rest of the nation.

We will show that consumer prices are lower in New England than in much of the rest of the country and that the \$10,000 to \$20,000 in added annual income has helped keep New England farmers in business who otherwise would have had to leave farming.

I will demonstrate that the hidden risk right now to consumers and farmers in New England—and the rest of the nation—is the growing concentration of processors in the milk industry.

In New England, Suiza Foods is rapidly trying to cinch a stranglehold on milk supplies. In some parts of New England they already control 70 to 80 percent of

the fluid milk supply. They have swept in, bought processing plants in New England, and then closed them—eliminating competition.

The ascent of Suiza is nothing less than stunning. In a few short years, Suiza has gained its dominant position in the milk processing business. If its purchase of Dean Foods is approved, a strong case can be made that Suiza is on the verge of becoming a monopoly in the milk processing business. I have asked the Department of Justice and its Antitrust Division to closely monitor Suiza's surging market dominance, and I again call to their attention the urgency of doing that.

But equally remarkable is the fact that Suiza is also now in the process of consolidating a dominant position as the chief purchaser of milk from farmers. Simply put, in many parts of the country, Suiza Foods is the dominant customer—if it is not the only customer—for farmers' raw milk to be used for fluid processing. Suiza Foods is now dominating both the purchase and the sale of fluid milk in this country. Suiza is becoming—all at once—both a monopolist and a monopsonist in the fluid dairy marketplace.

Suiza Foods is a new type of market force. I have searched our antitrust case law for a name for this type of combined market power. There is no adequate name on the books for what Suiza has become, so let's call these rare market entities "Suizopolies."

How can suppliers and consumers defend themselves from a giant firm that controls both the purchase of a product—from thousands of suppliers with little bargaining power—and its sale to millions of consumers?

The best way is the Dairy Compact—it gives the public some control over access to milk, it assures fresh, local supplies of milk, and it gives farmers some ability to earn a living income.

I want to respond to seven myths about the Compact that the big processors have spent millions of dollars to promote, through years of lobbying and advertising and campaign contributions. They were trumpeting many of these myths before the Compact was enacted, and they have not changed their songsheets, even though the Compact has done just what it was supposed to do, proving their arguments dead wrong.

1. Myth—Dairy compacts are milk taxes that hurt consumers.

Fact: As you have just heard, concentration is the major cause of consumer price increases in the milk sector.

And, a recent independent study funded by USDA determined that industry profit taking—including profit taking by Suiza—and cost increases not related to the Compact are responsible for more than 90 percent of the increase in retail prices in New England since the Compact was implemented. This leaves less than three cents of a gallon of milk attributable to the Compact.¹

A recent GAO report requested by Senator Feingold and myself says it all: It compares the prices of a gallon of 2 percent milk in Boston and Milwaukee for last year.

The wholesale price of milk in Boston was \$2.03. The wholesale price in Milwaukee was \$2.08—five cents MORE than in Boston.

So you would expect retail prices to be about the same for Boston, or slightly less, than for Milwaukee.

However, Suiza controls around 70 percent of the milk supply in Massachusetts, and a greater amount in Boston. The average retail price listed by GAO is \$2.74 in Boston for a gallon of milk, but only \$2.26 in Milwaukee.

Obviously, the Compact does not cause the difference—the wholesale prices for Boston are lower than in Milwaukee, as the GAO makes clear.

The GAO report also shows that for most of the cites they examined, the consumer prices in the compact region were lower.

2. Myth—The Dairy Compact has harmed nutritional programs such as WIC, school lunch, school breakfast and food stamps.

Wrong again. The fact is that the Compact Commission requires compensation to state WIC and school lunch programs for any potential impacts. In fact, if anything it has over-compensated the WIC program, as noted in the 1998 OMB study. A letter from the Massachusetts WIC Director says this:

The commission has taken strong steps to protect the WIC Program and the School Lunch program from any impacts due to the compact. . . . Because of this, our WIC Program was able to serve approximately 5,875 more participants with fresh wholesome milk without added costs

The New England Compact Commission has exempted school breakfast and lunch programs from any pricing impacts due to milk price regulation.

¹The Public Interest and Public Conomic Power: A Case Study of the Northeast Dairy Compact: Cotterill and Franklin, Food Marketing Policy Center, Dept. of Agriculture and Resource Economics, University of Connecticut, May 2, 2001.

Commissioner Kassler of Massachusetts tells me in writing that “without the Compact, this [regional New England] milk shed will dwindle and milk would be brought in from greater distances and at greater costs.” Those greater costs have been estimated in the range of from 20 to 67 cents per gallon.

3. Myth—Dairy compacts are unconstitutional price-fixing cartels.

Fact: This is my favorite example of twisted logic. I believe my opponents’ argument goes something like this: “Interstate compacts would be unconstitutional if the Constitution didn’t explicitly contain a clause allowing the creation of interstate compacts with the consent of Congress.”

By operation of the Compact Clause, states explicitly have the opportunity to solve regional problems in this constitutionally permitted way. United States federal courts have continuously recognized the Northeast Dairy Compact as a constitutionally exercise of Congressional authority under the Commerce and Compact clauses of the U.S. Constitution (See: Art. 1, § 10).

4. Myth—Dairy compacts are barriers to interstate trade.

Fact: Dairy compacts encourage greater competition in the marketplace by preserving more family farms and increasing trade. An OMB study concluded that trade into the compact region actually increased after implementation. And I would also point out that farmers in non-Compact states, like New York, or even Wisconsin, are perfectly free to sell their milk in the Compact region at Compact rates. New York dairy producers are benefitting today by doing just that.

5. Myth: Dairy compacts encourage farmers to over-produce milk and will lead to a flood of milk in the market.

Fact: The Dairy Compact regulatory process includes a supply management program that helps to prevent over-production. In 2000, the Northeast Dairy Compact states produced 4.7 billion pounds of milk, a 0.6 percent decline from 1999.

In the nearly four years that the Compact has been in effect, milk production in the Compact region has risen by just 2.2 percent. Nationally during this same period, milk production rose 7.4 percent.

6. Myth: Dairy compacts only help bigger farms at the expense of smaller ones.

Fact: Just like most commodity programs, the Compact benefits all participants. Also, 75 percent of the farms in New England have fewer than 100 cows.

And the seventh myth: The dairy compact has not been successful.

Fact: The success of the Northeast Dairy Compact is undeniable.

Thanks to the Northeast Compact, farmers receive higher income which helps them stay in business.

If you are a proponent of states’ rights, regional compacts are the answer. Compacts are state-initiated, state-ratified and state-supported programs that assure a safe supply of milk for consumers. I will enter into the record a letter, that is being delivered today to all members of Congress, from 22 governors who are endorsing the dairy compact bill because it would ratify the compacts that their states have negotiated among themselves.

If you support interstate trade, regional compacts are the answer. The Northeast Dairy Compact has prompted an increase in sales of milk into the Compact region from neighboring states.

If you support a balanced budget, regional compacts are the answer. The Northeast Compact does not cost taxpayers a single cent. This is different from the costliness of many farm programs.

If you support farmland protection programs, regional compacts are the answer. Major environmental groups have endorsed the Northeast Dairy Compact because they know it helps preserve farmland and prevent urban sprawl. I will enter into the record a list of 33 environmental, conservation and public interest membership organizations that as a group today are announcing their support of the dairy compact bill.

And if you are concerned about the impact of prices on consumers, regional compacts are the answer. Retail milk prices within the compact region are lower on average than in the rest of the nation.

The Dairy Compact has done exactly what it was established to do: It has stabilized wildly fluctuating dairy prices, it has ensured a fair price for dairy farmers, it has made it possible for farm families to stay in business, and it has protected consumers’ supplies of fresh milk.

This is a policy debate that pits some of the nation’s most powerful corporations against the interests of farmers, of consumers and of communities that treasure the open space and quality of life that local dairy farming offers.

Congress should not stand in the way of these state initiatives that protect farmers and consumers without costing taxpayers a penny.

Chairman LEAHY. I yield to the Senator from Utah.

Senator HATCH. Mr. Chairman, I think that Senator Specter—
Chairman LEAHY. Senator Specter was here right at the beginning.

Senator HATCH. He needs to leave, so I will defer to him and then maybe you can come back to me.

Chairman LEAHY. He was the first one in the room, so he should get a chance.

Senator HATCH. Maybe you can come back to me after Senator Specter.

Chairman LEAHY. I will do whatever you want.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Well, thank you very much, Mr. Chairman, and thank you, Senator Hatch, for yielding. I commend you, Senator Leahy, for convening this very important hearing.

After you have explored the seven myths about dairy compacts, there isn't really much more to say, but that seldom stops a Senator from saying substantially more in any event and I do have a few things to add.

Earlier this year, I introduced the Dairy Consumers and Producers Protection Act of 2001 because the Dairy Compact is about to expire in the northeastern part of the United States. The legislation which I have introduced, which now has 39 cosponsors, would reauthorize the Northeast Dairy Compact, to include Pennsylvania, New York, Ohio, Maryland, Delaware, and New Jersey, and authorize a Southern Dairy Compact and a Pacific Northwest Dairy Compact within 3 years, and an Inter-Mountain Compact within 3 years.

Some 25 States have enacted legislation calling for a dairy compact because of the importance to consumers as well as dairy farmers. Admittedly, a Pennsylvania Senator has a very strong parochial interest in this subject, since my State is the fourth largest producer of milk in the United States.

But beyond the interests of the farmers is the interest of the consumer, and that has long been recognized to require legislative action. This goes back to the New Deal days, when minimum prices were set for milk. Some of the earliest work I did in the practice of law was the representation that my firm had of Sealtest National Products and appearances before the Pennsylvania Milk Control Commission.

Since coming to the Senate and working on the Agriculture Subcommittee of Appropriations, as well as this committee, I have seen the importance of governmental action in this field. The fact is that there is such a broad fluctuation of pricing that the dairy farmer, really the small dairy farmer, is at the mercy of irrational forces. I think they are irrational because I have studied them extensively and I can't figure them out.

I recently had an in-State hearing in Pennsylvania to take a look at why, when the prices for the farmers go from \$17 per hundredweight to less than \$10 per hundredweight, the price goes up at the store. I know the prices are going down for the dairy farmers because I hear a resounding sound when I travel through Pennsylvania's upstate counties, and I know the prices are going up for

consumers because I buy milk at the convenience store, and it went up from \$1.80 to \$1.85 and then to \$1.95 at precisely the time that I am hearing the complaints from the farmers.

So if we are to retain the small dairy farmer—and I believe that is indispensable to maintain a supply of milk in America, and a safe supply of milk in America—we have to have some stability, and that is provided by the Dairy Compact.

As Senator Leahy has pointed out, there is no cost to the Government and there is no increase in prices to the consumers. So this is one of the unique features where it is win-win-win, except for one important consideration and that involves the regional differences, and we have two very vigorous and very able Senators from Wisconsin who will present a somewhat different perspective on the matter. It is my expectation, beyond my hope, that we will have this Dairy Compact on the legislation on dairies which will be considered yet before the recess.

In conclusion, just one short story.

Before doing that, I want to recognize Mr. Arden Tewsbury, who is here today, who is—there you are, Arden—about as strong and tough an advocate for the dairy farmer as you can find. Usually, when I see Arden, he is bending my ear very, very hard, and the part about it that I admire is that he is right.

One short story. A professor of constitutional law at my law school named Walter Hale Hamilton would go around and visit the participants in major constitutional cases. There was a celebrated case called *Nebia v. New York*, where the Supreme Court of the United States upheld minimum pricing when a man named Leo Nebia sold milk below the minimum price by adding a loaf of bread without charge.

So Professor Walter Hale Hamilton found out where Leo Nebia was long after the case was decided and walked into his store 1 day and bought a quart of milk. He was paying for it and he said, oh, by the way, Mr. Nebia, would you throw in a loaf of bread. And Professor Hamilton got kicked out of the store promptly.

I reminisce about that story when I think about this issue and the long, tortured history that milk pricing and milk control has had. I believe it would be a benefit to the country and to the consumer, as well as to the dairy farmer, if this compact legislation was approved.

Thank you, Mr. Chairman.

Chairman LEAHY. I thank the Senator from Pennsylvania. I know he has spent time throughout his State, one of the most significant agricultural States in the country, on this issue.

While you have those who make sure you know about this from your dairy farmers, I see Harold Harrigan, who is a dear friend of mine from Franklin County, Vermont. Every time I am home, he will make sure I hear about it. If not, his brothers will, and I appreciate it because it has been very helpful.

Senator SPECTER. Mr. Chairman, may I just add that I have other commitments, but I will be following the hearings closely and expect to be able to return later this morning.

Chairman LEAHY. I appreciate that. The Senator from Pennsylvania has spent a great deal of time in preparing for this, so I appreciate that, too.

Now, the Senator from Wisconsin, who probably will not have exactly the same position that the Senator from Pennsylvania and I have had on this.

**STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR FROM
THE STATE OF WISCONSIN**

Senator KOHL. Well, I thank you very much, Mr. Chairman, for holding this hearing this morning. We also thank our witnesses for agreeing to testify today.

No one can deny that the United States has a great economic system that allows anybody with any product or service the unfettered opportunity in all 50 States to market that product or service. This is the way it has always been in our great country. The success of the American economy depends on open markets and open competition, and the beauty of the American economy is that it provides a bounty of business success stories, fair prices, and consumer choices.

The American free market did not evolve by accident. For a brief period following the American Revolution, our Nation operated without a Constitution. Rather, the Articles of Confederation set up a loose association of States, each acting in economic isolation. It was during that brief and troubled time that we witnessed States waging economic warfare on each other, using tariffs and other mechanisms to favor home State products and to disfavor products from other States.

Our Forefathers saw how our Nation could unravel under such conditions, and James Madison, along with others, called for a Constitutional Convention. A central tenet of the new Constitution that evolved was a unified national economy, with States freely trading with one another.

The Northeast Dairy Compact runs counter to our Forefathers' design of a unified national economy. There is nothing American about the dairy cartel in place in the Northeast. The Compact sets an artificially high price for milk that is marketed in the Northeast and it insulates that price through tariff-like mechanisms that prohibit price competition.

Compact supporters like to argue that there is something unique about milk—the fact that it is perishable—that justifies the creation of this dairy cartel. They argue they need the Compact to ensure that the region has access to fresh milk. Well, I can assure you that consumers in the Southeast, a region without a compact, have access to fresh milk everyday, as do consumers in every one of the 44 States not in a compact region.

Here in Washington, D.C., a grocery store called Fresh Fields sells milk that is guaranteed fresh—milk that comes from Boulder, Colorado; Austin, Texas; and Franklin, Massachusetts. I am sure New England consumers would get nothing less from the market. Milk is and always will be sold fresh both intrastate and interstate.

Further, if we have a compact for dairy, then why shouldn't we have one for corn or any other perishable good? We all know that locally grown fresh corn is the best. I can get in my car in Milwaukee and drive out to the suburb of Menomonee Falls and stop at a roadside farmer's market, where I can buy corn harvested that

same day. Those farmers compete for my dollar by providing the freshest corn.

However, there is no restriction on corn from Iowa being shipped in to compete with the local product. Competition grants me, the consumer, the opportunity to choose the product that best suits my needs. That is the beauty of our economy. Consumer demand, not government, drives the market. If consumers want locally produced fresh milk, the market will allow for it to be there. It is when we begin to interfere and distort market conditions that we run the risk of harming consumers, limiting their choices, and raising their prices. That is exactly what the Northeast Dairy Compact has done for millions of milk drinkers in the Northeast.

Since its inception in 1997, the Northeast Compact has cost consumers in that region an extra \$140 million for milk. Worse yet, if the Senate were to approve the legislation introduced by Senator Specter which allows for compacts in 35 States, consumers in our country would be forced to pay an estimated extra \$2 billion a year for their milk. The brunt of that price increase will fall on those least able to bear it—low-income families and children.

And to what end have we imposed this regressive milk tax on the consumers of the Northeast? What end do the sponsors of compact expansion hope to achieve by expanding that tax to consumers in 35 States? They will argue it is to preserve the family dairy farm, and that is an end I certainly do support.

But the hard evidence from the Northeast Dairy Compact shows that it has done nothing—I emphasize nothing—to slow the loss of dairy farms in the region. In fact, the Northeast is losing dairy farmers at a rate faster today than they were prior to the Compact. And if it were not for the emergency dairy payments that we worked together on last year, I am sure even more dairy producers would have gone out of business by now.

I have also worked over the last year with Senator Santorum, of Pennsylvania, on the National Dairy Farmer Fairness Act. I am confident that this safety net is a viable alternative to regional cartels, and I would hope we could all agree to work together on establishing a national program to help all dairy producers.

So I ask again, to what end have we violated the spirit of our Constitution, turned our free economy on its head, and asked millions of consumers to pay more for their milk? There is no good answer, and that is why when the Dairy Compact expires at the end of September it should not be renewed.

As the chairman of the Antitrust Subcommittee, I have worked to ensure that open and fair competition in our marketplace thrives. Mr. Chairman, you and I have worked on issues related to concentration and consolidation in the dairy industry throughout our time in the Senate. I very much want to continue to investigate the increased consolidation that is taking place in the dairy industry at the processing level. But I can assure you, Mr. Chairman, if we want to solve that problem, dairy compacts are not the answer.

Finally, I would like to ask this committee to consider the dangerous precedent set by this Compact. We have witnessed as a result of the creation of the existing Compact how other regions now seek to create their own cartel. If we approve an expanded compact

for dairy, then what is to stop us from approving price-fixing cartels anywhere else in our economy?

I would argue that all of us in this room understand the benefits that result from open and free trade. If we want to continue to enjoy the best economy in the world, then we should stop moving down the path of price-fixing cartels. Only then can we work toward a national dairy program that benefits all producers, regardless of location, and put to rest once and for all this very dangerous policy that takes us back to the days of the Articles of Confederation.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Hatch?

**STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM
THE STATE OF UTAH**

Senator HATCH. Well, thank you, Mr. Chairman.

I want to thank the chairman for calling this hearing to discuss the policy issues raised by S. 1157, the Dairy Consumers and Producers Protection Act of 2001. This bill would extend the Northeast Interstate Dairy Compact. It also would authorize three new regional dairy compacts. Although I am sympathetic to some of the arguments in favor of regional dairy compacts, I am not convinced that such compacts are the optimal solution for consumer welfare.

Many have criticized regional dairy compacts because they harm consumers, dairy processors, and dairy farmers located outside the region. The facts appear to support these criticisms, but I would like to focus my remarks today instead on a more fundamental question: Are regional dairy compacts a form of economic protectionism which is antithetical to the national common market the Framers of the U.S. Constitution sought to create?

To answer this question, it is useful to take a step back in history. During the time that our Nation operated under the Articles of Confederation, States often formed coalitions with the sole purpose of promoting one area of the Nation at the expense of another.

One of the main reasons that the States decided to hold the Constitutional Convention was to bring a halt to the “commercial warfare between the States.” The Framers sought “to change this state of affairs, and to encourage a free and open economy in which states could not halt the national flow of goods and trade through economic barriers.”

The Framers established a national common market through the Commerce Clause of the U.S. Constitution. In the words of the Supreme Court in the H.P. Hood case, the Framers envisioned that “our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation...Likewise, every consumer may look to free competition from every producing area in the Nation to protect him from exploitation.”

To make this vision a reality, the Commerce Clause, as the Court more recently noted in the New Energy Co. case, prohibits “economic protectionism—that is, regulatory measures designed to ben-

efit in-state economic interests by burdening out-of-state competitors.” That is in the *New Energy Co. v. Limbach* case, a 1988 case.

For more than two centuries, our Nation has prospered because producers and consumers have received the benefits of the free flow of goods and services in a national common market, with limited market regulation and with vigorous competition. The fundamental question is whether we should give our imprimatur under the Compact Clause to regional dairy compacts and similar forms of economic protectionism.

In my opinion, before we do that, a very high threshold must be met in light of the effects such compacts will have on consumers. The Framers did not intend that the Congress would use its power under the Compact Clause to approve agreements between States which undermine our national common market. History proves the point. Congress has approved nearly 300 interstate compacts in the more than two centuries since our Nation was founded. Interstate compacts have been limited to agreements which serve to facilitate important national interests, such as improving transportation, allocating water rights, establishing boundary lines, and protecting against forest fires. Only one interstate compact, the Northeast Interstate Dairy Compact, has involved Congress blessing an agreement among a group of States to engage in what many believe to be economic protectionism.

We should learn from and follow the wisdom of the past. The Compact Clause should not be used to bless agreements which undermine competition in our national common market, especially given that such agreements may be at cross-purposes with other laws, like the antitrust laws, which are designed to promote competition.

Approving the Northeast Dairy Compact has already spawned a request that we approve at least three more regional dairy compacts, with these compacts together covering about 80 percent of American consumers. To preserve the national common market which the Framers of the Constitution created and which has been a source of our great prosperity, very compelling reasons would have to be demonstrated before I would be willing to support these compacts. But I am going to keep an open mind, pay attention to the testimony given here today and other authorities, listen to my colleagues, and hopefully make the right decision in the end.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

[The prepared statement of Senator Hatch follows:]

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

I want to thank the Chairman for calling this hearing to discuss the policy issued raised by S. 1157, the Dairy Consumers and Producers Protection Act of 2001. The bill would extend and expand the Northeast Interstate Dairy Compact. It also would authorize three new regional dairy compacts. Although I am sympathetic to some of the arguments in favor of regional dairy compacts, I am not convinced that they are the optimal solution for consumer welfare.

Many have criticized regional dairy compacts because they harm consumers, dairy processors, and dairy farmers located outside the region. The facts appear to support these criticisms. But I want to focus my remarks today instead on a more fundamental question:

Are regional dairy compacts a form of economic protectionism which is antithetical to the national common market the Framers of the U.S. Constitution sought to create?

To answer this question, it is useful to take a step back in history. During the time that our nation operated under the Articles of Confederation, “states often formed coalitions, with the sole purpose of promoting one area of the Nation at the expense of another.” [A. McLaughlin, *A Constitutional History of the United States* 137–47 (1936).] One of the main reasons that the States decided to hold the Constitutional Convention was to bring a halt to the “commercial warfare between the states.” [*H.P. Hood v. DuMond*, 336 U.S. 525, 533 (1949).] The Framers sought “to change this state of affairs, and to encourage a free and open economy in which states could not halt the national flows of goods and trade through economic barriers.” [Federalist Paper No. 42 at 267–69 (Clinton Rossiter ed. 1961).]

The Framers established a national common market through the Commerce Clause of the U.S. Constitution. In the words of the Supreme Court in the *H.P. Hood* case, the Framers envisioned that:

our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation. . . Likewise, every consumer may look to free competition from every producing area in the Nation to protect him from exploitation.

To make this vision a reality, the Commerce Clause, as the Court more recently noted in the *New Energy Co.* case, prohibits “economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.” [*New Energy Co. v. Limbach*, 486 U.S. 269, 273–74 (1988).] For more than two centuries, our nation has prospered because producers and consumers have received the benefits of the free flow of goods and services in a national common market, with limited market regulation and vigorous competition. The fundamental question is whether we should give our imprimatur under the Compact Clause to regional dairy compacts and similar forms of economic protectionism.

In my opinion, before we do that, a very high threshold must be met in light of the effects of such compacts on consumers. The Framers did not intend that the Congress would use its power under the Compact Clause to approve agreements between states which undermine our national common market. History proves the point. Congress has approved nearly 300 interstate compacts in the more than two centuries since our nation was founded. Interstate compacts have been limited to agreements which serve to facilitate important national interests, such as improving transportation, allocating water rights, establishing boundary lines, and protecting against forest fires. Only one interstate compact—the Northeast Interstate Dairy Compact—has involved Congress blessing an agreement among a group of states to engage in economic protectionism.

We should learn from and follow the wisdom of the past—the Compact Clause should not be used to bless agreements which undermine competition in our national common market, especially given that such agreements may be at cross purposes with other laws, like the antitrust laws, which are designed to promote competition in our national common market. Approving the Northeast Dairy Compact has already spawned a request that we approve at least three more regional dairy compacts, with these compacts together covering about 80% of American consumers. To preserve the national common market which the Framers of the Constitution created and which has been a source of our great prosperity, very compelling reasons would have to be demonstrated before I would be willing to support anti-competitive compacts. But I will keep an open mind and listen to all arguments before I make my mind up on this matter.

Chairman LEAHY. Senator Feingold.

**STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR
FROM THE STATE OF WISCONSIN**

Senator FEINGOLD. Thank you, Mr. Chairman, and I would like to first express my thanks to you for the even-handed style that you have used during the scheduling of these hearings. I commend you and your able staff, who have been fair in the make-up of the panels of witnesses and the structure of the hearing, and I thank all the witnesses for being here.

While the chairman and I fundamentally disagree on this issue of the expansion and extension of the Northeast Dairy Compact, I have always respected and admired his ability to hear both sides of every issue.

Everyone in this room is concerned about the decline in the number of dairy farms in the United States in the past 30 years. I was astounded when I realized that in 1950 Wisconsin had over 143,000 dairy farms. After nearly 50 years of the current dairy policy, Wisconsin is left with under 20,000 dairy operations. Let me repeat that, less than 20,000 dairy farms, after we had 143,000. That is a decline of about 86 percent since 1950.

There are certainly a number of different challenges facing dairy farmers across America, and I have worked with many members of this committee to enact dairy policies that will help all of our Nation's dairy farmers. Unfortunately, those who are advocating dairy compacts have chosen to focus much of Congress' attention on what can only be called regional price-fixing schemes rather than a unified national dairy policy that can help all of America's dairy farmers fairly compete in the modern marketplace.

Instead of focusing on regional dairy policies, I think Congress has to turn its attention to enacting a national dairy policy that helps all farmers get a fair price for their milk. Congress needs to follow the lead of people like my senior Senator and colleague Senator Kohl, who has demonstrated that if we work together, we can provide meaningful assistance to America's dairy farmers. I believe Congress should enact a national dairy policy such as the one envisioned by Senator Kohl and Senator Santorum. This legislation brings a national, unified approach to a national problem.

While the Northeast Dairy Compact has been effective, or in my view at least partly responsible for raising prices for the consumer, compacts have not been able to keep farmers in business. According to the American Farm Bureau Federation's data, New England has lost more dairy farms in the 3 years under the Compact, 465, than in the 3 years prior to the Compact.

So when the chairman talks about one of his myths that production has not increased in New England, he might look to the fact that that is because a lot of farms aren't making it even under the Compact. That might have something to do with the production issue.

I also want to note here that I do share the chairman's concern about the increased disparity between what dairy farmers receive for their milk and what consumers pay. However, I have to take issue with his conclusion that our GAO report supported the idea that the Compact helps lower this disparity.

If we look at what is actually on page 26, we see that, in fact, in the Boston and Milwaukee markets dairy farmers receive roughly the same share of the retail dollar, between 46 and 47 cents. But I do want to say that I truly want to work with the chairman on this issue. That is why I asked him to work with me on this GAO report, but I respectfully disagree with his conclusions about what the report means.

The Northeast Dairy Compact also aggravates the inequities of the Federal milk marketing order system by allowing the Compact Commission to act as a price-fixing entity that walls off the market

in a specific region, and it does hurt producers outside the region. The Northeast Interstate Dairy Compact Commission is empowered to set minimum prices for fluid milk higher than those established under Federal milk marketing orders. Never mind that farmers in the Northeast already receive higher minimum prices for their milk under the antiquated milk pricing system.

The Compact not only allows these six States to set artificially high prices for specific regions; it permits them to block entry of lower-price milk from producers in competing States. So how can this really be defended? This Compact amounts to nothing short of government-sponsored price-fixing that hurts producers outside the region. It is outrageously unfair, and it is also bad policy.

I am especially pleased to have one of our real experts here, Richard Gorder, a Wisconsin dairy farmer who will testify before this committee. I have met with Mr. Gorder on many occasions, and I cannot think of many Wisconsinites who can articulate the perspective of the Wisconsin agriculture community on dairy compacts better than Mr. Gorder.

I hope that Congress will turn its attention away from dairy compacts, which ultimately hurt both consumers and farmers. It is high time to begin to focus on enacting legislation that helps all dairy farmers. America's dairy farmers deserve a fair and truly national dairy policy, one that puts them all on a level playing field from coast to coast.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Feingold.

Senator Grassley?

**STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR
FROM THE STATE OF IOWA**

Senator GRASSLEY. I would like to put a longer statement in the record and highlight.

Mr. Chairman, first of all, you are defender of American agriculture and farming, and very seldom do I find myself in dispute with you. I do in this instance because the Northeast Dairy Compact establishes what amounts to domestic trade barriers that will detrimentally impact producers in my home State of Iowa.

The Dairy Compact's purpose is to raise the price of milk above the Federal milk marketing order price in a specific region. This domestic tariff on milk prevents the market from reacting to supply and demand.

If I wasn't an advocate of free trade and increasing profit for family farmers by lowering trade barriers, I might be able to accept the idea of artificial prices if it didn't impact Iowa's dairy producers. But the problem is that compacts will hurt Iowa dairy producers. In addition, I am a free trader and I do think that my producers are best served by lowering trade barriers, foreign as well as domestic.

Milk production in the Northeast doesn't follow the rules of supply and demand; it is just supply and more supply. The Northeast exports these subsidized products to other States, where the products compete against non-subsidized dairy products. If this was an international issue, there would probably be a letter circulating in

the Senate asking for a dumping inquiry within the context of the World Trade Organization.

Studies conducted by economists at the University of Massachusetts and Penn State demonstrate that at least a substantial portion of the artificially high milk price is passed through to consumers in the form of higher retail milk prices. It has been estimated that between July 1997 and December 2000, New England consumers paid up to \$135 million in higher milk prices generated by the Compact.

I want to refer to a Wall Street Journal article: "It is hard to see how anyone justifies dairy compacts with a straight face. They are basically a highly regressive tax on milk drinkers, starting with school-age children. Creating them is a tacit endorsement of the OPEC cartel model. Claims that it doesn't gouge consumers are preposterous." Is it helping dairy farmers in New England? More New England dairy farmers have closed down in the 3 years since the Compact began than in the 3 years prior to the Compact.

In conclusion, I would say that I understand the desire of northeasterners to help their dairy producers, but there ought to be some way that we can help dairy producers in the Northeast without hurting farmers elsewhere. As a family farmer, I know that it is very difficult to make ends meet on the farm, but an approach that attempts to prop up some producers at the expense of others is not acceptable.

Thank you.

[The prepared statement of Senator Grassley follows:]

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Mr. Chairman, I appreciate this opportunity to discuss the issue of dairy compacts. You are a champion of the Northeast Dairy Compact, and while I admire your dedication to what you believe in, I am disappointed that your agenda establishes what amounts to domestic trade barriers that will detrimentally impact producers in my home state of Iowa.

The Northeast Dairy Compact is a coalition of states working together to serve one purpose, that purpose is to fix prices. The dairy compact's purpose is to raise the price of Class I (Beverage) milk above the federal milk marketing order price in a specific region. Dairy producers outside the compact region can ship milk into the compact, but only at the compact's premium price, not at a competitive rate. This domestic tariff on milk prevents the market from reacting to supply and demand.

If I wasn't an advocate of free trade and increasing profit for family farmers by lowering trade barriers, I might be able to accept the idea of artificial prices, if it didn't impact Iowa's dairy producers. But the problem is that compacts will hurt Iowa's dairy producers. In addition I am a free trader and I do think that my producers are best served by lowering trade barriers, foreign and domestic.

Artificially high compact prices stimulate milk production. It's really a simply concept, if the worth of a penny is one cent everywhere else in the country, but the northeast decides pennies are worth three cents, guess where I'm going to take my pennies.

Milk production in the Northeast doesn't follow the rules of supply and demand, it's just supply and more supply. The surplus is being converted into storable dairy products such as butter and cheese. The excessive amounts of butter and cheese in the marketplace drive down prices and cause the Northeast to export these subsidized products into other states where the products compete against non-subsidized dairy products.

If this was an international issue there would probably be a letter circulating in the Senate asking for a "dumping" inquiry within the context of the WTO. But since we don't have a similar enforcement mechanism domestically, everyone but the compact suffers.

Since I brought up suffering, let me be clear, it's not just my dairy producers that are going to suffer. Taxpayers, consumers and small dairy producers in the northeast are suffering as well due to this poorly constructed federal policy.

Studies conducted by economists at the University of Massachusetts and Penn State University demonstrate that at least a substantial portion of the artificially high milk price is passed through to consumers in the form of higher retail milk prices. It has been estimated that between July 1997 and December 2000, new England consumers paid up to \$135 million in higher milk prices generated by the compact.

A recent editorial in the *Wall Street Journal* entitled "The OPEC of Milk" explained, "It's hard to see how anyone justifies dairy compacts with a straight face. They are basically a highly regressive tax on milk drinkers, starting with school-age children. Creating them is a tacit endorsement of the OPEC cartel model. Claims that it doesn't gouge consumers are preposterous."

New England's 700,000 food stamp recipients are exposed to the artificial price increase, as well as Meals on Wheels and the Child and Adult Care Food Program. Shouldn't this fact alone be enough of a reason to not renew the compact?

The compact is also evidently promoting the demise of dairy farms. More New England dairy farms have closed down in the three years since the compact began than in the three years prior to the Compact. This is likely due to the fact small dairy producers receive little income from the compact since the allocation is paid based on the amount of milk produced. The Compact's artificial price has led to increased land prices and placed smaller producers at a competitive disadvantage.

A 1998 Rutgers University study on the effects of development pressures concluded that in Pennsylvania, New York, and New Jersey, the "major reason for the loss of dairy. . . is rising land values." Larger producers have increased their volume to take advantage of the artificial price, and family operations which did not have the ability to compete in a quantity driven market have closed down.

The fact that I find amazing though is that states which contain consumers who are hurt by the Compact force their citizens to pay tax dollars to support the Compact. Vermont and other pro-compact states are providing more than \$100,000 from each state's treasury to pay lobbyists and reimburse expenses related to the advocacy of Compacts to Congress.

Let me conclude by stating that I understand the desire of the Northeasterners to help their dairy producers. I'm the only working family farmer in the Senate and I know how hard it is to make ends met on the farm, but an approach that attempts to prop up some producers at the expense of other producers is not acceptable.

Attempting to maintain this defective compact by expanding the authority to create new defective and detrimental compacts is not the answer. It would be my hope that we could work together to explore other options that would not impede interstate commerce while sustaining your producers.

Thank you for providing us the opportunity to discuss this issue Mr. Chairman.

Chairman LEAHY. There are some in the Northeast who would say we spend an enormous amount of our tax dollars to help the farmers of the Midwest and we really would like some support for something that costs the taxpayers nothing in the Northeast.

With that editorial comment, we will have a series of witnesses—Daniel Smith, Grover Norquist, Stephen Burrington, and Burt Neuborne—all of whom have statements for the record. Unlike those on this side of the room, the chairman included, who tend to go over their time, I would ask each of you to stick within 5 minutes each because we would like to go to the questions.

We will begin with Daniel Smith, the Executive Director of the Northeast Interstate Dairy Compact Commission.

Mr. Smith, we are always glad to have you here and always glad to have a fellow Vermonter here.

**STATEMENT OF DANIEL SMITH, EXECUTIVE DIRECTOR,
NORTHEAST DAIRY COMPACT COMMISSION, MONTPELIER,
VERMONT**

Mr. SMITH. Thank you, Mr. Chairman. Good morning, Mr. Chairman and members of the committee. Thank you for this oppor-

tunity to speak with regard to Senate bill 1157 relating to dairy compacts.

I have been involved with dairy compacts since the inception of the first Northeast Dairy Compact in 1987. My travels and work on the Compact have taken me to now over 20 State houses and two Federal circuit courts of appeals and now before Congress.

Compacts are properly before this committee as an interstate initiative, duly authorized by the Interstate Compact Clause of the Constitution. Compacts have been passed by the State legislatures, as has been indicated, in a number of States now, in addition to the New England States. The six New England States, distinct from the other States, have both adopted their Compact and had it approved by Congress as part of the 1996 farm bill.

My purpose today is to put before the committee as many facts and figures as I can glean from operation of the Dairy Compact since Congress approved it so that your deliberations can be based on as full and complete a record of one compact's actual operation as a pilot project approved by Congress as you decide whether to authorize the other compacts, as well as reauthorize the Northeast Compact.

I would summarize my extended statement which I will be presenting for the record with a number of bullet points.

No. 1, the Compact, despite the eloquent descriptions by the Senators from Wisconsin and Mr. Hatch, has been determined by the courts not to be a protectionist device, but in fact to be a proper exercise of regulatory authority authorized by the Interstate Commerce Clause and Compact Clause of the Constitution.

The courts have spent much time assessing the concerns raised by the Senators and by Professor Neuborne in his testimony. Certainly, all of us who have been to law school understand that protectionism is neither favored nor allowed by the Interstate Commerce Clause of the Constitution, and the courts, working from that essential legal premise, have reviewed the Compact and determined that the Compact is not a protectionist device.

I would point you to the attachment to my summary statement showing the volume of milk that comes into the Compact region from New York State. Approximately 30 percent of the milk produced for consumption in the New England market actually comes from New York State. That amount, as Senator Leahy indicated, has increased over time rather than decreased with the operation of the Compact.

As Senator Leahy indicated, the payment under the Compact follows the supply of milk. The money tracking the supply of milk from New York goes back to the New York farms, so there is no discriminatory policy with regard to operation of the Compact. Senator Grassley's farmers, if they supplied the market, would receive the benefit of the Compact on equal footing with farmers from Vermont, Massachusetts and Rhode Island.

The Compact--again, I would respectfully disagree with the Senator's statement--has had a proven and substantial impact on farm viability in New England. In this regard, I would point you to my third attachment, which is an analysis conducted by the Farm Credit Service, which is the Federal lending authority for dairy farms, which indicates that for 2000, one studied year, the degree

of financial stress confronting dairy farms was cut almost in half, from 50 percent to just under 30 percent. By any measure, this is a tangible, positive impact on farm viability.

The net loss of farm numbers will be addressed by Commissioner Healy following my presentation in the second panel, and perhaps you might inquire of him with regard to your statement.

I will also address the consumer issue. Again, I have to take issue with the statements that have been made. The Compact has certainly in this regard had a less certain record to present to the Congress. I have put together a graph for the Senators' consideration which graphs the comparison between the procurement cost, which is the Compact price and the Federal price, and the retail price. Clearly, the retail price has gone up over time. However, for a period of time during the Compact's operation, the retail price actually dropped a dime. So the record is quite mixed in this regard.

My testimony would be that here the Compact as a pilot project is of most vital concern. Certainly, something is going on in the dynamic between farm prices and retail prices which needs to be reviewed as a matter of public policy. Congress has given the Compact Commission the authority to address this issue, to intervene in the dynamic that occurs and see if it can be resolved favorably both for farmers and for consumers.

And I would urge that Congress consider how the Compact price regulation has been designed with this in mind. Certainly, changes can be made; it can be adjusted, and that is the benefit that the public in New England, as well as the Federal Government gets through the pilot project of the Compact.

I would close with a statement of similar import with regard to the pilot project, which is the Commission has adopted a supply management program over the past year to address the issue of price and supply, a question that has been debated at length in the Congress.

Chairman LEAHY. Excuse me. Somebody has what must be an important phone call. Why don't we just wait and let the person with the phone call step out and take it? I could have sworn I heard a cell phone.

Mr. SMITH. I will take that as the—

Chairman LEAHY. No, no. I just wanted to give the opportunity because I know nobody would have a cell phone ringing in here unless it was extremely important and I wanted them to have the opportunity to get up and leave to take the phone call.

Would the person like to step out and take their phone call?

Apparently, it wasn't as important as the person who was receiving it thought it was.

Go ahead, Mr. Smith.

Mr. SMITH. I will close by suggesting that the Compact has been working as a pilot project for the past 5 years. I believe its record is very positive. I would urge the committee to approve the extension of this Compact and the authorization of the other compacts.

I thank you for your time.

[The prepared statement of Mr. Smith follows:]

STATEMENT OF DANIEL SMITH, EXECUTIVE DIRECTOR, NORTHEAST DAIRY COMPACT COMMISSION

SUMMARY OF TESTIMONY

Mr. Chair, Members of the Senate Judiciary Committee. I am Daniel Smith, founding and current Executive Director of the Northeast Dairy Compact Commission. I am testifying in favor of S.1157, an act relating to reauthorization and expansion of the Northeast Interstate Dairy Compact and authorization of the Southern, Northwest and Intermountain Dairy Compacts. I have been involved with Dairy Compacts in various capacities since inception of the first, Northeast Dairy Compact in 1987.

My testimony is intended as a follow-up of Congress' action to authorize operation of the Northeast Dairy Compact as pilot project in the 1996 Farm Bill. My testimony provides a comprehensive report on the Compact's legal, economic and administrative operation since Congress approved it in 1996. This report is intended to provide this Committee with as many facts and figures as I can assemble, so that the Committee may assess the propriety of further congressional authorization of Dairy Compacts based upon the actual record of the Northeast's operation as a pilot project.

By way of introduction, as the Committee is aware, the Northeast Dairy Compact is a federalist initiative, being the function of both state and federal sovereign action. The Compact was established under law by the six New England states in the early 1990s. With congressional and federal executive authorization, the Compact assumed the power of federal law. Consistent with its federalist design, though, the Compact still remains the states' prerogative and responsibility to administer.

In summary:

- **“The Compact has proven to be the legal solution to the vexing problem of how best to restore the two-part federal/state system of milk market regulation.** The Compact has successfully reinvigorated the legal ability of states to exercise regulatory authority in the public interest over a regional dairy market without running afoul of the constitution. The Compact has been tested twice in Court, with two federal circuits of appeal finding resoundingly in its favor. Most specifically, the First Circuit affirmed the Congressional grant of authority to the New England states for the uniform regulation of the interstate New England market.
- **“The Compact has accomplished the states' intended economic and social purpose of stabilizing the New England milkshed.** The Compact Commission's price regulation has provided income stability as well as enhancement to producers, with a net positive impact on farm viability and sustainability. As presented in my extended statement, there is strong evidence from a variety of sources that the attrition rate among New England and New York farms subject to the price regulation has been slowed considerably.
- **“The Compact has accomplished the further economic and social purpose of not unduly burdening consumers.** The price regulation's precise impact on retail prices remains an open question and the subject of vigorous debate. In absolute terms, the data presented in my report indicates that, however calculated, the impact can only be described as marginal. Moreover, the record indicates that the public interest is served by regulatory intervention into the procurement cost pricing dynamic for beverage milk, in the manner of the Compact price regulation.
- **“Consistent with its design, the Compact has been administered without discrimination among market participants.** The price regulation is being successfully administered without discriminatory burden on either farmers or processors located outside the New England region. New York farmers benefit uniformly with their counterpart New England farmers; the regulation is equally competitive-neutral in its effect on processors located outside of New England. The price regulation has been particularly effective in its uniform treatment of packaged milk brought in from outside the region, and in this regard represents a significant advance in milk market regulation.
- **“The Compact has accomplished the objective of effectively incorporating the concerns of all market participants -from farmers to consumers—in the regulatory process.** The Compact Commission contains twenty-six members covering the whole spectrum of interested concerns in the marketplace. This diverse, potentially divergent, group has proven most able to work together in the common, public interest.

- **“Consistent with its design and statutory requirement, the Compact Commission has instituted a ground-breaking initiative in supply management.** As intended, the Commission is ensuring that the causal relationship between pay price and milk production is cemented and made a vital part of its regulatory program. The Commission has taken the first, concrete steps toward real progress in this truly difficult task.

Mr. Chair and Members of the Committee, I strongly believe that your review of the record I am presenting today will convince you that the Northeast Dairy Compact has functioned successfully and as intended by your authorizing action of 1996. I believe that the record supports reauthorization, so that the Commission may continue its work on behalf of the New England public interest.

Mr. Chair, Members of the Senate Judiciary Committee:

Thank you for this opportunity to testify today about the function and operation of the Northeast Dairy Compact Commission.

I am Daniel Smith, founding Executive Director of the Northeast Dairy Compact Commission. I have been involved with the Northeast Interstate Dairy Compact, in various capacities, since its inception in 1987. Looking around these august surroundings, perhaps it is enough to say by way of introduction that the Dairy Compact has indeed come a long way since that first, informal late night meeting with Representative Starr, Chair of the Vermont House Agriculture Committee, about the need to restore Vermont’s sovereign ability to regulate its dairy marketplace. My extended written testimony presents a comprehensive legal, administrative and economic impact report on the operation of the Dairy Compact since Congress first ratified the Compact pilot project as part of the 1996 Farm Bill.¹ As set forth in my summary, I strongly believe the record presented provides a tangible basis for the Committee’s review and a solid foundation of support for Congressional action to reauthorize the Compact.

My presentation today will primarily provide a summary economic impact review of the Commission’s price regulation since its implementation in July, 1997. Presented as attachments to this statement are summary data about the price regulation’s impact on New England and New York dairy farmers and on New England consumers. The information includes data on net farm pay prices, farm profitability, farm viability and milk production. Also set forth is information about the price regulation’s impact on the procurement cost of raw milk and on retail consumer milk prices. I have also provided data on the net relative impact on consumer spending for milk and for all food products, based on income.

Attachment I provides summary data for the price regulation’s operation from July, 1997 to present, by year and in total. It sets forth the \$159.2 million total compact over-order obligation imposed on the New England Class I or beverage milk market, and the \$146.4 million total payment made to New England and New York farmers who supply the market.

The annual obligation amounts ranged from \$19.9 million to \$64.4 million, with an annual average of The total annual producer payments ranged from \$16.7 million to \$59.7 million, with an annual average total payment of—. These producer payment figures begin to describe the regulation’s combined function of producer price stability and enhancement.

Attachment II identifies an average total of 4217 New England and New York farms supplying the market. These producers received total annual payments ranging from \$3,900 to \$14,700 per farm, with an average payment of \$9812.

As can be seen from this and subsequent attachments, of the 4217 total farms, approximately 1300 are located in New York State. New York farms in this proportion have historically supplied the New England market. The attachments treat New England and New York farms, uniformly as milk shedfarms historically supply the New England Market.

As also indicated, the average annual total pool volume of 6.6 billion pounds of raw milk produced and processed for all purposes in the New England marketplace

¹As an appendix to my testimony, I am presenting a detailed analysis in three parts; 1) A summary legal history, describing the state and congressional legislative actions resulting in the establishment of the compact, the administrative rulemaking conducted by the Compact Commission to adopt and administer the market-wide price regulation and the litigation involving the Compact and the price regulation; 2) an economic analysis of the price regulation’s impact, from farm-gate to consumer outlet, for the period of its operation, July 1997—present; and 3) a compendium of the record for the meetings the Commission has held throughout the New England Compact region, during which the Commission has heard from state representatives and interested citizens about the Compact’s impact in each state.

yielded an average net payment of \$0.57 payment per hundredweight on all raw milk produced.² The average annual amounts of the producer payments are also set forth per hundredweight, ranging from \$0.25 to \$0.91. These amounts are also shown in combination with the federal minimum producer, or blend, price paid for federal Milk Market Order #1.

These per farm and per hundredweight producer payment figures display quite concretely the regulation's combined function of producer price enhancement and stability. Attachment I also identifies the net, annual over-order obligation of 11.6 cents per gallon imposed under the price regulation on Class I milk in the New England market, for the period. The Attachment places the over-order obligation in context with operation of the federal Milk Market Order Class I price, which establishes the underlying regulated minimum procurement price for beverage milk in the New England market. The two regulated minimum pricing mechanisms in combination establish the net, overall increase of 11.6 cents in the regulated procurement cost of the raw, Class I milk. The amount is established monthly as the difference for the given month between the federally established amount and the compact price regulation minimum amount of \$1.46 per gallon.³

Attachment I also identifies the price regulation's total exemption payments made to the six New England state WIC programs and the total reimbursement payments made to the region's school districts for school milk purchases. Also itemized are the two payments made to the Commodity Credit Corporation, pursuant to the Congressional condition of consent. Attachment I accounts also for the funding for the price regulation's initial Supply Management Program, which the Commission is just now in process of administering.

Finally, Attachment I accounts for the administrative assessment that finances operation of the Commission and the price regulation. As can be seen, the Administrative Assessment on average was just under 2 percent of the total obligation collected for the period to present. It can also be seen that the assessment was reduced by a half cent beginning in 2001.

Attachment II provides comprehensive data on farm numbers and production for the New England milkshed. Attachment I shows the average annual distribution of supplying New England and New York farms by herd size and the total, annual average production by herd size. Total producer payments by herd size through 2000 are also identified.

It can be seen that almost three-quarters of the supplying New England and New York farms have fewer than 100 cows in their herds. It can also be seen that of the remaining 1000 farms, about 20 percent have fewer than 200 cows. This means that, of the farms regulated under the Compact, 400 farms or have herds in excess of 200 cows, with only about 80 farms having herds larger than 400 cows. The farms subject to the Compact price regulation remain on balance, overwhelmingly small family farm operations.

It can also be seen that the farms under 100 cows, or about 72 percent of total farms of the total about provide only 35 percent of the total milk supply. On the other end, the farms over 200 cows, or about 28 percent of total farms, supply about 35 percent of the milk supply. It is thus the middle group of farms, between 50 and 100 cows, that is the essential anchor of the milkshed for both production and milk supply. (Contrary to common understanding, this grouping rather than the larger operations also shows the greatest increase over time in New England.)

Attachment III provides data about the price regulation's impact on farm profitability. The data establishes that the producer payments stabilized farm cash flow positions, and enhanced net income so as to allow many farms to operate in the black instead of the red, for extended periods of time. This is apparent over time, and particularly for the year 2000.

The impact for the typical farm in 2000 is particularly striking. For 2000, without operation of the price regulation, the typical farm showed net farm earnings of \$23,000, with fully two-thirds of the income derived from the price regulation.

When family living expenses and taxes are factored in, the picture changes quite dramatically, with the farm showing net earnings still in the black but in the amount of only \$400. Viewed from this perspective, therefore, without operation of the price regulation, the typical farm would have slipped deeply into the red for 2000 in the amount of approximately \$15,000.

²The total New England pool volume of 6.6 billion all milk is approximately 4.1 percent of the total, approximate 160 billion pounds of raw milk produced nationally. (FAPRI data)

³The average annual pool volume of approximately 3 billion pounds of Class I milk regulated under the Compact and consumer in New England is approximately 5.3 percent of the total, approximately 57 billion pounds of Class I or beverage milk consumed nationally. (FAPRI data)

The analysis of the typical farm operation for 1997 provided by Attachment III indicates a similar, if less substantial impact attributable to the price regulation. (The price regulation was only in effect for one half of the year, moderating its impact by definition.)

The final piece of Attachment III, an assessment of the regulation's impact on the most credit worthy 200 plus operations in New England indicates that, even for the most successful operations, the Compact had a substantial, positive impact on farm profitability. This data also describes the positive benefit over time of price stability, as well as that of price enhancement.

Attachment IV provides an assessment of the price regulation's impact on farm viability. This farm viability assessment considers both the relative degree of financial stress confronting a farming operation and the absolute degree of financial stress resulting in a farmer's decision to cease operating the farm. The latter is of course a function of the former—the less financial stress confronting a farm, the less likely the farmer will be compelled to cease operation.

The assessment presented in Attachment IV indicates that the price regulation has had a substantial, positive impact on the viability of the New England and New York farms comprising the New England milkshed. By identifying the regulation's impact on profitability, the data presented in Attachment III serves also to describe the price regulation's effect on the relative financial stress confronting these dairy operations.

Stabilized cash flow positions, enhanced net income and return on assets and equity serve most directly to reduce the financial stress experienced by a farming operation. As also indicated, and perhaps most importantly, the producer payments allowed farmers to pay a significant portion of their living expenses for the period with a much greater degree of certainty than they would have been possible without operation of the price regulation.

According to the analysis presented in Attachment IV, this overall reduction in financial stress resulted in a significant reduction in the likely net loss of dairy operations in the New England milkshed. According to the analysis presented, this effect of the price regulation may well have cut the attrition rate by more than half of what might have occurred without operation of the price regulation.

According to the first part of Attachment IV, the price regulation had two striking impacts on farm viability in 2000: 1) the number of the most stable farms, or those experiencing no financial stress was increased from thirty to fifty percent; and 2) the most vulnerable farms, or those experiencing severe stress, was reduced in half, from thirty-four to seventeen percent.

The second part of Attachment IV, which assesses the likely impact on farm attrition, follows from the above analysis. According to this assessment, the price regulation may well have reduced the number of farm losses by as much as two and one half times. This translates to approximately 400 farms remaining on the land, and remaining as vital participants of the New England milkshed.

The analysis presented in Attachment IV probably understates the case according to the data presented in the individual assessments of the price regulation's impact on farm loss provided by each of the New England State commissioners of agriculture. (These assessments were prepared in response to a request made by Senator Snowe and Senator Collins of Maine. I have attached their letters to my statement). For example, Commissioner Steve Taylor of New Hampshire indicates that

“Since the Compact's inception in July 1997 the number of farms producing milk for the commercial market in this state has declined from 187 to 176. . . If there had been no Compact I would expect that by now we would be down to 130 or even fewer farms.”

The remainder of my presentation provides some assessment of the impact of the price regulation on consumer retail milk prices and consumer spending on milk. This portion of the analysis is much more difficult to present in concrete terms. At the least it can be said that the literature is extensive with regard to the impact on retail milk prices of the price regulation's 11.6 cent increase in the regulated minimum procurement cost.

Yet the literature is most inconclusive. One study finds only a marginal impact; another finds somewhat similarly that some but not all, though still more than a marginal amount, was passed through; yet a third finds a substantial, marked-up impact well in excess of the actual amount of the price regulation.

These studies are presently all the subject of a raging academic debate on methodologies. The Commission has yet to make its own determination, given the stark

disagreement in this still developing literature. My purpose today is not to contribute further to the array of opinions, but instead to provide some context.⁴

Attachments V and VI identify possible per capita and per family cost, annually, of the price regulation. Tracking the first two studies cited above, an analysis premised on a pass through of half the increase is also presented. For purposes of illustration, a complete pass through of the price regulation's increase in the regulated minimum procurement cost is also presented.

According to Attachment V, a pass-through of half of the regulated assessment, or 6 cents, would have yielded an annual per capita average increase in spending on milk in the amount of about \$1.40, with a range of \$0.75 to \$2.35. A pass-through of the entire 11.6 cents would have yielded twice these totals, or about \$2.75 on average. By household, assuming a pass-through of half the amount, the annual impact on average would have been about \$3.50, with a range of \$1.90 to \$5.80 for the period. Again, a pass-through of the entire amount would double these impacts.

Attachment VI provides a further context for assessing the annual household net impact of the price regulation. This assessment considers milk purchases and total food purchases, by income group. As can be seen, assuming a complete pass-through, the impact again ranges on average between \$5 and \$10, with the higher impact occurring for the higher income groups. With regard to all food purchases, this increase appears as a one to two tenths of one percent increase for all food purchases; it does not appear at all statistically with regard to all purchases. The attachment also provides some further context with regard to all food purchases.

A final note on consumer impacts with regard to the Women, Infants, and Children Nutrition Program (WIC) and School Lunch Programs. The price regulation contains provisions exempting the WIC program and providing reimbursement to the School Lunch programs. The purpose of the first is to ensure the WIC program is held harmless; the attached letter from Mary Kelligrew Kassler, Director of the Massachusetts WIC Program indicates that this purpose has been served. (A letter from Peter Petrone letter, Compact Commission member-designee of the Rhode Island WIC Program, describing a similar outcome, is also being submitted for the Record.

The School Lunch reimbursement procedure was intended to ensure the same result, while at the same time allowing for the possibility that milk processors might choose to compete over the potential impact of the over-obligation on the margin for school lunch milk. The total amount of the reimbursements provided has been substantially less than originally provided for. This indicates at least that the program has been held harmless.

Finally, I have provided data in graph form that illustrates the interrelationship between the regulated procurement cost for Class I or beverage milk and the retail price for the same milk in the New England market (Boston). As noted earlier, the procurement cost for raw milk is a combined function of the federally established Class I minimum price and the Compact price regulation. In combination, the bottom two lines of the graph identify the combined minimum procurement cost.⁵

Adding the top line for retail prices defines the margin between this combined regulated minimum procurement cost and the retail price. As can be seen, this graphed illustration is presented in two formats. The first is a single, continuous graph for the entire Compact period, (Attachment VIIa). The second shows the Compact period divided in two parts (Attachment VIIb).

Attachment 7b indicates that the pattern of the margin between the regulated procurement cost and the retail price was dramatically different between the first and second of these two defined periods. The first shows a period of stable cost and even declining price, while the second shows combined stability and fluctuation in cost accompanied by a substantial increase in price. For the moment, I can only let the graph speak for itself. On behalf of the Commission, I will be attempting to reconcile these two periods as our assessment moves forward. I can only hope that the analysis in the literature will move in that direction, as well.

This concludes my testimony. I thank the Committee for its considerate attention.

Chairman LEAHY. Thank you very much.

⁴At the same time, thought speaking only for myself and not on behalf of the Commission, I do not find the third study to be at all credible for its description of the retail mark-up pattern for milk and its resulting conclusion of a substantial retail mark-up attributable to the price regulation. For this reason, I have not provided any illustration of this study, as presented for the others.

⁵As also described earlier, their combination also defines the price regulation's net, overall increase of 11.6 cents in the regulated procurement cost of the raw, Class I milk. This amount is established monthly by the combined operation of the federal price regulation and the compact price regulation minimum amount of \$1.46 per gallon.

Mr. Norquist, you are no stranger to the Congress and we are delighted to have you here, sir. Go ahead.

STATEMENT OF GROVER NORQUIST, PRESIDENT, AMERICANS FOR TAX REFORM, WASHINGTON, D.C.

Mr. NORQUIST. Thank you. I serve as President of Americans for Tax Reform. I am submitting my testimony in writing. I speak to support allowing the Northeast Compact to lapse and in opposition to any extension of it.

There was recently a book and a movie called "The Perfect Storm" and it described the perform storm. The Dairy Compact is the perfect bad law. There are lots of laws that have good points and bad points, but the Dairy Compact is absolutely perfect in its wretchedness and it has nothing to recommend it. It is price-fixing by the Government.

We have somewhere between 4 and 20,000 years of history on price-fixing being a bad idea. It creates a cartel. If anything, the Government should be trying to move away from monopolies and cartels. We know that monopolies and cartels give us higher prices and less good quality. The Government ought not to be interfering in capitalist acts between consenting adults.

Third, it has hidden costs. I mean, one of the things that we would like to have from Government is more transparency, but here it is not even sort of an honest tax where you say the Government is going to come and take 10 cents from me or 20 cents from me every time you buy a—at least the sales tax one can see, and consumers and taxpayers can say, well, this sales tax is too high or it is a reasonable cost. But when you hide costs, that is a particular problem.

It hurts poor people. Obviously, for lower-income people, milk of a larger percentage of their income than for other people. When we sent people over to the former Soviet empire and found things like this, we told them don't do this. This is exactly the kind of government program that we told people that they should move away from.

It also has a false promise. It promises to help small farmers. Small farmers have continued to go out of business. It sends money to large farmers. When you go to college, they explain to you how corruption happens in government, that you have diffused costs and concentrated benefits and if you just sort of nick everybody a little bit, somebody can walk away with a lot of money. This is the structure of nicking everybody who buys milk.

Then, seventh, it moves away from where I think the country and the world is trying to get to, which is expanding markets. We want to trade not just between the 50 States, but with Canadians and Mexicans, and hopefully with the entire hemisphere and with the entire world. We should be knocking down markets and insisting the Europeans move away from their subsidies and cartels, and this makes it more difficult to do that. The United States can compete successfully in the world, but we ought to be competing rather than hiding behind cartels and moving in the wrong direction.

Now, it has been said that no one's life is ever a complete waste; some people serve as bad examples. And this law serves as a bad example, but we don't need it. There are others. High school, the

Department of Motor Vehicles and the post office have inoculated America against socialism because people decide they don't want more of that.

When I am asked as a taxpayer advocate, what Government services would you give up if you had less taxes, the first one I always point to is the milk cartel. That is a Government service that I would like to give up, and I never get an argument from people who then want to tell me that this is a useful project.

That said, I hope this will be allowed to lapse. I certainly hope it will not be extended.

Chairman LEAHY. And that would save you how much in taxes if you gave up the Dairy Compact, Mr. Norquist? I want to make sure I follow your testimony.

Mr. NORQUIST. No, no. The interesting conversation, of course, is politicians are put in the very difficult position of explaining that they are giving lots of money to dairy farmers, but somehow it isn't coming from anybody. Obviously, it comes in higher consumer costs because the money is not printed; it actually comes from somewhere.

It does not run through the central Government. It is a mandated price-fixing by the Government, and therefore it is a Government service, these laws, that we would like to pass on. But it does not show up on the tax records, which I would argue makes it a less honest transfer of wealth from some to others.

[The prepared statement of Mr. Norquist follows:]

STATEMENT OF GROVER NORQUIST, PRESIDENT, AMERICANS FOR TAX REFORM,
WASHINGTON, D.C.

Americans for Tax Reform (ATR) has steadfastly opposed the Northeast Dairy Compact since its inception for reasons based initially on principle and further strengthened over the course of years by mounting evidence of its disappointing performance. Therefore, we find S1157 to be a very troubling proposal, for it would give dairy compacts everlasting life, and would take a bad idea from one corner of the country and spread it virtually nationwide.

The Northeast Compact has been an expensive boondoggle not worth continuing, and this experience has ably shown that establishing even more regional compacts would be a very ill advised choice for Congress to make.

ATR's opposition to the extension of the current dairy compact and the creation of new compacts can be categorized into four basic themes. First, it's bad economics. Second, the Northeast Dairy Compact has completely failed in its mission to rescue the small farmer, as would new compacts. Third, the entire approach is so anachronistic it should be forever consigned to a museum. Finally, the Northeast Dairy Compact's persistence has demonstrated Milton Friedman's cautionary adage that "There is nothing so permanent as a temporary government program."

Dairy compact advocates have insisted all along that in order to prevent the collapse of smaller farms (especially those owned by families) and ensure an adequate supply of milk and related dairy products, a higher floor on regional dairy prices needs to be set than the one imposed by Washington every month.

The problem with this approach is that it does not correct the underlying flaw; it simply relocates it. A pricing decision imposed by bureaucrats at the local level is no better than a pricing decision imposed by bureaucrats in Washington, DC.

Whenever any government brusquely interferes with the pricing mechanism of the free market, untenable economic distortions inevitable follow. These deliberate alterations are intended to confer direct benefits to the rest, and the schemes are alleged to somehow come at no real expense on the part of the whole.

As with any attempt at command and control economics, such an unrealistic outcome is the rosier of rosy scenarios. It has certainly not been the case with dairy compacts. Indeed, it would appear that no one has benefited, and nearly everyone has borne a very real cost for keeping the program intact.

The average price per gallon of milk in the Compact has generally increased 10 to 15 cents. This artificially induced price hike is, for all intents and purposes a tax

on milk, and has worked much like any other excise tax in that it serves to reduce the maximized consumption of milk. (Think of the excise taxes slapped on alcohol and tobacco. Milk has now joined their ranks as guilty pleasures discouraged by government.)

Such a tax, of course, penalizes milk drinkers. But it also hurts milk producers. The flattened consumption levels have tended to obviate any potential profit gains dairy farmers would have otherwise expected. And consequently, many of those farmers find it impossible to continue operating and decide to quit the industry, which leads us to the aforementioned second bone of contention: The Northeast Dairy Compact hasn't prevented the implosion of small farms.

The Massachusetts Department of Food and Agriculture recently reported that while dairy farmers in that state receive an additional \$7,000 every year on average from participating in the Northeast Compact, which is in accordance with the compact boosters' design, the rate of annual dairy farm closure defied their wishes and leapt from 6% to 10% after the Compact was established.

Unfortunately, this sorry phenomenon is not exclusive to Massachusetts. It applies throughout the Compact zone. And it's largely attributable to the "less you need, more you'll get" nature of agricultural subsidies.

As a recent GAO report confirmed (GAO-01-606), the bigger and more efficient farms have been receiving the lion's share of federal agricultural assistance payments for years, and that share has been steadily increasing. In 1999, large farms, which constitute only 7 percent of all farms, received around 45 percent of the payments. Medium-sized farms, which constitute 17 percent of all farms, took 41 percent of the payments. The remaining 14 percent was divided among the 76 percent of farms that are small—they very same farms the agricultural support programs are meant to assist.

And milk is no exception. Since the total amount of price support any one farm can claim is determined by the amount of milk it produces, larger farms automatically qualify for far more in subsidies simply because they have higher production capacities. And since the program doesn't heap its benefits on small farms, as its supporters would assert, the program doesn't help to keep small farms in business. Instead, it provides huge incentives for farms to grow larger in order to soak up more subsidies, which often entails consolidating with the smaller farms previously driven out of the industry.

Allow me to clarify: Large farms are not to be feared. They will obviously be a major component in the future of farming, which is entirely desirable. They produce a greater yield with less space and at lower prices. But our regulatory framework does not accurately reflect this ongoing development, and scarce resources are getting showered upon already efficient and thriving farms. What was designed to prop up family farms during the Great Depression is now hopelessly anachronistic in this prosperous age, the third point ATR would hasten to make.

The current outdated approach has resulted in millions upon millions of taxpayer's dollars going to meet needs that by any objective criteria simply do not need to be met by the government for the simple reason that the advance of agricultural technology as well as agricultural economics has shown that government interference is unnecessary and costly.

Clearly, a new approach is needed. The production, distribution, and sale of milk and other dairy products have entered the 21st Century. But the laws governing the dairy industry need to follow. Dairy compacts will keep us in the past. Congress should keep pace with the modernization of farming, not cling tenaciously to a by-gone era.

In that same spirit, Congress should regard the issue of dairy compacts as a failed experiment that is destined for the history books. Doubtlessly, the entire matter of dairy compacts was meant to be jettisoned by now, but that brings us to ATR's fourth concern: the permanence of "temporary" government programs.

The Northeast Dairy Compact, in effect since July 1997, was supposed to be a short-term measure to help the region adjust to the aftermath of years of lower dairy price supports and the sale of government-held dairy stocks. Concurrent with the Federal Milk Marketing Order reform called for in 1999, the Compact was supposed to expire, hence the automatic sunset provision in its original legislation. The Marketing System was reformed as promised, but the Compact remains. So the Compact is living on borrowed time, and it deserves the fate ordained by the Federal Agriculture Improvement and Reform Act, i.e. oblivion.

Much of the Northeast Dairy Compact's surplus milk and dairy products have spilled out into non-compact states and applied downward pressure on prices in those states, which would explain to a great degree why many states want in on this deal. ATR believes it would be far better to simply end the entire misadventure before things get out of hand.

Moreover, ATR believes that all attempts to fix food prices are misguided and counterproductive. Not only should regional compacts get out of the business of fiddling with the price of milk, the USDA should get out of it as well. Governments at all levels should allow the marketplace to determine the price of all food, as it does so effectively and equitably with every good and service.

In closing, I would like to acknowledge the tireless efforts of grassroots organizations like Citizens Against Government Waste and the superb research of scholars such as Professor Kevin McNew of Montana State University. (Were I to present a more comprehensive list of the people exasperated by dairy compacts and doing something about it, this testimony would have filled volumes.)

Chairman LEAHY. Mr. Burrington?

**STATEMENT OF STEPHEN H. BURRINGTON, VICE PRESIDENT
AND GENERAL COUNSEL, CONSERVATION LAW FOUNDATION,
BOSTON, MASSACHUSETTS**

Mr. BURRINGTON. Thank you, Mr. Chairman and members of the committee. I am Vice President and General Counsel of the Conservation Law Foundation. We are widely regarded as New England's leading public interest environmental advocacy organization. Many people know us as the group that brought the lawsuit that led to the cleanup of Boston Harbor. For many years, we have tackled pressing environmental challenges in New England, in many, many different areas.

I am here because providing a living wage to our region's dairy farmers is as high an environmental priority today as cleaning up Boston Harbor was 20 years ago, and it is clear to us that the Compact is working and the Compact is the way to achieve that goal.

The list of New England public interest organizations who join my organization in supporting the Dairy Compact is long. For example, the entire Massachusetts environmental community, ranging from small, grass-roots groups to the State's major organizations, and Massachusetts' leading consumer and historic preservation groups all vigorously support the Dairy Compact and its reauthorization.

On the ground, in New England, to put it simply, reauthorization of the Dairy Compact is a no-brainer. Why, from an environmental perspective? Because sprawl is our foremost environmental challenge and we simply have no hope of winning the war against sprawl if farmers can't make ends meet.

Sprawl is an open-space problem, it is a biodiversity problem, and it is a quality of life problem. But it is even more than that. Sprawl is the worst threat to air quality and to water quality that we face today. For example, Lake Champlain has a severe eutrophication problem. Farms produce some of the phosphorous pollution that is causing the eutrophication in Lake Champlain, but the mere 4 percent of the land around Lake Champlain that is developed produces one-fifth or more of the phosphorous that is going into Lake Champlain. So sprawl pollutes on a per-acre basis much more than farms do and farms are an important bulwark against sprawl. The environmental and consumer interests here are perfectly aligned, we believe.

Milk is heavy and bulky and expensive to transport over long distances. There are freshness issues which have been alluded to, but there is no way around the fact that unless you reduce it to concentrate, milk costs a lot to transport a long distance. The milk

that arrives in Washington, D.C., from Boulder has a hefty transportation component to its retail price.

Under the Dairy Compact, New England consumers are paying regional farmers a few cents per gallon to avoid paying literally ten times that amount to get milk from 500 or more miles away. Whether it be the very farthest part of western New York State or Ohio or Michigan, there is no way around the fact that it would cost our consumers more to bring milk such a long distance than it costs them to keep our regional dairy farmers in business.

Time doesn't allow me to go into all the issues that have been raised up to this point in the hearing, but I would like to take on just a couple of them. First, the question of whether the Dairy Compact has been effective in protecting our dairy farms, and I would make five points in response to that.

First, the appropriate question is are we doing better than we would without the Compact, and I think clearly the answer is yes, we are doing better than we would without the Compact.

Second, the focus should be on farm acreage, not farm numbers. Farm acreage has remained stable under the Dairy Compact.

Third, the trends in dairy farming need to be looked at in historical context. We are still experiencing the after-effects of decades when it was impossible to make ends meet in farming in New England and when nobody could see a future in farming. The median age of farmers in our region rose to 64. We are still suffering that effect.

It is easy to get out of farming. Many people have been looking to get out farming for years prior to the time when you could make ends meet under the Compact. It is very difficult to get into farming because we have extraordinarily high land prices in our region.

Fourth, the Compact, due to its governance structure, provides no dairy farmer a guarantee. The Compact price is based on a balancing of public interest considerations. It is not a cartel controlled by the dairy farmers; it is governed by a commission that consists of representatives of farmers, processors, consumers and others. It may be that if we absolutely wanted to provide assurance that we would lose no dairy farmers, we would set a higher price, but that has not been done and should not be done.

Finally, the anecdotal evidence that there are many farmers in business in New England today who would not be without the Compact is simply overwhelming to anyone who is on the ground in New England.

In conclusion, I would say giving the States authority to protect the economic viability of their dairy farms and keep milk supplies local is critical to protecting consumers and the environment. We think this is a matter that is handled well by the States. It has been handled well in our region and we and our many allies in New England's environmental community urge you in the strongest possible terms to give the States the authority that they have requested.

Thank you. I would be glad, by the way, to answer questions on a wide range of subjects.

[The prepared statement of Mr. Burrington follows:]

STATEMENT OF STEPHEN H. BURRINGTON, VICE PRESIDENT AND GENERAL COUNSEL,
CONSERVATION LAW FOUNDATION

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear today and express the strong support of the Conservation Law Foundation (CLF) for the Dairy Consumers and Producers Protection Act of 2001. CLF is a non-profit, member-supported organization that works to solve the environmental problems which threaten the people, natural resources and communities of New England. CLF is widely recognized as New England's leading environmental advocacy organization.

The Dairy Consumers and Producers Protection Act is one of the most important pieces of consumer and environmental protection legislation Congress will take up in the near future. The availability of fresh, affordable milk, and the future of millions of acres of rural and suburban land across the nation, both hang in the balance. New England's experience since the Northeast Interstate Dairy Compact (Dairy Compact) took effect in 1997 has shown that empowering the states to provide dairy farmers a living wage is good for consumers and the environment. The Dairy Compact has enabled consumers to avoid the high cost of shipping milk over long distances while simultaneously protecting the landscape from sprawl.

The Dairy Compact enjoys broad support in New England. Many of the region's environmental, consumer, land conservation and historic preservation groups join the Conservation Law Foundation in strongly supporting its reauthorization. A partial list of New England public interest organizations supporting reauthorization is attached as Exhibit A. In Massachusetts, which accounts for nearly half of New England's population and a corresponding share of its milk consumption, every major environmental organization and the state's leading consumer protection and historic preservation groups, as well as many smaller community-based organizations, support reauthorization of the Dairy Compact.

My testimony will explain the importance of the Dairy Compact to the environment and to consumers and then briefly address criticisms that have been leveled at the Dairy Compact by representatives of the national dairy processing industry and their allies.

KEEPING DAIRY FARMS VIABLE PROTECTS THE ENVIRONMENT

Farms are important environmental assets. They provide a bulwark against sprawl. Throughout New England and many other parts of the country, if farmers cannot make a living in agriculture, public and private land protection efforts will never be able to save more than a fraction of the rural landscape from low-density development. Hundreds of millions of dollars in land protection spending could not compensate for the effect of public policies that allowed farmers supplying milk and other basic commodities to be driven out of business. When farmers can earn a living in agriculture, government and private land conservation organizations can spend, scarce dollars elsewhere. In the coming years, pressure on land will likely be even greater than it has been in the past. Development pressure is spreading to more of the rural Northeast as more people work at home and the retirement-age population grows and becomes free to locate far from employment centers and schools.

In New England alone—a small, densely populated region—there are roughly 1.3 million acres of land in dairy farming, most of which would be lost to agriculture if Congress did not reauthorize the Dairy Compact. For decades before the Dairy Compact took effect, federal price floors failed to reflect the cost of producing milk or to serve their intended purpose of keeping dairy farms economically viable in this and other regions. In 1995, there were 1,919,535 acres of dairy farmland in New England. In 1995, just a decade later, there were only 1,320,507 acres of dairy farmland. In other words, about 600,000 acres of dairy farmland—almost one-third of the dairy farmland in the region—were lost to other uses during a few short years. According to Yankee Farm Credit, a leading regional agricultural lender, as of 1995 a full 54% of New England dairy farms were under moderate or severe financial stress. Only 38% were in healthy financial condition.

Protecting the working agricultural landscape from sprawl has fiscal as well as environmental value. Farms have positive revenue-cost ratios for municipalities. For example, for each dollar of local tax revenue a Massachusetts farm produces, the Farm requires an average of only 40¢ in costs for local services. Residential development, by contrast, does not pay its way: each \$1.00 in tax revenue it yields is more than offset by \$1.09 in costs for local services. Protecting farms also helps state government avoid infrastructure expansion costs, Massachusetts, New Hampshire, and other New England states have been spending hundreds of millions of dollars on outer-suburban highway, expansion projects in recent years. They will spend much

more in the future if sprawl development eats up farms on the suburban fringe and in rural areas.

From an environmental perspective, more than open space is at stake. The water quality and air quality impacts of sprawl are among today's most intractable environmental problems. For example, Lake Champlain has a severe eutrophication problem due to phosphorus pollution, and dairy farms are one significant source of that pollution. Yet studies carried out in recent years show that on a per-acre basis, the four percent of land in the Lake Champlain basin that is developed produces one-fifth or more of the phosphorus pollution. Similarly, the lion's share of the pollution causing acid precipitation acid smog in New England originates with burgeoning motor, vehicle traffic volumes resulting from sprawl. On a per-acre basis, sprawl development produces far more pollution than dairy farms do.

CLF would not support the Dairy Compact simply as a means of keeping land open if preserving local milk supplies were not important in its own right. But preserving local milk supplies is a critically important public objective, and Congress should recognize the enormous environmental value of the Dairy Compact when considering the proposed legislation

CONSUMERS NEED LOCAL MILK SUPPLIES

The dairy Compact has enabled New England consumers to avoid becoming dependent on distant sources of milk and paying the high cost of shipping milk for hundreds of miles. Milk is heavy and bulky and expensive to transport. Even with fuel prices below current levels, trucking milk to Rhode Island from Michigan or Wisconsin would cost 50–70¢ per gallon. (See Exhibit B.) In Florida, where the dairy industry has collapsed, consumers pay nearly that much for shipping and get milk from as far away as New Mexico. In contrast, it costs less than a dime per gallon to ship milk within New England. While economies of scale on massive dairy farms in certain regions yield lower wholesale milk prices, they offset only about half the cost of long-distance transport. Since the Compact took effect, New England consumers have paid dairy farmers a few additional cents per gallon. Those pennies have enabled regional farmers to stay in business and provide milk at a lower overall cost to consumers. Recent unprecedented consolidation in dairy processing gives consumers an even greater stake in the Dairy Compact. Dallas-based Suiza Foods now controls three-quarters of fluid milk processing in New England. There is strong evidence that Suiza has used its market power to gouge consumers. Suiza Foods doesn't need New England dairy farms, but the regional processors who represent its remaining competition do. If the Dairy Compact goes, they will succumb as well.

It is important to note that the Dairy Compact has shielded programs benefiting children, particularly low-income children. The Dairy Compact legislation exempts milk sold to low-income people under the Women, Infants, and Children (WIC) Program. The Dairy Compact Commission has approved an exemption for school meals programs. Neither of these programs would be exempt from the higher costs associated with long-distance shipping and with the reduced competition in dairy processing that would be abetted by the demise of dairy farming in New England and other regions. I note that, when the New York Public Interest Group (NYPIRG) testified in opposition to the Dairy Compact before the New York legislature several years ago, it cited as two of its three reasons anticipated impacts on the two programs just mentioned—impacts which, the Compact was subsequently crafted and administered to avoid.

Nationwide consolidation, of milk production in a small handful of states would mean not only higher costs but diminished product, quality. Consumers would increasingly be presented with milk that had been "ultra-pasteurized," a process that enables milk to be stored for weeks longer than conventionally processed milk but that also leaves it tasting like liquid cardboard. With transportation accounting for a large share of costs, processors would have a strong incentive to reduce milk to concentrate for shipment. Fresh-tasting local milk would remain available for consumers in higher income brackets. But the days when dairy farms remained in all regions and children of all income levels drank the same milk would become a memory.

CRITICISMS OF THE DAIRY COMPACT HAVE NOT WITHSTOOD SCRUTINY

The Dairy Compact has been under constant attack by representatives of major national dairy processors. Their multiple court challenges have failed. And despite, heavy spending on advertising and lobbying in Massachusetts—a populous state with a comparatively modest agricultural presence that industry opponents hoped would provide fertile ground for their arguments—the opponents have won no pop-

ular support. Indeed, support for the Dairy Compact in Massachusetts is broad, as mentioned above, and popular opposition imperceptible or nonexistent. The result of drawing more attention to the Dairy Compact has been to draw more legislators and others into the ranks of Compact supporters.

Some of the Compact opponents' recurring criticisms were aired at an oversight hearing of the Joint Committee on Natural Resources and Agriculture of the Massachusetts legislature on February 10, 1998. At that time, the chairs of the committee were Representative Douglas W. Petersen and Senator Lois G. Pines. The hearing followed one of the opponents' concerted attempts to turn opinion against the Compact. In its report on the hearing (Exhibit C), the committee rejected the arguments against the Compact.

An underlying reason for Compact opponents' failure to persuade is that the Compact has brought management of an important agricultural resource closer to the people and placed it in the hands of a body that, by design and in practice, protects the broad public interest. The Dairy Compact legislation has given back to the states authority that does not belong in the hands of the federal government. For decades prior, to 1997, the federal government presided over the decline of New England's dairy farms. Federal price floors failed to serve their intended purpose of keeping dairy farms economically viable in our region and many others. In contrast, the commission that administers the Dairy Compact on behalf of the states has proven to be an effective guardian of the public interest. The Dairy Consumers and Producers Protection Act would give other regions the same badly needed mechanism for addressing threats to their food supplies.

Opponents malign the Dairy Compact as a "cartel," but it is nothing of the sort. A cartel is a combination of businesses that regulates prices to suit itself. In contrast, the Compact has a broadly representative and accountable governance structure. The Dairy Compact Commission is a publicly appointed body that includes representatives of consumers, processors, the general public and others. Dairy farmers are in the minority on the commission.

After years of debate, Compact opponents have failed to explain how consumers would be better off paying far more to ship milk from 500–1,000 miles away than they would be paying a few pennies per gallon to enable dairy farmers to stay in business and produce milk within their region.

Compact opponents have also failed to produce evidence in support of their claim that the Dairy Compact is promoting consolidation in dairy farming in New England. The Dairy Compact took effect after many years when dairy farmers could not make ends meet or see a future in dairy farming, when very few people went into dairy farming, and when the median age of the region's dairy farmers climbed to 64. New England has some of the highest agricultural land values in the country—Massachusetts, for example, ranks fourth among the states in farmland value, at \$5,597 per acre—making it difficult for new farmers to get started. With many dairy farmers reaching retirement age, neighboring farmers, who now find dairy farming to be a viable proposition, sometimes buy or rent retiring farmers' assets. At the same time, more people have been going into dairy farming since the Dairy Compact took effect. Dairy farms in New England remain modest in size. For example, the average dairy herd size in Massachusetts is 70 cows, up from 67 a few years ago. A typical New England dairy farm is run by an overworked couple with kids and at least one off-farm job, a large farm by two overworked couples with kids and off farm jobs. Finally, when Compact opponents assert that they embrace the goal of protecting local milk supplies but that interstate compacts are not the best means of attaining that goal, they disregard the fact that the Dairy Compact emerged from years of debate and experimentation with other mechanisms that proved less satisfactory. Other witnesses are better qualified than I am to discuss that pre-Compact history. What I can attest to is that the historical record since 1997 shows that the Compact is a response to the dairy farm crisis that, viewed from any perspective, does work.

The Dairy Compact has not eliminated all challenges for dairy farming in New England. It was not intended to do that. It has, however, provided a mechanism through which the people of our region can address the challenges and find solutions that benefit consumers, farmers, processors, and the environment alike. After four years of experience with the Dairy Compact, it is clear that this mechanism should be preserved and expanded in the Northeast and made available to other regions of the nation as well.



**New England Public Interest Groups Supporting
Reauthorization of the Northeast Interstate Dairy Compact**

July 25, 2001

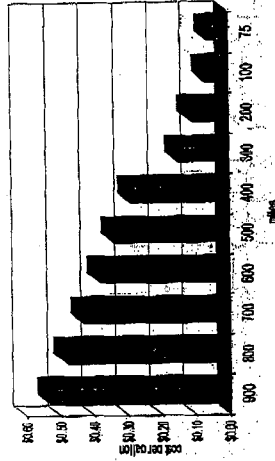
Association of Vermont Conservation Commissions
 Audubon Vermont
 Bay Circuit Alliance (MA)
 Berkshire Natural Resources Council (MA)
 Community Involved in Sustaining Agriculture (MA)
 Conservation Law Foundation
 Environmental League of Massachusetts
 Essex County Greenbelt Association (MA)
 Food Works (VT)
 Historic Massachusetts
 Lincoln Land Conservation Trust (MA)
 Massachusetts Association of Conservation Commissions
 Massachusetts Audubon Society
 Massachusetts Watershed Coalition
 MASSPIRG
 Nashua River Watershed Association (MA)
 National Wildlife Federation
 New England Small Farm Institute
 New Hampshire Association of Conservation Commissions
 QLF - Atlantic Center for the Environment
 Rural Vermont
 Sheffield Land Trust (MA)
 Shelburne Farms (VT)
 Sierra Club - Northeast Region
 Sippican Land Trust (MA)
 Sudbury Valley Trustees (MA)
 The Trustees of Reservations (MA)
 Upper Valley Land Trust (NH)
 Valley Land Fund (MA)
 Wildlands Trust of Southeastern Massachusetts
 Vermont Natural Resources Council
 Vermont PIRG

(Incomplete list)

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 120 Tillson Avenue, Rockland, Maine 04841-3416 • (207) 594-8107 • Fax: (207) 596-7708
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 15 East State Street, Suite 4, Montpelier, Vermont 05602-3010 • (802) 223-5992 • Fax: (802) 223-0060

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Cost of Transporting Milk to Massachusetts



MILEAGE TO DAIRY FARMS	OUTSIDE CURRENT "MILKSHED"
Lancaster County, PA:	350 miles 20 cents
Buffalo, NY	465 miles 32 cents
Central MI	850 miles 50 cents
Wisconsin Dairylands	1,200 miles 67 cents

Source: Massachusetts Department of Food and Agriculture, February 2001.

Rep. Stephen Nadeau



DOUGLAS W. PETERSEN
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ROOM 473F
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The Commonwealth of Massachusetts
COMMITTEE ON NATURAL RESOURCES AND AGRICULTURE
MASSACHUSETTS GENERAL COURT
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LOIS G. PINES
SENATE CHAIR
ROOM 504
TEL. (617) 723-1639

TO: Natural Resources & Agriculture Committee Members
FR: Douglas W. Petersen, House Chair
Lois G. Pines, Senate Chair
RE: Northeast Interstate Dairy Compact
DT: May 28, 1998

Please find attached the final report on "Northeast Interstate Dairy Compact."

Comments submitted by committee members in response to my previous memo requesting your review of the draft report were reviewed and incorporated as appropriate.

Thank you for your time and input. Any questions, please contact Jody Lehrer in my office.



DOUGLAS W. PETERSEN
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May 27, 1998

**REPORT BY THE
JOINT COMMITTEE ON NATURAL RESOURCES AND AGRICULTURE
ON THE OVERSIGHT HEARING ON THE
NORTHEAST INTERSTATE DAIRY COMPACT**

The Joint Committee on Natural Resources and Agriculture held an oversight hearing on Tuesday, February 10, 1998, on the Northeast Interstate Dairy Compact (Compact). The purpose of the oversight hearing was to allow the Committee to hear the opinions of many interested parties, including farmers, dairy processors, consumers, and the public with respect to the Compact, its significance, and the real and putative impacts of the Compact on the lives of individuals who testified.

About this Report

What is the Northeast Interstate Dairy Compact?

The Compact is a regional milk pricing system that was ratified by the legislatures of all six New England states, and approved by the United States Congress. The General Court of the Commonwealth unanimously passed the Compact enabling law in 1993 (Chapter 370 of the Acts of 1993).

The avowed purpose of the Compact is to produce stability in the prices and supply of fluid milk that farmers in the Compact states sell, so that farmers can more accurately predict cash flow and expenses related to dairy farms. It is also designed to increase income to dairy farmers, in an effort to stem what is perceived as the escalating problem of dairy farm foreclosures in the Compact states. The Executive Office of Environmental Affairs has stated that the Compact is also intended to ensure a "...fresh, wholesome supply of locally produced milk."

In April 1996, the U.S. Congress approved the enabling legislation for the Compact as part of the Federal Agricultural Improvement and Reform Act (FAIR Act; the 1996 Farm Bill). Congress approved the Compact only for a limited period of time: the Compact is set to expire in early 1999, unless it is reauthorized prior to that time.

The enabling legislation allows five other states, New York, New Jersey, Pennsylvania, Delaware, and Maryland, to join the Compact, provided they are contiguous to Compact-member states. Of these five states, New Jersey has passed, and the governor has signed, the Compact legislation into law. Maryland has passed the legislation and is awaiting the governor's signature. In New York, the senate has passed the Compact legislation, and is awaiting consideration by the General Assembly. Delaware is preparing a bill for consideration, and Pennsylvania is holding hearings on the Compact legislation.

Twelve southern states (Alabama, Mississippi, Louisiana, Arkansas, North Carolina, South Carolina, Georgia, Tennessee, Kentucky, Oklahoma, Virginia, and West Virginia) are also seeking to form a Compact of their own, and are at different stages in the process. The establishment of additional compacts may influence the decision of Congress towards renewal of the Northeast Interstate Dairy Compact.

The Northeast Dairy Compact is overseen by a "Compact Commission" (Commission). The Commission is made up of delegations from each member state. Each state has from three to five delegation members¹ appointed by the particular state. The delegation must include a farmer representative, a milk processor, and a consumer representative. Other delegation members are left to the discretion of the particular state, but have included milk processors, supermarket representatives, and government officials. Each state has only one vote on the Commission.

The current delegation from the Commonwealth is made up of five members, all appointed by the Governor. Membership includes the director of the Women, Infants, and Children office, a processor-retailer representative, two farmers, and the Commissioner of the Massachusetts Department of Food and Agriculture.

The Compact Commission held hearings and solicited comments from the public in order to set the Compact price for milk used for beverage products (often called fluid milk or Class I milk) distributed in the Compact states. The Commission began holding its first round of hearings in December 1996, and concluded the process in May 1997, with the adoption of a Final Rule, setting a farm price for beverage milk. This first farm price for beverage milk, established

¹ Currently, Massachusetts, Connecticut, Rhode Island, and Vermont each have five delegation members and Maine and New Hampshire each have three.

under the Compact, went into effect on July 1, 1997, at \$1.46 per gallon. This price was intended to apply only through December 31, 1997, but following a public hearing, the Commission extended the price through early 1999.

Two consumer groups are exempt from price increases for milk attributable to the Compact. First, the U.S. Congress required that the Compact reimburse the Women's, Infants, and Children's (WIC) program for any retail price impact on beverage milk. Second, the Compact Commission itself voted in favor of reimbursing schools for the any price increases of milk used in school lunch programs.

Who is Regulated By the Compact?

The Compact regulates the price of milk that dairy processors pay for beverage milk in New England. The Compact establishes only the price at which *beverage milk* (called Class I milk) is sold to processors. The Compact does not set the price that processors must pay for milk used in cheese, ice cream, etc. In fact, the Compact is specifically prohibited from regulating the price that processors pay for milk used in these other products. Finally, the Compact's regulatory authority does not extend to the prices that processors charge retailers or retailers charge consumers. These prices are left to the free market.

How Milk Prices are Set

There are three markets that influence the price that consumers pay for milk. They are:

- the farm market - where milk is purchased by processors from farmers;
- the wholesale market - where processors sell processed products, e.g., beverage milk, butter, ice cream, or cheese, to retailers; and,
- the retail market where consumers buy the product (e.g., beverage milk)

Most price regulation occurs in the farm market, where prices are first established by Federal Milk Marketing Orders (Marketing Orders). Marketing Orders are documents issued by the United States Department of Agriculture (USDA) that set milk prices in 32 areas of the country. Generally, only in an area of the country where there is a high demand for beverage milk is there an applicable Marketing Order. The New England Marketing Order is the one that regulates New England's milk market.

Marketing Orders establish prices for milk used in various products. For example, milk used in beverage products has one price, while milk used to make cheese or butter has another price. Milk is divided into classes dependent upon its use (e.g., milk used as a beverage is Class I; milk made into cheese is Class II). For each class of milk, there is a minimum price established by a Marketing Order. Fluid milk - that is, milk used as a beverage (Class I) - is the only class for which a price is set by the Compact.

The rationale underlying Marketing Orders for fluid milk is to assure a minimum price for the sale of milk to processors by farmers to maintain an adequate supply of milk in areas with higher demands for milk, but lower supplies. The USDA sets prices, through Marketing Orders, each month, so the price for Class I beverage milk (as well as for other classes of milk) generally fluctuates monthly. For example, the New England Marketing Order for Class I milk was \$1.20 in July 1997, versus \$1.43 in February 1998.

The price set by the Market Orders represent the minimum price that a dairy processor must pay per gallon of beverage milk bought from farmers. However, in New England, because of the Compact, there is a further adjustment to the price that dairy processors pay per gallon of fluid milk.

The purpose of the Compact price is to ensure that the minimum price paid by processors for each gallon of beverage milk sold in New England is \$1.46. The actual amount added to the Market Order price for New England varies, depending upon the Market Order price.

To illustrate how this works in practice, the following example is provided. The Market Order price was \$1.20 in July 1997, versus \$1.43 in February 1998. This means that in July, the Compact added 26 cents to the Market Order price (to reach the \$1.46 Compact price minimum). In February, the Compact added three cents to the Market Order price. When, and if, the Market Order price is equal to or greater than \$1.46, the Compact adds nothing to the Market Order price.

Farmers in New England do not actually receive \$1.46 per gallon of beverage milk sold to processors. This is because the \$1.46 farm price established by the Compact only signifies the minimum price that dairy processors must pay per gallon of beverage milk, not the price actually paid to dairy farmers.

The price paid to farmers for milk sold (regardless of the class) is an average of the prices set by the Marketing Orders for all four classes of milk, including Class I beverage milk as adjusted by the Compact. Therefore, for the month of February 1998, the average price (of all four classes of milk) was \$1.30. This was the amount paid to farmers in Compact member states for each gallon of milk sold.

What the Consumer Pays

Consumers in the Commonwealth (and elsewhere) do not actually buy their milk for \$1.46 per gallon, anymore than farmers in New England earn this amount per gallon of milk sold to processors. The price of milk sold to consumers in New England is effected by the price paid to farmers, the price processors charge to retailers, and the price mark-up of the retailer in sales to the consumer.

The Massachusetts Department of Food and Agriculture (DFA) estimates that the Compact price of \$1.46 averaged 15 cents above the Federal order Class I price since the inception of the Compact. Of this amount attributable to the Compact, only two-thirds (10 cents) was actually passed on to consumers. According to the DFA, the remaining five cents of the 15 cent Compact add-on was simply not passed on by either processors or retailers because of competition.

The average price paid by consumers in the Commonwealth for beverage milk has been \$2.70 per gallon. Prices vary throughout the country. Florida, for example, has retail milk prices that average from \$3.50 to \$3.70 per gallon².

Testimony at the hearing as to the amount of the rise in retail milk prices in the Commonwealth was inconsistent: some individuals claimed that milk prices at retail had gone up 10 cents and others claimed that increases were as high as 17.5 cents. There were some claims that retailers had raised milk prices 20 cents per gallon as a result of the Compact.³ Some of the testimony attributed these increases in price solely to the Compact.

Some of those testifying at the hearing stated that in some urban areas, the price of beverage milk seemed far higher than in other parts of the state. Several individuals offered testimony that milk prices in particular areas of the Commonwealth rose from 60 cents to 80 cents within a six month period of time. It appeared that grocery retailers had been charging different prices in different areas of the Commonwealth, and that the major price fluctuations from one area to the next were more likely attributable to the pricing decisions of the retailer than to the mandates of the Compact. The price floor set by the Compact is constant. It appears that retail prices of milk have been fluctuating disproportionately to the price adjustments made by the Compact.

Dairy Farms in the Commonwealth

There are approximately 320 dairy farms in the Commonwealth. Together these farms preserve about 133,000 acres of open land. In the Commonwealth, dairy farming is the third largest agricultural enterprise, after the produce and nursery businesses. The average size of a dairy farm in the Commonwealth is just over 400 acres. Dairy farms utilize the largest amount of land of all farms in the Commonwealth.

² Commissioner Jonathan Healy, Massachusetts Department of Food and Agriculture, as quoted in the Boston Globe, pp. D5, Friday October 17, 1997

³ Boston Globe, pp.26, Business Section, reporting on the oversight hearing of the Committee on Natural Resources and Agriculture's on the Northeast Interstate Dairy Compact.

The average number of milking cows (i.e., herd size) on dairy farms in the state is 67. Many other non-New England states have larger farms which benefit from economies of scale. California, Idaho, New Mexico, and Arizona are among the largest dairy farming states in the nation. Some of their farms have herds of 1000 or more.

Dairy farming in the Commonwealth, as in all of New England, is burdened by high production costs as a result of higher than average production costs and the inability of small farms relative to substantial economies of scale. As a result of this and other factors (e.g., urbanization), dairy farms in the Commonwealth, according to agricultural economists, have declined from 6,760 in 1960 to just over 300 this year.

Proponents of dairy farming point out that dairy farms provide employment and business opportunities to host communities. Farms hire labor, and purchase supplies, machinery, and services. Also, farms lend aesthetic qualities to life in New England. The Compact has ensured the preservation, by dairy farms, of one hundred and thirty three thousand acres of open space in the Commonwealth and over one million acres throughout New England. The preservation of open space is a value that has been embraced by both ends of the political spectrum.

Some individuals testified that an additional benefit of maintaining dairy farms in the Commonwealth is that many of the ice cream producers in the state rely on steady supplies of locally produced milk. These businesses would, according to some, likely leave the state if dairy farms were to go out of business, taking with them jobs and tax support.

The Oversight Hearing

Many individuals, organizations, and government officials testified before the Committee at the oversight hearing on the Northeast Interstate Dairy Compact. In fact, over 100 individuals and organizations were invited to testify at the hearing, which was open to the public.

Invitees included, but were not limited to, environmental organizations, farmers, grocer retailers, dairy processors; Compact members; school officials; representatives of WIC (Women, Infant, and Children); local, grassroots organizations; representatives of state and local government agencies; and members of the United States Congress.

About 50 individuals and/or organizations testified at the hearing. The great majority of those testifying were in favor of retaining the Compact. Below is a synopsis of the major points expressed by opponents of the Compact, and the response of proponents to issues raised.

1. *The Compact Only Helps Large Farms*

Some individuals testifying at the hearing alleged that the Compact would help only large farms in the Compact states, thereby increasing the competitive disadvantage of the small farms and accelerating their decline. Proponents of the Compact countered by pointing out that there are few, if any, large farms in New England, in comparison to other parts of the country. The average size of the farms in this state is slightly more than 400 acres of land. In all of New England, the average is similar. The herd size in this state averages 67 cows, which contrasts sharply with that of other states, such as Idaho and California, where some farms have in excess of 1500 cows.

Therefore, even though competitive advantages accrue to larger, more efficient farms, the relative uniformity in size of New England farms makes the differential economic effect of the Compact minimal. Proponents point to the fact that limited land availability and the high price of land in New England make it unlikely that farmers will increase their herd size very dramatically.

2. *Massachusetts Consumers are Paying Compact Prices to Support Out of State Farmers*

The argument has been made that since the Commonwealth is a larger consumer of beverage milk than is any other New England state, and since the Commonwealth imports 75% of its beverage milk from New York and Vermont, consumers in the Commonwealth are paying to support farmers in these other states.

The fact that the Commonwealth is the single largest beverage milk consumer in New England is a function of the fact that the population of the state is larger than others. The Commonwealth does have to import milk to meet its demand for beverage milk. Therefore, the price paid under the Compact for milk is paid to farmers who produce the milk, even if the producing farmer is not in the Commonwealth. However, proponents argued that the Massachusetts supply of milk is a regional supply of milk and to protect this regional supply had value to Massachusetts consumers.

Proponents also alleged that a dwindling supply of locally produced milk would eventually lead to the need to import milk from distant locales. Transportation costs and a shorter shelf life, they alleged, would be more costly than the increase in milk prices resulting from the Compact.

It was estimated that the added cost of long-distance shipping of milk would be anywhere from 30 cents to 40 cents per gallon⁴. Another estimate presented at

⁴ Testimony, Massachusetts Audubon Society, February 10, 1998

the hearing was that milk shipped from Wisconsin or Michigan would cost the consumer in the Commonwealth an additional 43 to 55 cents per gallon⁵.

3. *The Farmers in the Commonwealth Are Not Really Helped by the Compact*

There have been concerns expressed by Compact opponents that the Compact will do little to prevent the dwindling number of farms in the Commonwealth - that the Compact will not provide any real benefits to farmers, certainly not enough tangible benefits to slow the growth of farm foreclosures or to prevent farmers from leaving the dairy business. However, numerous farmers testified that they were enabled by the minimal price support provided by the Compact to pay for equipment and machinery, and to pay expenses related to farming, expenses they would not otherwise have been able to pay, were it not for the Compact.

There was testimony that one farm saw an increase of from \$4,000 to \$7,000 in income since the inception of the Compact. Another farmer informed the Committee that he was finally able to pay some of the debts owed on farm equipment. The owner of a farm feed and supply business reported that he was receiving payments on old debts held by farmers. Collectively, the testimony presented made it evident to the Committee that the Compact was, in fact, providing real, calculable benefits to farmers in the Commonwealth.

4. *There is No Limit on the Price Increase that May be Required by the Compact*

There has been concern expressed that the current price ordered by the Commission, which is approved only through early 1999, could be raised substantially higher than \$1.46 if the Compact is renewed prior to its expiration in 1999.

Testimony revealed that there is a limit on how high the Commission can set the price. For 1998, the Compact is allowed to set a price of up to \$1.93 per gallon of beverage milk, and for 1999, the maximum price that may be required for beverage milk is \$1.99. To date, the Compact Commission has not set the price at the maximum amount authorized (\$1.93), instead electing to set a much lower price (\$1.46). Proponents of the Compact have further pointed out that the Compact Commission was not considering raising the Compact price.

5. *The Compact will Encourage Excess Milk Production*

Some individuals testified that the increased prices that farmers have been receiving as a result of the Compact may encourage an increase in milk production. An increase in production sometimes, but not always, results in an excess of a commodity being produced. For example, milk production could increase, but may not exceed demand. However, proponents of the Compact

⁵ Testimony, Conservation Law Foundation, February 10, 1998

countered that the limited expansion capacity for dairy farmers lessened the chance that an excess of milk would be produced.

However, if an increase in milk production were still somehow to occur - despite the fact that expansion of dairy farms is unlikely (due to factors such as the high cost of land and limited land availability) - it may be that the Compact would have to reimburse the USDA for the purchase of the excess milk produced. This reimbursement would be required under the "milk price support program," a program administered by the USDA but unrelated to the Compact.

Under this program, if there is an increase in milk production that results in an excess of milk, and the excess milk exceeds a national increase in milk production, the Compact will be required to reimburse the USDA for the amount that it would cost the USDA to purchase the excess milk produced.

For example: if milk production in the Compact states were to increase by two percent (over the production rate of the previous year), and the national milk production average were to increase by one percent (over the previous year), the Compact would have to reimburse the USDA for the value of purchasing the one percent increase if such increase actually represented an excess in milk production. This mechanism (by which the Compact would have to reimburse the USDA for excess milk) also mitigates against the chance that excess milk will be produced in the first place.

In the last several months there has been an increase in milk production in the New England area. However, this increase is not due to the Compact, according to the DFA. Rather the climate changes caused by "El Nino" have caused increased rainfall on the West Coast (and a resultant decrease in milk production), and higher temperatures on the East Coast (with the effect of increasing milk production).

Proponents of the Compact point out that the Compact Commission has, in realization of recent increases in production spurred by weather patterns, held a series of public meetings to gather information on supply management options. One of several options discussed has been the establishment of a cap on the amount of milk for which the New England farmers may be reimbursed under the Compact.

Conclusions of the Joint Committee on Natural Resources and Agriculture
In general, testimony presented at the oversight hearing did not convince the Committee that the Commonwealth should extricate itself from membership in the Compact.

While the Compact has resulted in minimal price increases for Massachusetts consumers, there are tangible benefits accruing to Massachusetts farmers. The function of the Compact appears not unlike a minimum wage for dairy farmers.

If the Compact does not ameliorate the current trend of farm foreclosures and farmers leaving the dairy business, then the long term proposed benefits of the Compact will have failed. A review of trends six months and one year from now should be instructive and may include, but not be limited to, an examination of milk supply fluctuations.

In the absence of data confirming opponents objections, the Committee does not find any compelling evidence to lead to a recommendation for legislation to alter the membership and/or scope of the Compact.⁶

⁶ For further information, please contact Jody Lehrer, Senior House Counsel, Committee on Natural Resources and Agriculture

Chairman LEAHY. I suspect you are going to get a number of them, Mr. Burrington, but I do appreciate in your testimony that you mentioned strong evidence that Suiza has used its market power to gouge consumers, and we will go into that.

Mr. Neuborne, it is good to have you here with us, sir.

**STATEMENT OF BURT NEUBORNE, JOHN NORTON POMEROY
PROFESSOR OF LAW, NEW YORK UNIVERSITY SCHOOL OF
LAW, NEW YORK, NEW YORK**

Mr. NEUBORNE. Thank you, Senator Leahy. I am a Professor of Law at New York University, and thank you for the opportunity to appear before you this morning. This is a rare occasion for me to disagree with Senator Leahy, whom I admire very much.

Chairman LEAHY. Don't feel badly. I have constituents who do it all the time and they still somehow find their way to vote for me, so I don't mind a bit, Professor.

Mr. NEUBORNE. I appear on behalf of the International Dairy Foods Association to express my concern over the effort to use the Compact Clause to permit certain States to fix the price of milk at artificially high levels in order to shield high-cost local milk producers from competition from lower-cost producers elsewhere in the Nation.

I want to make clear I do not oppose aid to local dairy farmers. Powerful arguments that have been made this morning, sounding in really three Cs, sounding in culture, the desire to protect the culture of the family farm, which is a part of the American ideology; conservation, the importance of preserving farms in the modern era; and compassion, the notion that these are people who work very hard and should be protected, argue in favor of subsidizing dairy farmers. But regional price-fixing compacts are the worst way to subsidize dairy farmers, the worst way from fairness and the worst way, I believe, from American constitutional law.

First of all, there is no getting around the fact that a regional price-fixing compact is a regressive tax on low-income consumers. There is no free lunch and there is no free milk, and if the price that goes to dairy farmers is to be increased, it has to come from either one of two places. It has to either come from recovering some of the gouging that the processors and retailers appear to be engaging in, and I would support that unreservedly, or it has to come out of the pockets of consumers.

The way the Compact operates, it is going to come out of the pockets of consumers. So this is, in fact, a transfer of wealth from the poor consumers to the dairy farmers to achieve important social goals. It is just unfair to advance those social goals by forcing low-income consumers to bear the principal economic cost.

There is a way to do it, and the way to do it would be for regional tax legislation aimed at providing subsidies to New England's milk farmers, which would enable them to compete, but they would be subsidized competitors. The market price would be the true market price and the people of the area would pass democratically on whether they wished to have tax subsidies that go to these farmers.

But the milk Compact doesn't allow that type of democratic judgment to enter into the process. It essentially takes it out of politics

and allows this subsidy to be imposed without the people who bear the cost of the subsidy ever having a chance to express themselves democratically about whether the subsidy is a good idea.

But moving to an area that I have some expertise with, and that is the Constitution, I think in addition to being an unfair regressive tax, the milk Compact places serious tension with the Constitution on four levels.

First, it is unquestionably inconsistent with the ethos of the document. As a number of you have said, the ethos of the document is an effort to move from the kind of regional price wars that characterized the Articles of Confederation to a national common market. And that national common market is important not just for efficiency. It has allowed us to be the most efficient economic engine the world has ever seen, but it is also important because it has forged the national consciousness which underlies the psychological notion that we are the citizens of a single Nation.

If we begin to divide ourselves into regional economic blocks through the use of the Compact Clause, people begin to think of themselves as citizens of the region, not citizens of the Nation. And we would erode not only our economic efficiency, but the psychology that makes us the strongest exercise in democratic governance the world has ever seen.

I think everybody on this panel agrees, everybody who has been to law school agrees that if a single State tried to do this, it would be unconstitutional. It would be clearly treated as a violation of the negative Commerce Clause. So the question is can the negative Commerce Clause be lifted by the use of the Compact Clause.

I would argue that the Compact Clause is exactly the wrong way to do this. First of all, it has never been done before. In the 200 years of the Nation, we have never used the Compact Clause to lift the bar of the negative Commerce Clause, and for good reason, because it takes the issue out of politics, and this is an issue that should be in politics.

But more importantly, it is inherently unequal. Even if Congress had the power to use the Compact Clause to lift the negative Commerce Clause, that power would still have to be measured by the other substantive provisions of the Constitution, by the Equal Protection Clause, the Privileges and Immunities Clause, and by the Privileges or Immunity Clause. All three of those clauses insist that Congress treat everybody equally when it raises the negative Commerce Clause.

How can one say that you treat everybody equally by creating a compact that gives some States the power to set milk prices and leaves other States subject to the restrictions of the negative Commerce Clause? This is a regime of two separate laws governing the economic marketplace. Entirely apart from its economic merits and its political merits, it is a classic exercise in inequality and, in my opinion, raises the most serious questions of constitutionality.

I would just leave you with a hypothetical. Suppose 26 States decided they were going to get together and create one of these compacts maybe to control energy, maybe to control some other very important economic entity. All political controls would be stripped away because they would have a majority in Congress. They would then be in a position to wage economic warfare on one or other of

the other States with no restrictions. So I am going to suggest to you the Founders would never have thought that a Compact Clause was a way to deal with economic regulations.

Thank you, Senator Leahy.

[The prepared statement of Mr. Neuborne follows:]

STATEMENT OF PROFESSOR BURT NEUBORNE, JOHN NORTON POMEROY PROFESSOR OF LAW AT NEW YORK UNIVERSITY SCHOOL OF LAW, NEW YORK, NEW YORK

INTRODUCTORY STATEMENT

I am the John Norton Pomeroy Professor of Law at New York University School of Law, where I have taught Constitutional Law for twenty-five years. For the past thirty-five years, I have been an active constitutional lawyer, serving as National Legal Director of the American Civil Liberties Union from 1982–1986, and as a member of the New York City Commission on Human Rights from 1988–1992. In addition to my teaching responsibilities, I currently serve as Legal Director of the Brennan Center for Justice at NYU, a partnership between and among Justice William Brennan, Jr.'s family, many of the law clerks who served Justice Brennan during his historic tenure on the Supreme Court, and the faculty of NYU Law School, dedicated to honoring the Justice's extraordinary contribution to American law.

I have written widely in the area of constitutional law and policy. A partial listing of my publications is annexed as an appendix to this statement. In May, 2001, I was elected to the American Academy of Arts and Sciences.

I have prepared this statement at the request of the International Dairy Foods Association (IDFA),¹ an umbrella organization consisting of the Milk Industry Foundation, the National Cheese Institute, and the International Ice Cream Association, but the opinions I express are my own. I make this statement to express my opposition to efforts to secure Congressional approval of interstate compacts designed to fix regional milk prices at artificially high levels in order to aid high-cost local producers at the expense of the consuming public and lower cost producers elsewhere in the nation.

I will leave to better qualified observers a discussion of the adverse economic and social consequences of artificially increasing the regional price of milk, especially the adverse impact on low-income parents who ultimately bear the bulk of the real costs associated with artificially inflated milk prices. Suffice it to say that whenever the price of a necessity like milk is artificially raised by law, the net effect is a substantial wealth transfer from the poorest segment of society to the powerful political interests that are able to use government power to set an artificially high price for a necessity of life.

I will also leave to others a discussion of the alternative means of assisting local dairy farmers to confront vigorous competition from lower-cost producers, ranging from government assistance in the modernization of facilities, to direct farm subsidies financed from general tax revenues. Once again, suffice it to say that a government-imposed artificially inflated price level is not the only—indeed, it is not even the most effective—way to foster the survival of a local dairy industry.

EXECUTIVE SUMMARY

It is a profound mistake, both as a matter of constitutional law and constitutional policy, to use the device of the interstate compact to create a regime of regional economic protectionism that flies in the face of the national free market in goods and services established by the Founders. The primary impetus for the Founders' decision to abandon the Articles of Confederation in favor of the United States Constitution was the desire to foster a national free market in goods and services throughout the United States. The Founders understood that rampant state and regional protectionism under the Articles of Confederation was the single greatest threat to the American experiment. See *infra*, Point I.

Consistent with the intent of the Founders, efforts by states to impose price controls in order to benefit local high-cost producers at the expense of lower-cost producers elsewhere, have been uniformly condemned as unconstitutional by the Supreme Court as violations of the negative Commerce Clause, the Privileges and Immunities clause, and the Equal Protection clause. Our sense of community as citizens of a single nation has stemmed, in large part, from the Supreme Court's con-

¹The several member companies of IDFA represent 80% of the dairy products consumed in the United States. Dairy foods are a \$70 billion industry.

sistent enforcement of the Founders' incisive perception that local or regional economic protectionism is not only economically inefficient, it is politically corrosive of the bonds of unity that bind us together as the world's most successful exercise in democratic governance. See *infra*, Point II.

Whatever Congress's doubtful power to itself authorize and implement discriminatory, hard core protectionism at the state or regional level, the use of interstate compacts to exercise such power is extremely unwise, and in my opinion, potentially unconstitutional. Using Article I, section 10 (the Compact Clause) as the vehicle for authorizing regional protectionism invites the Nation to divide into competing regional economic blocs in flat betrayal of the Founders' vision, and virtually assures that regions of the country will organize politically in order to secure economic advantage at the expense of one another. While efforts by single states (or by all of the states equally) to obtain such power from Congress can be dealt with effectively because they are subject to inherent political checks, groupings of states acting as regional protectionists will inevitably erode the normal political checks on parochialism. For example, what happens when an interstate compact between and among twenty-six states seeks to wage economic warfare on a few low-cost producing states? Such a formal political combination of 26 states would evade all political checks because it would command a Congressional majority, and would plunge the Nation into precisely the type of destructive trade war that caused the Founders to abandon the Articles of Confederation in favor of the Constitution.

Moreover, deciding whether to favor high-cost local producers at the expense of local consumers is an issue that should be decided at the local political level. Unlike the boundary disputes and regional resource situations where interstate compacts are routinely used to insulate certain types of regional decisionmaking from parochial state political interference, the decision whether to impose hard core economic protectionism on a necessity of life should never be shielded from open political discussion and ultimate political control by the people who must, ultimately, bear its economic cost. The decision to fix milk prices at an artificially high level is, in effect, a regressive tax levied on the poorest populations of the compact clause states; a tax that shifts money from the pockets of low income consumers to the local dairy industry. Perhaps such a tax is justified. But the decision about whether such a wealth transfer is or is not a good idea should be made by the voters of each state (or by the voters of all the states in the case of national legislation),² not by sheltered bureaucrats operating under the cover of a politically-insulated interstate compact. An interstate compact is designed to operate in the political shadows. No official in any state is politically accountable for its decisions. In effect, it is a decision to take the subject of the interstate compact out of day-to-day politics.

Taking interstate boundary disputes out of day-to-day politics is an excellent idea. Taking the day-to-day regulation of shared natural resources out of politics is an excellent idea. That is why interstate compacts have worked so well in those areas. But insulating decisions about whether the price of milk should be set at an artificially high level to protect high-cost dairy farmers against low-cost competition from local political scrutiny by the persons who must bear the costs is a terrible idea.

The fact is that the Compact Clause was never intended, and, except for the milk price-fixing controversy currently before Congress, has never been used, as a vehicle for regional economic protectionism. I believe that it would be a serious mistake, and, quite possibly, a constitutional violation, to unleash the Compact Clause as a potent engine of regional protectionism more than 200 years into our national history. See *infra*, Point III.

Finally, whatever technique Congress uses, Congress's power to trump the presumption of a national free market established by the Constitution is subject to significant constitutional limits imposed by the Equal Protection Clause, the Privileges and Immunities Clause, and the Commerce Clause itself. Since Congress lacks power to enact (or to authorize others to enact), legislation that discriminates in violation of the 14th Amendment's Equal Protection Clause, or the Privileges and Immunities Clause of Article IV, section 2, Congress may not impose (or authorize others to impose) domestic protective tariffs that discriminate against out-of-state or out-of-region producers. Moreover, since regional price fixing mechanisms are constitutionally indistinguishable from protective tariffs, Congress may not establish (or authorize others to establish) such overtly discriminatory hard core protectionist

²Minimum wage legislation is the converse, a transfer of wealth from employers who could hire at a lower wage under unregulated market conditions to low-income workers. I believe that minimum wages are an important constraint on the unregulated labor market. But I believe that the decision about minimum wage must be made by a politically accountable body. It would be a terrible idea to shift the decision about minimum wages to a politically insulated body acting pursuant to an interstate compact.

regimes, whether it does so pursuant to legislation, or the approval of an interstate compact. See *infra*, Point IV.

I. THE PRINCIPAL IMPETUS FOR THE FOUNDERS' DECISION TO ABANDON THE ARTICLES OF CONFEDERATION IN FAVOR OF THE UNITED STATES CONSTITUTION WAS THE FOUNDERS' DESIRE TO FOSTER A FREE MARKET IN GOODS AND SERVICES THROUGHOUT THE UNITED STATES

At the close of the Revolution, the thirteen original states experimented with a loose confederation that delegated power over foreign affairs to a national government, but retained power over virtually everything else at the state and local level. The lack of a national power to regulate interstate Commerce led to the eruption of a series of trade wars, pitting states and regions against one another in a mutually destructive spiral. Justice Jackson expressed the consensus judgment of history best in *H. P. Hood and Sons v. DuMond, Inc.*, 336 U.S. 525 (1949), when he stated:

When victory relieved the Colonies from the pressure for solidarity that war had exerted, a drift toward anarchy and commercial warfare between the states began. '[E]ach state would legislate according to its estimate of its own interests, the importance of its own products, and the local advantages or disadvantages of its position in a political or commercial view'. This came 'to threaten at once the peace and safety of the Union'. The sole purpose for which Virginia initiated the movement which ultimately produced the Constitution was 'to take into consideration the trade of the United States; to examine the relative situations of trade of said States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony' and for that purpose the General Assembly of Virginia in January of 1786 named commissioners and proposed their meeting with those from other states. The desire of the Forefathers to federalize regulation of foreign and interstate commerce stands in sharp contrast to their jealous preservation of the state's power over its internal affairs. No other federal power was so universally assumed to be necessary, no other state power was so readily relinquished. [As Madison] indicated, 'want of a general power over Commerce led to an exercise of this power separately, by the states, which [sic] not only proved abortive, but engendered rival, conflicting, and angry regulations.' 336 U.S. at 534.

Indeed, James Madison noted that the single most important achievement of the Constitutional Convention was to rescue the nation from a continuation of the parochial trade wars that had marred the first ten years of its existence and threatened its future "permanent harmony".

Before taking steps that might encourage the modern-day recurrence of those trade wars (this time through the agency of protectionist interstate compacts), Congress should reflect on the fact that Madison's understanding of the relationship between economic protectionism and the erosion of political unity was brilliantly prescient. One of the Founders' enduring insights was that regional economic protectionism is ultimately corrosive of national political unity. To prevent economic regionalism, the Founders imposed a constitutional prohibition on state and regional efforts to discriminate against goods and services produced elsewhere in the nation. To tamper with that constitutional prohibition is to tamper with the mainspring of the nation's political and economic fabric.

II. EFFORTS BY STATES TO IMPOSE PRICE CONTROLS IN AN EFFORT TO AID HIGH-COST LOCAL PRODUCERS AT THE EXPENSE OF LOWER COST OUT-OF-STATE PRODUCERS HAVE UNIFORMLY BEEN HELD TO VIOLATE THE NATION'S COMMITMENT TO A NATIONAL FREE MARKET IN GOODS AND SERVICES

Consistent with the Founders' intentions, the Supreme Court has repeatedly ruled that the grant of power in Article I, Section 8, to Congress to regulate interstate commerce carries with it a negative pregnant precluding the states from engaging in economic protectionism aimed at favoring local economic interests at the expense of outsiders. *E.g.*, *Camps Newfoundland/Owatonna Inc. v. Town of Harrison*, 520 U.S. 564 (1997); *Fulton Corp. v. Faulkner*, 516 U.S. 325 (1996).

The paradigm of forbidden economic protectionism is the imposition of a protective tariff by one state designed to raise the price of goods imported from another state in an effort to shield high-cost local producers from national competition. Given the Founders' clear commitment to a national "common market," no state has attempted openly to establish a system of domestic protective tariffs. Instead, they have experimented with devices designed to achieve the identical effect of neutralizing the com-

petitive advantage of out-of-state lower cost producers. The most obvious hard core protective technique has involved the setting of minimum prices designed to prevent out-of-state competitors from underselling local producers. In *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511 (1935), New York attempted to set minimum prices for milk. New York's scheme was to forbid the sale of milk in New York unless a dealer had paid the minimum price to a producer, no matter where the transaction took place. The effect of New York's plan was to prevent low cost milk from entering the New York market.

Justice Cardozo, writing for a unanimous Court, held that New York's price fixing scheme:

. . . set a barrier to traffic between one state and another as effective as if customs duties equal to the price differential had been laid upon the [milk]. Nice distinctions have been made at times between direct and indirect burdens. They are irrelevant when the avowed purpose of the obstruction, as well as its necessary tendency, is to suppress or mitigate the consequences of competition between the states. Such an obstruction is direct by the very terms of the hypothesis. We are reminded in the opinion below that a chief occasion of the commerce clause was 'the mutual jealousies and aggressions of the States, taking form in customs barriers and other economic retaliation.' [If] New York, in order to promote the economic welfare of her farmers, may guard them against competition with the cheaper prices of Vermont, the door has been opened to rivalries and reprisals that were meant to be averted by subjecting commerce between the states to the power of the nation. 294 U.S. at 521-22.

More complex efforts to stifle interstate competition by fixing milk prices have also been invalidated. For example, in *West Lynn Creamery v. Healy, Inc.*, 512 U.S. 186 (1994), the Court invalidated an effort to tax milk dealers on the quantity of milk sold in Massachusetts, and to rebate the tax to Massachusetts dairy farmers. In effect, the plan taxed all milk, but rebated the tax to Massachusetts dairy farmers, rendering the tax discriminatory because its burden fell solely on out-of-state milk. The *West Lynn* Court noted that the tax plan was a minimum pricing scheme in disguise, and that a minimum price regulation has the same unconstitutional effect as a tariff or customs duty—"neutralizing the advantage possessed by lower cost out-of-state producers".³ *Id.* at 194.

Thus, if any state attempted to set minimum prices for milk in an effort to protect its dairy farmers from low cost competition from out-of-state producers, the plan would be blatantly unconstitutional as a violation of the so-called negative Commerce Clause.

III. CONGRESS SHOULD NOT USE ITS POWER UNDER THE COMPACT CLAUSE TO AUTHORIZE STATES TO FORM HARD CORE REGIONAL PROTECTIONIST BLOCS

I will suggest in Point IV that Congress lacks power to authorize hard core protectionism by the states no matter what techniques are used. But, whether or not such substantive power exists, regional price fixing compacts are not an appropriate vehicle for the exercise of Congress's power. It is, I believe, a profound mistake, both as a matter of constitutional law and constitutional policy, to use the device of the interstate compact to create a regime of regional economic protectionism that flies in the face of the national free market in goods and services established by the Founders.

Congress is, of course, far from powerless if it finds it necessary to relax the rigors of an uncontrolled national free market. For example, in an effort to prevent the proverbial race to the bottom, Congress may enact national minimum standards that avoid destructive state and regional competition. The establishment of a national minimum wage, maximum hours legislation, and uniform safety standards are classic examples of the exercise of Congress's power. Moreover, in connection with the enactment of national standards, Congress may authorize federal regulatory officials to establish regional variations from national standards to reflect local conditions. Indeed, in the case of milk, Congress has done precisely that under the Agricultural Marketing Agreement Act of 1937, which authorizes the Secretary

³The *West Lynn* Court noted that attempts to protect local dairy farmers had provoked numerous Supreme Court challenges. *Schollenberger v. Pennsylvania*, 171 U.S. 1 (1898); *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511 (1935); *H.P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525 (1949); *Dean Milk Co. v. Madison* 340 U.S. 349 (1951); *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U.S. 361 (1964); *Great Atlantic & Pacific Tea Co. v. Cottrell*, 424 U.S. 366 (1976); *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186 (1994).

of Agriculture to regulate minimum prices paid to milk producers by issuing marketing orders for particular geographical areas. See 7 CFR section 1000, *et seq.* (2000) (setting regional prices for raw milk).

The use of such federal legislation to regulate interstate commerce, precisely because it is the expression of the entire nation, contains an important built-in political safeguard against unfair local protectionism, since it is unlikely that a national legislature would enact legislation that permits one state or region to protect its high-cost producers unfairly at the expense of the national majority.⁴ As an alternative to direct federal legislation, Congress may encourage regulation of the national free market by delegating additional regulatory authority to the states. Congress's decision to delegate the power to regulate the insurance industry to the states pursuant to the McCarran Act is the classic example. *Prudential Insurance Co. v. Benjamin*, 328 U.S. 408 (1946). Congressional delegation of uniform regulatory authority to each of the states, as in the McCarran Act, permits careful tailoring to local conditions, while simultaneously retaining important internal political checks against irresponsible protectionism.⁵ Since any Congressional delegation of regulatory authority to the states must treat each state equally, each state is limited in its temptation to engage in irresponsible protectionism by the knowledge that sister states are similarly empowered to retaliate. Moreover, since any delegation of regulatory authority to the states must be approved by Congress, irresponsible behavior by one or, even, several states risks a withdrawal of the regulatory authority by the rest of the nation.⁶

Supporters of the regional milk price-fixing compact have eschewed the two usual avenues of Congressional action. They are dissatisfied with existing Congressional legislation regulating national milk prices because federal officials, acting in the national as well as the regional interest, have refused to provide them enough protectionism for high-cost Northeast regional milk producers. Moreover, they are unwilling to seek a delegation of uniform authority to all the states to regulate interstate commerce in milk, recognizing that such a Balkanization of the milk industry will never be approved in the national interest, and would provoke bitter political struggles in the various states.

Instead, for the first time in the nation's history, they seek to erode the constitutionally mandated national free market by asking Congress to grant authority to several states to form an interstate compact pursuant to Article I, section 10 of the Constitution designed to carve out an island of regional protectionism from the national free market for milk.⁷ Multi-state compacts are, however, wholly unsuited to act as vehicles for Congressional regulatory judgments under the Commerce Clause. Most importantly, interstate compacts lack the internal political safeguards that render direct Congressional regulation, or uniform Congressional delegation to the states, appropriate vehicles for the exercise of Congressional power under Article I, section 8. For one thing, requests for Congressional approval of interstate compacts emanate from multiple states acting as a pre-established unit, inherently increasing the political power of a protectionist faction. Taken to an extreme, if twenty-six states formally united as a bloc to establish an interstate compact designed to en-

⁴ Despite the internal political safeguard, if Congress agrees to such a regime of hard core protectionism, perhaps because of complex political trade-offs, the Constitution imposes substantive checks on the power to enact protectionist legislation. See *Metropolitan Life Insurance Co. v. Ward*, 470 U.S. 869 (1985); *Saenz v. Roe*, 526 U.S. 489 (1999). See *infra*, Point IV.

⁵ Once again, the states' power to regulate pursuant to Congressional waiver of the negative Commerce Clause is limited by the equality provisions of the Constitution. *Metropolitan Life Insurance Co. v. Ward*, 470 U.S. 869 (1985) (invalidating discriminatory tax despite waiver of negative Commerce Clause); *United Bldg. & Constr. Trades v. Camden* 465 U.S. 208 (1984) (invalidating residential quota for public works jobs); *Hicklin v. Orbeck*, 437 U.S. 518 (1978) (invalidating Alaska hire law requiring employment preferences for Alaska residents in certain jobs); *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985) (invalidating ban on nonresident practice of law). See *infra*, Point IV.

⁶ Irresponsible behavior by a majority of the states acting individually is unlikely, first, because self-interest will rarely persuade a majority of the states to act in a protectionist manner when the option of national regulation is present; and, second, because the equality provisions of the Constitution place limits on state protectionism. See *infra*, Point IV.

⁷ When coordinated state action does not infringe on federal sovereignty, states may enact cooperative legislation without Congressional consent. See *United States Steel Corp. v. Multistate Tax Commission* 434 U.S. 452 (1978) (reciprocal legislation designed to enhance tax administration not an interstate compact); *Bode v. Barrett*, 344 U.S. 583 (1953) (reciprocal exemptions on non-resident motorists from highway use tax not an interstate compact). Since the hard core protectionism contemplated by the Northeast Regional Dairy Compact strikes at the core of the constitutionally protected national free market, it unquestionably requires formal Congressional approval. As with other forms of Congressional action, the authorization of a protectionist interstate compact must be measured against the limits on Congressional action imposed by the equality and privileges and immunities provisions of the Constitution. See Point IV, *supra*

gage in economic warfare against a disfavored state or region, the coordinated political power of the twenty six states acting as a formal bloc would overwhelm any political checks that would, ordinarily, make it difficult to persuade the national majority to acquiesce in local protectionism.

Of course, the twenty-six states could pursue their protectionist aims through ordinary legislation. But the absence of a pre-established formal bloc created by the compact would leave the coalition vulnerable to the ordinary process of political erosion, as members joined or left in accordance with individual judgments of self-interest. The existence of a formal compact places barriers to exit that simply do not exist in an ordinary political coalition. Moreover, the requirement that ordinary legislation grant uniform regulatory power to all the states permitting effective retaliation if necessary would pose a significant check on irresponsible action by any ordinary political coalition of states. Interstate compacts are, however, non uniform by definition. Member states would operate under one legal regime freed from the constraints of the negative Commerce Clause, while non-member states would remain subject to the constraints of the negative Commerce Clause. Thus, unlike a delegation of uniform regulatory authority to the individual states, an interstate compact vests power in some states to ignore the constraints of the negative Commerce Clause, while continuing to impose those constraints on the remainder of the states. In that sense, an interstate compact designed to permit hard core protectionism is the formal antithesis of the Equal Protection of the laws and the Privileges and Immunities clause.

The obvious potential for friction among the states, abuse and unequal treatment inherent in using interstate compacts to create islands of protectionism explains why the Founders did not intend interstate compacts to operate as techniques for regulating interstate commerce. Rather, the Founders envisioned interstate compacts as mechanisms to permit state governments to form hybrid political entities needed to perform traditional police power functions in settings where a single state government would lack the capacity to act effectively. *Cuyler v. Adams*, 449 U.S. 433 (1981). Not surprisingly, the early use of the interstate compact was almost entirely confined to the resolution of boundary disputes between the states. The boundaries fixed by the Colonial Charters were notoriously ambiguous, leading to sustained conflict. Indeed, at the time of the Revolution, no fewer than eleven formal boundary disputes existed between and among the thirteen colonies. Once the Constitution came into being, two obvious mechanisms for resolving boundary disputes were possible: (1) time consuming and bitter litigation in the Supreme Court; and (2) negotiated settlements. The litigation route usually resulted in all-or-nothing decisions that often embittered relations between the contesting parties. But negotiated settlements were often impossible because they required simultaneous and binding political acceptance in both contending states. The interstate compact was the technique designed by the Founders to permit the contending states to create a hybrid political entity empowered to take the necessary steps to resolve a boundary dispute that would bind each state without the necessity of assembling political support in each state for a particular settlement.

As the 19th century progressed, states used the interstate compact to create hybrid political entities designed to exercise coordinated police power over natural resources that could not be effectively regulated by a single state, either because geography rendered the resource inherently regional in nature (as in compacts governing interstate rivers and harbors), or because the effective regulation of a natural resource risked being bogged down in parochial state political efforts to extract maximum local advantage from a shared resource. As with the boundary compact, the police power compacts were designed to insulate the judgments of the compact from day-to-day political control by the state electorates.

Prior to the Northeast Regional Dairy Compact, my research has not uncovered a single instance of Congress's use of its power under Article I, section 10 to license blocs of states to engage in economic protectionism. The first interstate compact was approved by Congress in 1789 to enable Virginia and Kentucky to resolve a boundary dispute.⁸ In the ensuing 212 years, Congress has approved approximately 300 additional interstate compacts. It is no coincidence that, except for the Northeast Interstate Dairy Compact, none of these interstate compacts have sought to enable a combination of states to engage in precisely the protectionist behavior that led the

⁸Peaceful resolution of the numerous boundary disputes that existed between the original states has been deemed the principal reason for the Compact Clause. See Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustment*, 34 Yale L. J. 685 (1925). Neither the Farr and notes on the debates at the Constitutional Convention, nor the Federalist Papers discuss the Compact Clause.

Founders to abandon the Articles of Confederation and to embrace a constitutionally mandated national free market in goods and services.

In addition to the lack of internal political checks discussed above, an obvious reason explains why interstate compacts have never been used to impose hard core protectionist regimes on the national free market. Unlike the boundary and police power situations where interstate compacts are routinely used to insulate certain types of decision making from parochial state political interference, the decision whether to impose hard core protectionism should never be shielded from open political discussion and ultimate political control by the people who must, ultimately, bear its economic cost. The decision to fix milk prices at an artificially high level is, in effect, a regressive tax levied on the poorest populations of the compact clause states that shifts money from the pockets of low income consumers to the dairy industry. Perhaps such a tax is justified. But the decision about whether such a wealth transfer is or is not a good idea should be made by the voters of each state (or by the voters of all the states in the case of national legislation), not by sheltered bureaucrats operating under the cover of a politically insulated interstate compact. Indeed, the reason why proponents of the milk price fixing scheme are seeking to proceed by compact, rather than by national legislation, or Congressional delegation of regulatory authority to the states, is that both of those techniques permit the affected members of the electorate to pass political judgment on the wisdom and fairness of the scheme. An interstate compact, on the other hand, operates in the political shadows. No official in any state is politically accountable for its decisions. In effect, it is a decision to take milk price-fixing out of day-to-day politics.

Taking interstate boundary disputes out of day-to-day politics is an excellent idea. Taking the day-to-day regulation of shared natural resources out of politics is an excellent idea. That is why interstate compacts have worked so well in those areas. But insulating decisions about whether the price of milk should be set at an artificially high level to protect high-cost dairy farmers against low-cost competition from intense democratic scrutiny is a terrible idea. It is bad enough that we must pay taxes. It is particularly sensitive when those taxes shift wealth from one segment of the population to another. It would compound the problem though, to develop a technique that allows powerful local interests to impose massive wealth transfer taxes without having to face the democratic judgment of the affected voters. But that is exactly what will happen if Congress uses the Compact Clause to delegate hard core protectionist power to an interstate compact to fix the price of milk.

IV. CONGRESS'S LIMITED POWER TO ALTER THE CONSTITUTIONALLY MANDATED EXISTENCE OF A NATIONAL FREE MARKET IN GOODS AND SERVICES DOES NOT INCLUDE THE POWER TO ENACT OR TO AUTHORIZE DISCRIMINATORY PRICE-FIXING SCHEMES DESIGNED TO PROTECT CERTAIN HIGH-COST LOCAL PRODUCERS AGAINST COMPETITION FROM THE REMAINDER OF THE NATION

Supporters of the scheme to fix regional milk prices acknowledge that, standing alone, the price-fixing scheme would violate the Constitution as a blatant interference with the national free market mandated by the negative Commerce Clause. They argue, however, that Congress has the power to cure the constitutional violation by authorizing blocks of states to engage on the discriminatory practice, either directly, or through the device of regional price fixing compacts. But Congress's power to lift the bar of the so-called "negative" Commerce Clause is not unlimited. Congress, legislating pursuant to the Commerce Clause, lacks the power to authorize blatant interferences with a national free market motivated by an obvious desire to protect local producers from national competition.⁹ More importantly, whatever its power to lift the ban of the negative Commerce Clause, Congress may neither enact, nor authorize the states to enact, discriminatory restrictions that violate the Equal Protection Clause of the 14th Amendment, the Privileges or Immunities Clause of the 14th Amendment, and/or the Privileges and Immunities Clause of Article IV, section 2 by vesting certain favored states with authority to ignore the negative Commerce Clause, while requiring the remaining states to abide by its strictures.

A. CONGRESS'S LIMITED POWER TO LIFT THE BAR OF THE NEGATIVE COMMERCE CLAUSE

Chief Justice Marshall believed that the grant of power to Congress under Article I, section 8 to regulate interstate commerce was exclusive. According to Chief Jus-

⁹Since commitment to a national free market is at the core of the Commerce Clause, I believe that Congress would lack power under the Commerce Clause to establish a program of state customs duties aimed at the produce of sister-states.

tice Marshall, while the states retained the ability to act under the police power, states were denied the power to regulate interstate commerce. Compare *Gibbons v. Ogden*, 9 Wheat. (22 U.S.) 1 (1824) (suggesting that Congress's power over interstate commerce is exclusive), with *Wilson v. Black Bird Creek Marsh Co.*, 2 Pet. (27 U.S.) 245 (1829) (recognizing state police power to regulate, even when the regulation affects interstate commerce). Throughout the 19th century, the Supreme Court struggled to chart the uncertain line between legitimate exercise of state police power, and illegitimate efforts to regulate interstate commerce. See *Cooley v. Board of Wardens*, 12 How. (53 U.S.) 299 (1851); *Wabash, St. Louis & P. Ry. Co. v. Illinois*, 118 U.S. 557 (1886); *Smith v. Alabama*, 124 U.S. 465 (1888). It was from these 19th century cases that the flat ban on state efforts to engage in interstate milk price-fixing announced in *Baldwin v. G. A. F. Seelig, Inc.* emerged. See also *Dean Milk Co. v. Madison*, 340 U.S. 349 (1951) (invalidating milk regulation); *A & P Tea Co. v. Cottrell*, 424 U.S. 366 (1976) (invalidating milk regulation).

Moreover, for much of the 19th century, it was assumed that Congress could not validate an otherwise illegitimate state effort to regulate interstate commerce. See *Cooley v. Board of Wardens*, 12 How. (53 U.S.) 299 (1851). In *Leisy v. Hardin*, 135 U.S. 100 (1890), however, the Supreme Court was confronted with efforts by "dry" states to enforce prohibitions on the importation of beverages containing alcohol. Confronted by a clear state police power issue (regulation of alcohol), the Court suggested for the first time that Congress could authorize states to engage in certain forms of local regulation that might otherwise be in violation of the negative Commerce Clause. In response, Congress promptly enacted uniform legislation authorizing each of the states to ban the importation of beverages containing alcohol, even though they were items of interstate commerce. The Court upheld the authorization in *In re Rahrer*, 140 U.S. 545 (1891).

Leisy and *Rahrer* hold that, under certain limited circumstances, Congress may reinforce the police power of the states by uniformly lifting the constitutional check on its exercise imposed by the negative Commerce Clause. But the core of the state regulation must be a genuine effort to exercise the police power, not adisguised exercise in local economic protectionism. There is, of course, an almost complete overlap between the states' traditional police power to preserve the health, safety, and morals of the citizenry, and a decision to regulate alcohol. Thus, the enhanced state regulation permitted in *Leisy v. Hardin* and *In re Rahrer* was an effort to sustain a flat ban on alcohol rooted in the police power, not an exercise in economic protectionism designed to protect high-cost local producers. Indeed, nothing in either case suggests that Congress could approve blatantly discriminatory legislation designed to protect in-state producers from interstate competition.¹⁰ Moreover, the decision to lift the negative Commerce Clause in connection with the regulation of alcohol in *Leisy v. Hardin* and *In re Rahrer* took the form of legislation vesting uniform authority in each state.

Congress's power to lift the bar of the negative Commerce Clause was expanded in *Prudential Insurance Co. v. Benjamin*, 328 U.S. 408 (1946). Two years earlier, in *United States v. South-Eastern Underwriters Assn.*, 322 U.S. 533 (1944), the Court had reversed a series of cases holding that insurance was not commerce, thereby disturbing the historic pattern of ceding insurance regulation to the states. Congress responded in 1945 by enacting the McCarran Act, which provided that "silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of [insurance] by the several States." In *Benjamin*, the Court was confronted by a South Carolina tax on out-of-state insurance companies that exempted South Carolina companies. In the absence of the McCarran Act, the South Carolina tax would almost certainly have been invalid as a discriminatory treatment of interstate commerce. See *Welton v. Missouri*, 91 U.S. 275 (1876). In view of the McCarran Act, however, the Court sustained the discriminatory tax, reasoning that Congress had affirmatively decided to permit states to regulate insurance companies free from the constitutional barriers imposed by the negative Commerce Clause. See also *Western & Southern Life Insurance Company v. State Board of Equalization*, 451 U.S. 648 (1981).

Benjamin undoubtedly represents a significant increase in Congress's power to lift the constitutional barriers to state economic regulation imposed by the negative commerce clause. But nothing in *Benjamin* suggests that Congress can authorize overtly protectionist legislation that violates the core understanding of the Founders

¹⁰ A similar restriction limits Congress's affirmative power under the Commerce Clause. When Congressional legislation ostensibly designed to regulate interstate commerce is more accurately described as an effort to exercise a forbidden national police power, the Supreme Court has invalidated the Congressional statute as violative of the 10th Amendment. See *United States v. Lope* 514 U.S. 549 (1995); *Printz v. United States*, 117 S.Ct. 2365 (1997).

about the importance of a national free market. In one sense, the McCarran Act was an attempt to restore a long-time regulatory status quo that had been disturbed by the Court's decision to expand the definition of interstate commerce to include insurance. Alternatively, the South Carolina tax scheme can be viewed a rough effort to tax large out-of-state insurance companies, while exempting the smaller in-state companies. In any event, I do not believe that the case should be read as an open invitation to Congress to dismantle the national free market structure that was the basis for the Constitution itself. Most importantly, the Congressional action at stake was the McCarran Act, which delegated uniform regulatory authority to each state.

I believe that, whatever the ultimate extent of Congress's power to lift the bar of the negative Commerce Clause, the state regulation at issue must be rooted in a traditional exercise of the state's police power, and not a protectionist desire to cut off interstate competition. Thus, I believe that Congress lacks power under Article I, section 8 to sanction overtly protectionist local legislation.

B. RESTRICTIONS ON CONGRESSIONAL POWER IMPOSED BY THE EQUALITY PROVISIONS OF THE CONSTITUTION

Whatever power Congress may possess under the Commerce Clause to enact uniform legislation granting each state equal power to regulate a particular area of interstate commerce, Congress clearly lacks power to authorize the states to engage in behavior that violates substantive provisions of the Constitution. *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982). Indeed, the very type of discriminatory tax that had been upheld under the Commerce Clause in *Benjamin* was invalidated by the Supreme Court in *Metropolitan Life Insurance Co. v. Ward*, 470 U.S. 869 (1985), as violative of the Equal Protection Clause. In *Ward*, a California tax (enacted pursuant to the authorization of the McCarran Act) imposing a higher tax rate on out-of-state insurance companies was struck down as a violation of the Equal Protection Clause of the 14th Amendment. In words that are directly applicable to the regional milk price-fixing scheme currently before Congress, the *Ward* Court noted that "promotion of domestic business within a State, by discriminating against foreign corporations that wish to compete by doing business there, is not a legitimate state purpose."¹¹ *Id.* at 880.

Congress's power to authorize economic protectionism is also limited by the Privileges and Immunities Clause of Article I, section 2 of the Constitution.¹² In *Hicklin v. Orbeck*, 437 U.S. 518 (1978), the Court noted that there is a "mutually reinforcing relationship between the Privileges and Immunities Clause of Article IV, section 2, and the Commerce Clause—a relationship that stems [in part from] their shared vision of federalism". Thus, local efforts to reserve employment opportunities for residents at the expense of out-of-state residents have been deemed violative of the Privileges and Immunities Clause, even though they may satisfy the negative Commerce Clause. See *United Bldg. & Constr. Trades v. Camden*, 465 U.S. 208 (1984) (invalidating residential quota for public works jobs).

The functional link between the Commerce Clause and the Privileges and Immunities Clause is illustrated by the line of Supreme Court cases enforcing a national free market in services as well as goods by preventing state-imposed employment discrimination against out-of-state residents. See *United Bldg. & Constr. Trades v. Camden*, 465 U.S. 208 (1984) (invalidating residential quota for public works jobs); *Hicklin v. Orbeck*, 437 U.S. 518 (1978) (invalidating Alaska hire law requiring employment preferences for Alaska residents in certain jobs); *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985) (invalidating ban on non-resident practice of law). Similarly, both the Commerce Clause and the Privileges and Immunities Clause are recognized as the source of a constitutional right to migrate from one state to another in search of a better life, see *Crandall v. Nevada*, 6 Wall. (73 U.S.) 35 (1867) (invalidating tax for leaving state); *Edwards v. California*, 314 U.S. 160 (1941) (invalidating restrictions on entering state), a substantive constitutional right that Congress may not abrogate. *Shapiro v. Thompson*, 394 U.S. 618 (1969) (Congress may not authorize state interference with right to interstate migra-

¹¹The issue is somewhat complicated by the Court's action in *Northeast Bancorp, Inc. v. Bd. of Governors*, 472 U.S. 159 (1985). In *Northeast Bancorp*, Congress had imposed a general ban on interstate bank acquisitions under the Bank Holding Company Act of 1956, subject to a state power to waive the federal prohibition. When several New England states enacted legislation conditionally waiving the federal ban, but only *vis a vis* states that granted reciprocal waivers, the legislation was challenged under the Equal Protection Clause. The Court upheld the state statutes, reasoning that they were motivated by a legitimate desire to foster local ownership of banks, and did not unreasonably discriminate since they were keyed to reciprocity.

¹²The clause states: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States".

tion); *Saenz v. Roe*, 526 U.S. 489 (1999) (Congress may not authorize state interference with right to travel).

Finally, Congress's power to authorize hard core economic protectionism is limited by the Privileges or Immunities Clause of the 14th Amendment.¹³ In *Saenz v. Roe*, 526 U.S. 489 (1999), Congress purported to authorize California to set differential standards for welfare payments based on duration of residency. Recognizing that interstate migration is a pre-condition for a free market in labor, the Supreme Court invalidated the effort to discriminate against out-of-state persons wishing to migrate to California under both the Privileges and Immunities Clause of Article IV, and the Privileges or Immunities Clause of the 14th Amendment. Surely, if Congress in *Saenz* could not authorize California to favor in-state persons at the expense of recent migrants from other states, Congress cannot authorize a bloc of states to discriminate in favor of in-state high-cost regional milk producers at the expense of milk producers residing in other states.

Thus, whether one views the price-fixing scheme from the perspective of the Commerce Clause, the Equal Protection Clause, or the Privileges and Immunities Clauses, serious doubts exist concerning Congress's power to authorize a favored bloc of states to engage in the very hard core protectionist activities that the Founders viewed as utterly inconsistent with the nations' political unity and economic well-being, while leaving the rest of the Nation bound by the strictures of the negative Commerce Clause.

CONCLUSION

The decision to tamper with the national common market envisioned by the Framers is among the most momentous that Congress can face. The Founders understood that a common economic market is critical to a common political identity. The pending scheme to fix regional milk prices in an effort to shield high-cost regional producers from low-cost national competition strikes at the heart of the Founders' vision. Indeed, given the powerful guaranties of equality contained in the Commerce Clause, the Equal Protection Clause, and the Privileges and Immunities Clauses, I believe that Congress lacks power to usher in a regime of hard core economic protectionism that is as inherently discriminatory as the price fixing scheme currently before Congress. Finally, whatever Congress's substantive power, I believe that it is a terrible mistake (and quite possibly unconstitutional) for Congress to use consent to an interstate compact as a vehicle to authorize hard core protectionism. Such a device lacks internal political checks against irresponsible behavior, is historically unprecedented, and shields a crucial political judgment from democratic review.

Chairman LEAHY. Thank you, Professor.

We will take a 3-minute break and let everybody stretch and then we will come back and start questions of the panel.

[The committee stood in recess from 11:12 a.m. to 11:22 a.m.]

Chairman LEAHY. Other Senators will be coming in now during this hearing. As the witnesses know, we have probably a dozen hearings going on at the same time and I do appreciate the consideration of the panels and the time they have taken.

Mr. Smith, if I might start with you, I know that in addition to your job as Executive Director of the Compact Commission that you are also an attorney. Now, you have heard—I am just trying to help the people who are getting these cell phone calls by being willing to stop immediately so that they can take their important call out in the hall.

You are also an attorney. Now, Professor Neuborne, whom I also respect, although I disagree with him on this, says the Compact represents rank protectionism which is condemned by the constitutional text.

Would you like to respond to those points?

¹³The opening words of the 14th Amendment provide:

All persons born or naturalized in the United States. . . are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States. . . .

Mr. SMITH. The Compact's lineage traces directly back to the Article of Confederation and the concern with economic protectionism. When we designed the Compact, we had that basic principle in mind that States cannot be authorized to use regulatory authority in a protectionist or discriminatory manner, meaning to the benefit of the local citizenry and the detriment of citizens outside the State. So it is built right into the basic design of the Compact and it is built right into the basic design of the Federal order system, which is you regulate the market uniformly with regard to all market participants.

As I indicated in my earlier statement, the New England marketplace includes New York farmers. The milk sales from those farms are regulated on the same footing as the milk sales from New England farms. The regulation attaches to the purchase by the processor and the funding generated by that regulation traces right back to the farm.

So in marked contrast to the Whisky Rebellion and the other concerns that the Articles of Confederation transition to the Constitution addressed, the Compact is not a tariff because the benefits track back to the producer of the product.

That is what the court concluded as well, Senator. I would just followup with that. As I said before, the argument that was presented was argued by the plaintiffs in the lawsuit that reached the First Circuit Court of Appeals and the court found no merit in the claim for that reason, because the New York farmers are receiving the money.

Chairman LEAHY. We have heard some say that Government price regulation is somehow un-American or against our market principles. Of course, long before I was born, the milk market was regulated and still is today, so it is not a new idea. It was done because of the perishable nature of milk which could give processors some unfair bargaining ability with local farmers. We are familiar with the old expression "smell it or sell it."

Now, if we deregulated this entirely, who has the upper hand at that point, the processors or the individual farmers?

Mr. SMITH. That is the essential policy question at issue with the Federal order system, and a lot of the debate, I think, over the Compact is really that the Compact is being used as a stocking horse for a debate over the Federal order system, whether the milk market order system ought to be deregulated completely and the market made national for milk.

Congress has consistently made the policy decision that milk should be supplied locally for local consumption, and the Compact reinforces that policy decision by the Congress. In that sense, we are again dealing with regulatory authority of the marketplace. It is not a cartel design. In a cartel design, the market participants gain the benefits of the price-fixing, true price-fixing with the cartel, as opposed to the regulation of the price, whereas with the Compact the regulation is set by an administrative action.

In response to Professor Neuborne's concern about democratic participation, there is democratic participation at two levels: one, at the legislative level where the compacts are authorized, and, two, during the administrative process. Anybody who has been to a Compact Commission meeting knows that it is local government

at work in all its fine and detrimental parts, which includes absolutely open all hours of the day, like the Congress, and we end up staying up all night while people ventilate their concerns. So it is truly a local-level, democratic process.

Chairman LEAHY. Sort of like a town meeting.

Mr. SMITH. Very similar to a town meeting, Senator, yes.

Chairman LEAHY. Mr. Burrington, in your written testimony you raised the issue of Suiza Foods, and if I can quote from the written testimony, you mention that "There is strong evidence that Suiza has used its market power to gouge consumers. Suiza doesn't need New England dairy farms, but the regional processors who represent its remaining competition do."

Could you amplify on these points and explain what might happen if New England farmers would go out of business?

Mr. BURRINGTON. Suiza, as indeed a multinational corporation, is well positioned to ship milk anywhere and everywhere. The remaining milk processors in New England don't have that ability, and it is clear from conversations with their people, as well as from what you would conclude if you just reasoned your way through it, that if our milk supplies in the Northeast dry up, Suiza's only remaining competition would follow in very short order.

We are in a very unfortunate situation right now in New England. I think you will hear more from Commissioner Healy later on about the experience with our school meals program in Massachusetts. We have seen the elimination of competition in the bids for that, and the recent study from the University of Connecticut shows that consumers in the last couple of years have been paying a very large amount to middlemen and both the farmers and the consumers have fared badly because of the consolidation in milk processing.

Chairman LEAHY. Thank you. My time is up, so I will save my questions either for the record or later for Mr. Norquist and Professor Neuborne.

Senator Kohl?

Senator KOHL. Thank you.

Mr. Smith, several studies, including one ordered by the Northeast Compact Commission itself, have confirmed that the additional costs of the Compact have been passed on to consumers. These studies put the retail impact of the Northeast Compact at anywhere from 4.5 to 14 cents a gallon. These are studies in which your own Compact Commission participated. This increase means that consumers have paid anywhere from between \$55 to \$170 million more for their milk since 1997.

Also, in the early days of the Compact supporters argued that New England needed the Compact to keep dairy farmers in business. Well, the American Farm Bureau numbers show that New England continues to lose dairy farmers at the pre-Compact rate. And if it weren't for those emergency payments last year, I am sure that even more producers would have gone out of business. With New England continuing to lose farmers, all I see left is a policy that hurts consumers.

So, Mr. Smith, I want to ask you, if the Compact is not achieving its goal of keeping prices down for consumers, if it is not achieving

that goal and if prices are up and fresh milk is available in non-Compact States, then how can your Compact be justified?

Again, farmers continue to go out of business in the New England States. Prices of the Northeast Dairy Compact have been passed on to consumers. So what is the justification for the Compact? Is it for some social reason?

Mr. SMITH. No.

Senator KOHL. Cultural reason? Prices are up to consumers.

Mr. SMITH. The reason I paused is that we have——

Senator KOHL. Farmers are going out of business. What is the point of the Compact?

Mr. SMITH. The point of the Compact is that it is functioning very effectively in the complete reverse direction to your description of it. It is, in fact, keeping farmers in business and it is, in fact, having, I hope will show over time, a positive impact on retail prices rather than a negative impact.

I would point you back to the graph that I put on your table; hopefully, it is there in front of you. You can see from that graph that for the Compact period, essentially, except for about 9 months, over a 4-year period the procurement cost was flat at \$1.46 a gallon.

For the first period of the Compact program, there was a spike-up initially, but then the price drifted back down, arguably in reaction to the level of procurement cost. Then Federal order prices went into a dramatic fluctuating period which kind of threw the dynamic into uncertainty. But at least for a period of time, one of the theories of the price regulation, which was that if you can stabilize the procurement cost for a supermarket they would have an incentive to thin out their margin and reduce the price, as opposed to responding protectively for their margins by raising price over time to fluctuating prices—so I will grant you the record is uncertain with regard to the impact on retail prices, but at least for one period of time during the Compact price regulation's operation prices came down.

And I would suggest to you, as I did before, that the retail market needs some time to sort this out and that the Commission has the ability to intervene in the market in the public interest.

With regard to farm loss numbers, I would respectfully suggest to you that the numbers are not in the pattern that you describe. Commissioner Healy will be speaking with regard to the actual numbers of farm losses in New England before and after, and I would suggest you direct your question to him with regard to actual numbers.

Senator KOHL. I have to move on, but I just want to make a point, and maybe you can respond to this. So then you would also suggest that if similar kinds of conditions exist in other industries throughout the country, then they too might consider the efficacy of price-fixing cartels. Is that theoretically true?

Mr. SMITH. No.

Senator KOHL. Theoretically, is that true?

Mr. SMITH. I think that milk is a unique product.

Senator KOHL. Why is it different from any other perishable commodity?

Mr. SMITH. Because of its bulkiness as well as its perishability, so that the cost of transporting milk is unique in the sense that it is both bulky and perishable.

Senator KOHL. But then if there is this cost of transporting milk—and I talked to Mr. Burrington about the same point—then the consumers aren't going to buy it. If it costs a ton to transport milk from other long-distance States—the facts don't indicate that that is a problem, but if it is true, then people will continue to buy locally produced fresh milk, among other reasons because it can be brought cheaper to the market than milk trucked in from faraway States.

So I argue to you that this point that you are trying to make that milk is different from everything else in the world—it is unique and there is nothing like it—is specious. It is almost breathtaking in the sense that you are making that argument and saying there is only one commodity in the world that argues for a price-fixing operation, and that is milk. I am blown away by that argument.

Mr. Burrington, would you like to comment?

Mr. SMITH. If I might, Senator, I would like to leave the door open at least for States to consider the need to restore their regulatory authority over marketplace for other commodities. So I don't want to close the door on other commodities.

Milk is a product that has been regulated at the regional level as a matter of Federal policy. And I don't mean to take time away from Mr. Burrington, but I would suggest to you that the issue you have is with the Federal order system and that is the policy question that Congress has confronted and resolved in favor of maintaining local supplies of milk.

I would defer to Mr. Burrington.

Senator KOHL. Any thoughts, Mr. Burrington?

Mr. BURRINGTON. I don't have a lot to add to what has been said, but a family can go through the same amount of milk in about a day as it would an amount of grapes in 3 weeks. I mean, it has historically been treated as a distinctive commodity.

I have not puzzled my way through exactly the bounds of what you might take a similar approach to, but we haven't seen the basis for taking the compact approach to anything other than milk so far. It hasn't been, to my knowledge, suggested by anyone else. But, again, the facts as the transportation cost of milk, I think, are fairly undisputed.

Something else that I think is hard to dispute is that in many parts of the country where land values are very high, it is hard to reverse the process of farm loss. So if our farms go in New England, we aren't going to get them back. So the process could unfold, and I believe would unfold in a way that is different from what you might theoretically imagine the market might produce.

So I think that the market is not going to drive land back into dairy farm production. If the farms go out of business, only for our consumers to discover that maybe the Midwestern milk isn't such a great deal coming from 500 miles away, I don't see us pulling down \$600,000 houses off of land that was once dairy farms.

Senator KOHL. As you know, we have farmland protection programs that are funded at both the State and local level. So there are other ways to deal with the problem that you raise.

I see my time is up, unless Mr. Norquist wants to make a comment.

Chairman LEAHY. The chairman tried to stick to within his 5 minutes, and I would ask others to do that and certainly give plenty of time for another round, if you would like.

I understand Senator Feingold, with his usual courtesy, is willing to let Senator Schumer make an opening statement.

**STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR
FROM THE STATE OF NEW YORK**

Senator SCHUMER. Thank you, Mr. Chairman. I want to thank you and Senator Feingold for his courtesy. I am in the middle of a hearing that I am chairing in the Banking Committee, and so I will be brief and not ask questions. But I would like to make a statement, since this is very important to me.

First, I want to thank Chairman Leahy for his leadership. He has been leading on this issue and helping Northeast dairy farmers long before I even got to the House, let alone the Senate. I just want to tell you, Mr. Chairman, that the farmers in my State, the dairy farmers and others, are extremely grateful for the work that you have done.

I would also ask unanimous consent that a statement from the Governor of my State supporting the extension of the Compact be put into the record.

Chairman LEAHY. Without objection.

Senator SCHUMER. Mr. Chairman, people often forget that there are farmers in the northeastern part of the country and that these hard-working men and women produce much of the food we rely on to stay healthy.

In my State of New York, there are 2,000 vegetable farmers, 700 apple orchardists, and 7,200 dairy farmers, a number declining. But you meet these people and they are hard-working, dedicated people. Last year, we produce 11.9 billion pounds of milk, making us the third largest milk-producing State, behind California and Wisconsin.

To argue that New York State in agriculture is any more compelling than other areas of the country is impossible, but for years New York and many other States in the Northeast have been denied the same attention from the Federal Government that other parts of the Nation have received.

While we have started to change that situation under Senator Leahy's leadership over the last few years, there is still much to do to make up for the Federal Government's long neglect of northeastern agriculture. A few provisions in the crop insurance bill isn't enough, and so today this committee has the opportunity to take a giant step forward, reversing the years of Federal neglect, by launching the effort in the Senate to pass the Northeast Dairy Compact.

I know we are going to hear a variety of views about the Dairy Compact. Let me just explain why extending and expanding it to include New York and other States is so important to the Northeast and the country.

Whenever I visit or meet or hear from the dairy producers in New York, I hear the same thing. They tell me the answer is sim-

ple: extend the Dairy Compact and the dairy industry will survive in New York. Don't extend the dairy Compact and we will have no dairy industry in New York.

If New York had been a member of the Compact last year when dairy prices were at rock bottom, an individual dairy farmer would have received an average payment of \$18,200, enough to stay afloat, and that would be at no cost to the Government.

I have talked to thousands of my constituents and many of my congressional colleagues in New York City. They say, for the good of the State and the good of the economy of our dairy farmers, they are willing to pay a little more when milk prices are declining—they are not going to pay more when they are rising—to help those farmers stay in business for the good of our State and our country.

The price stability and predictability that the Compact offers are crucial to the long-term survival of our industry. Evening out the monthly highs and lows and the very significant swings in Federal price orders allows dairy producers to plan ahead.

Right now, our farmers—and I know Mr. Norquist likes this, but the farmers are slaves to the whims of the market. They don't know what their resources are going to be from year to year. The only way to deal with that would be to make huge farms that can cushion this. We are not going to have huge farms in New York State.

Successful businesses are those that can plan ahead for good and bad times. From greater certainty flows easier access to credit, a more certain bargaining position, and probably most important of all, a peace of mind with which the future can be imagined. Right now, there is so much price instability and uncertainty in dairy that many in the dairy community don't see a future.

For many farms in New York, the Compact is the last chance because it prevents waves of consolidation and collapse from completely engulfing them. The attrition rate for family dairies within the Compact, as I think has been stated ably by Mr. Smith and Mr. Burrington, is much less than those who are outside of the Compact.

Let me, in conclusion, Mr. Chairman, key in on the most revolutionary and important feature of the Dairy Compact. Unlike other dairy pricing out there, the Compact gives producers and consumers a direct say in setting the price that producers receive. By having representatives on the Compact Commission, producers and consumers help determine the price of milk, something that has never happened before in the dairy world.

To me, that is democracy at its best, and I hope and pray that we will not only renew the New England Dairy Compact, but add New York and other northeastern States into the Compact. The survival of our dairy industry depends upon it.

With that, I want to thank the chairman and thank Senator Feingold for their courtesy.

Chairman LEAHY. Thank you very much.

Senator Feingold, who takes a somewhat different position than the Senator from New York and the Senator from Vermont, unless he has suddenly had an epiphany here, it is over to you.

Senator FEINGOLD. Thank you. Mr. Chairman, you have heard of a New York minute. That was a New York 2 minutes, but I am pleased to hear from the Senator from New York.

Professor Neuborne, I want to thank you for coming here today to testify. You are very effective. I also want to thank you for all your efforts and input in the Congress in the past, and especially your help on campaign finance reform. I know if it is that you just pick good issues or you are very good. I think it is both, but it was wonderful hearing from you.

Of course, farmers in my home State of Wisconsin are penalized by the Compact Commission's ability to act as a price-fixing entity that walls off the market in a specific region and then hurts producers outside the region.

In Federalist No. 42, Madison warned that if authorities were allowed to regulate trade between the States, some sort of import levy would be introduced by future contrivances. I would argue that the dairy compacts are exactly the sort of contrivance feared by Madison. Dairy compacts are clearly a restriction of commerce, in that they impose what I believe amounts to a tariff between the States. The Founding Fathers never intended the States to impose levies on imports, such as those imposed by one nation on another's goods.

So what do you think James Madison would say if he knew that the Compact Clause was being used to block a shipment of milk between States?

Mr. NEUBORNE. Well, originalism isn't my strong suit, but I think that Madison would be very surprised and very troubled. There is one historical fact that speaks the loudest about this. The Compact Clause has been in effect for 212 years. Congress has authorized approximately 300 compacts during that period. The Northeast Regional Milk Compact is the only compact that has ever been established that allows for regional price-fixing. Every other compact that has been established for the last 212 years has dealt with essentially three problems.

In fact, the Compact Clause arose as a device to deal with boundary disputes. At the close of the Articles of Confederation, there were 11 separate boundary disputes that were complicating the relationship between the 13 original States. There was no way to resolve those disputes short of litigation in the Supreme Court or absolute internecine warfare that would have torn the place apart. The interstate compact was a brilliant solution for the resolution of those boundary disputes.

In the 19th century, we expanded the interstate compact idea as a way of managing shared natural resources—harbors, rivers, contiguous forests—to be able to assure that there was fire prevention. Those are excellent ways of permitting State cooperation and creating ad hoc political entities to deal with issues that no State could deal with alone.

But price-fixing is something that we have never thought the interstate compact was designed for, and I believe that is really quite inconsistent with the ethos of the Constitution itself and, for two reasons, I think, unconstitutional as well, although no one can sit before you and give you an absolute answer on that. I mean,

anyone who tells you they know whether this is constitutional or not is either a fool or a charlatan. It is so difficult to guess.

But my personal belief is that this raises very serious constitutional questions and might well be unconstitutional, for two reasons. One, I don't think Congress has the power to lift the negative Commerce Clause in order to establish price-fixing. They have always lifted the negative Commerce Clause in the past to deal with police power problems. They have lifted the negative Commerce Clause to allow the States to deal with importation of alcohol. They have lifted the negative Commerce Clause to restore the States' ability to regulate the insurance industry. But they have never, ever lifted the negative Commerce Clause to create a regional price-fixing scheme.

Suppose the statute said the negative Commerce Clause shall be lifted for the following States to permit them to regulate the price of milk. I think that would be flatly unconstitutional, and wrapping it up as a Compact Clause instead of a direct legislative act doesn't add one iota to Congress' power.

I know that Mr. Smith said that this issue had been raised in earlier litigation. I assure you that it has not. I have read those cases. There are two cases dealing with the legality of compacts. Neither of those cases dealt with the very fundamental question of whether the equality clauses of the Constitution forbid Congress from using the Compact Clause as a way of permitting one or more States to wage economic warfare on other competitors.

Senator FEINGOLD. Thank you. I am very pleased to have that on the record. I think it is going to be helpful.

I would like to turn to Mr. Norquist. Thank you for being here. You discussed how the Northeast Dairy Compact acts as a pricing mechanism and hurts the ability of farmers to market their milk freely. It is important to note that the Northeast Interstate Dairy Compact Commission is just one of the ways that Midwestern dairy farmers are disadvantaged under the current milk marketing structure, where dairy farmers in the Northeast already receive higher minimum prices for their milk under the antiquated milk pricing system.

Do you, sir, see any justification for saying to dairy farmers in Wisconsin that they should not be able to market their milk freely across the United States?

Mr. NORQUIST. No.

Senator FEINGOLD. Mr. Chairman, thank you.

Chairman LEAHY. Thank you. If there are other questions, we will submit them for the record. I think each of us has had a chance to ask questions of this panel.

Mr. Smith, Mr. Norquist, Mr. Burrington and Mr. Neuborne, thank you very much for being here.

Mr. NEUBORNE. Thank you, Senator.

Mr. BURRINGTON. Thank you.

Chairman LEAHY. On our next panel, we will have Jonathan Healy, who is the Commissioner of Agriculture of the Commonwealth of Massachusetts; Harold Brubaker, who is a State Representative of the State of North Carolina; Lois Pines, former Massachusetts State Senator; Dr. James Beatty, an economist from

Louisiana State University; and Richard Gorder from the Wisconsin Farm Bureau.

Commissioner Healy, it is always good to see you, and I want to also thank you for the amount of time you have spent in coming up to the State of Vermont and the amount of time you have spent with Vermonters.

We will begin with you, sir.

STATEMENT OF HON. JONATHAN HEALY, COMMISSIONER OF AGRICULTURE, COMMONWEALTH OF MASSACHUSETTS, BOSTON, MASSACHUSETTS

Mr. HEALY. Thank you very much, Mr. Chairman. I am pleased to be here. I have been the Commissioner of Agriculture in Massachusetts for 8 years.

It is very interesting to me in this ongoing debate over the Dairy Compact how the landscape changes a bit. I am here to tell you that the Compact, in spite of intense, intense lobbying on Beacon Hill, enjoys the strong support of our Governor and the great majority of the State legislature.

The first kind of argument that came up about the Compact was that it gouged consumers and really was a bad deal for them. Our studies in Massachusetts show that the top price the Compact could cost is 12 cents a gallon, and what has really happened is about 6 cents has been passed on to consumers and about 6 cents has been assimilated. So it has cost 6 cents a gallon to consumers in our State.

Ironically, however, since the inception of the Compact, we have had anywhere between a 30 to 45 cents a gallon increase in those retail costs. So some of us find it very ironic that the processors and the retailers would have you think that this paltry 6 cents a gallon for farmers represents a cartel.

The irony from my perspective is that the opponents of the Compact have made much more profit in their margins than the dairy farmers they decry. Our consumers have seen through this smoke-screen in terms of this myth. The Massachusetts Public Interest Research Group strongly supports it, represents hundreds of thousands of consumers in Massachusetts. Groups from the Massachusetts Audobon Society, Gun Owner Action League, the WIC program, as you have heard from, are strong supporters of the Compact.

It has helped, on balance, the consumers in the State because the opponents don't tell you where your milk comes from. We are already getting our milk, a lot of it, from New York State, and under the Compact, if we lose it, we will have to go farther and farther to receive our milk at much greater transportation cost per gallon to our consumers than what we pay under the Compact.

The second myth I would like to talk about refers to questions about farm loss. I am a little bit interested that the American Farm Bureau, based probably in D.C., has some figures that have been bandied about here today. But this is from the New England Agricultural Statistics Service, which is funded by the Federal Government, and I would urge people on this august committee to talk with people who get New England agricultural statistics, and talk

to those of us who are in the individual departments of agriculture in New England.

The farm loss in the Compact region, pre-Compact, was 572, versus 408 after the Compact. These are admittedly inexact numbers, but using farm loss as an indication of the efficacy of the Compact is really apples and oranges. We have so many things happening in our businesses.

For instance, in Massachusetts we have lost 84 farms. That is what the statistics will say, but let me tell you really what has happened during that time period. Ten farms have consolidated, so they look like a loss. They have consolidated. Four have moved out of State. We have had 13 new farms not reflected in these statistics, but that is about twice a higher percentage than before the Compact.

Even more importantly, we have had 40 farms that have transitioned from dairy into other forms of agriculture. So a figure that looks like 84 is really 24 in terms of the number of farms we have lost since the inception of the Dairy Compact. As you know, any of you who run businesses, there are a lot of factors that go into effect in terms of why people stay or get out of business.

In Connecticut, from Commissioner Ferris, prior to the Compact, 64 farms lost; after the Compact, 47. In New Hampshire, from Steve Taylor, the number of farms declined from 187 to 176. Commissioner Taylor says, "I would expect by now we would be down to 130 or even fewer without the Compact."

In Rhode Island, 6.5 farms were lost per year, on average, prior to the Compact. Ken Ayer says the rates declines to 2.3 farms since the inception of the Compact. Commissioner Bob Speers in Maine says a loss of 16 percent of the dairy farms before the Compact, 9 percent after the Compact.

It seems to me that there is a clear indication that the farm loss has not been as extensive as has been quoted here today, and we would be happy to provide more numbers for folks.

The last point I would like to make is what Senator Leahy has alluded to in terms of the monopolies and the cost to consumers. I would respectfully submit that the 6 cents a gallon that farmers are receiving in Massachusetts and New England under the Dairy Compact pales in comparison to the real issue. The real story here today as far as I am concerned is not the 6-cents-per-gallon cost, but it is the rapid consolidation of milk processing in New England and the effect of this strong consolidation on milk prices.

Suiza Corporation, of Dallas, Texas, now controls over 70 percent of the milk processing industry in Massachusetts. An indication of their adverse effect on consumers is illustrated by recent bids on the Massachusetts school lunch contract, and I would respectfully submit to Senator Kohl and others this is what happens sometimes in the free market.

Before the Suiza consolidation in Massachusetts, we had competition on our school bids. In 1998, the Commonwealth received six different responses from milk processors and the competition resulted in a final contract which was 12 percent below the initial original bid. Just two short years later, in June of 2000, the Commonwealth was very disturbed to receive only one bid from Suiza. This bid was 16 percent higher than the 1998 contract.

At that time, there was nowhere near a 16-percent increase to Suiza of their raw milk costs. Suiza, however, used its market muscle and steadfastly refused to negotiate any price, even though their volume was much higher under the new contract.

Stephen Crosby, a fiscal conservative, who was the chief fiscal officer in Massachusetts, was so upset with the price cost for the school lunch contract he wrote our attorney general, Thomas Reilly, stating "Suiza's response as to the procurement team's request is a clear indication of its ability and desire to exercise its monopolistic market power."

I would submit to you that this is the real issue, and the consumers in Massachusetts are already paying extensively more on the school lunch contract because of that market consolidation. I respectfully urge you to continue the New England Regional Dairy Compact and support Senate bill 1157 because we need it now more than ever, given the fact that our farmers have fewer and fewer options of where they are going to sell their milk.

Now, it looks like it is only going to be one show in town, as you have indicated, in terms of where farmers will be able to sell their milk. And the implications for consumers are very, very troubling, given what has happened to the New England milk market, at least in our region.

Thank you.

[The prepared statement and attachments of Mr. Healy follow:]

STATEMENT OF COMMISSIONER JAY HEALY, COMMISSIONER OF AGRICULTURE IN MASSACHUSETTS, IN SUPPORT OF THE NEW ENGLAND REGIONAL DAIRY COMPACT

Good morning. For the record, my name is Jay Healy. I have been the Commissioner of Agriculture in the Commonwealth of Massachusetts for the past eight years. Since the Compact's inception in July of 1997, it has been a valuable resource in preserving a fresh, nutritious, and continuous supply of local milk to Massachusetts consumers.

The Compact enjoys the steadfast support of Governor Jane Swift and the Legislature, even though large amounts of money have been spent by opponents of the compact. Here in Massachusetts, the International Dairy Foods Association (IDFA), which represents Suiza Corporation, spent \$238,000 to fight the compact. Only one other company, Phillip Morris, spent more on lobbying on Beacon Hill this past year.

These paid political opponents say that the compact has adversely affected our consumers. This is simply not the case. Our Department of Food and Agriculture estimates that the compact has, on average, cost consumers six cents a gallon. Since the inception of the compact, however, the average price per gallon of milk has risen over thirty cents per gallon. Processors and retailers would have you think that this paltry minimum wage for farmers, an added six cents a gallon, represents a "CARTEL!" The irony is that the opponents of the Compact have made much more profit on their margins than the dairy farmers they decry.

Massachusetts consumers have seen through the smokescreen. They know that they will pay much more for the transportation costs for milk, up to fifty cents per gallon, if they lose the New England dairy farmers and milk shed that supply local milk for Massachusetts. (see Costs for Transporting Milk) They know we will lose thousands of jobs at the Friendly's, the Breyers, and the Sealtests when some of the thirty thousand plus dairy processing jobs in eastern Massachusetts follow the milk supply and leave the state.

Citizens have repeatedly stated that the compact should be retained. The compact helps preserve over 100,000 acres of Massachusetts open space owned by our dairy community. It has helped the Mass WIC and School Lunch and Breakfast Program by setting aside funds to insure these populations are not adversely affected.

Consumer support is indicated from groups as widely divergent as the Mass. Public Interest Research Group (MASSPIRG), Mass. Audubon Society, Gun Owners' Action League, and the director of the Commonwealth's WIC program (see letters enclosed). MASSPIRG alone represents a huge amount of consumers. Why, if Massa-

chusetts consumers allegedly dislike the Compact, would this well-respected organization support the Compact?

This strong public support was reflected in a recent legislative battle on Beacon Hill, where IDFA outspent compact supporters by a wide margin. While the urban-oriented state Senate supported IDFA by including an outside section of the state budget that deleted the Compact, an overwhelming majority of the House blocked a possible conference committee report by signifying they would not support any conference report that would delete the Compact.

In light of the large amounts of money being circulated in legislative opposition to the Compact, I urge you to look very carefully at erroneous lobbying alleging no Massachusetts consumer support for the Compact. I understand that you will hear today from a former state senator who opposes the compact. On May 27, 1998, as Senate Chair of the Committee on Natural Resources and Agriculture, she signed a report that concluded, "In the absence of data confirming opponents objections, the Committee does not find any compelling evidence to lead to a recommendation or legislation to alter the membership and/or scope of the Compact" (see attached report). My understanding is that this same individual is now paid to work for antiCompact efforts in the Massachusetts consumer community.

The real impact on Massachusetts consumers is not the small six-cent per gallon cost of the Compact. The real story is the rapid consolidation of the milk processing industry in New England and the effect of this strong consolidation on milk prices. Suiza Corp. of Dallas, Texas now controls over seventy percent of the milk processing industry in Massachusetts. An indication of their adverse affect on consumers is illustrated by recent bids on the Massachusetts school lunch contract. Before the Suiza consolidation, there was competition on the bids. In 1998, the Commonwealth received six responses from milk processors and competition resulted in a final contract twelve percent below the original bid. In June 2000, the Commonwealth was very disturbed to receive only one bid, from Suiza GTL. This bid was sixteen percent higher than the '98 contract. At that time there was nowhere near a sixteen percent increase in Suiza's raw milk costs from prior years. Suiza, however, used its market muscle and steadfastly refused to negotiate prices, even though volume would be increasing dramatically over the course of the two-year contract. Our Commonwealth's chief fiscal officer, Stephen Crosby, was so upset he wrote a letter to our Attorney General, Thomas Reilly, stating, "Suiza's response to the procurement team's request is a clear indication of its ability and desire to exercise its monopolistic market power. Food and Agriculture's earlier warnings have been realized. Suiza possesses the ability to hold the line on milk prices to be paid by both state agencies and by local school districts, which can least afford such dramatic increases."

I respectfully submit that if Suiza can directly hold our Commonwealth hostage with huge price increases, one can only imagine the long-term adverse affects on consumers. Suiza increases profits when it drives down the raw costs of milk (see enclosed DMR article). The lack of competition in the school lunch procurement process, however, indicates that there is no correlation between raw milk costs and consumer savings. In fact, there is a strong probability that the reverse is true. Market consolidation and Suiza's market power has resulted in our Commonwealth repeatedly asking our Attorney General to investigate Suiza (see enclosed letters). These requests have resulted in Attorney General Reilly's announcement on June 25, 2001 of a settlement with Suiza Foods and Stop and Shop.

I urge you to support re-authorization of the New England Regional Dairy Compact. Given the market dominance of middlemen like Suiza, if our New England dairy industry is to be able to continue to provide a continuous supply of fresh, local milk, we need the Compact even more now than we did in the past.

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DPW perspective

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China not big win for U.S. dairy

President Clinton took his China road show to a Minnesota farm May 13, not so much to convince farmers that admitting China into the World Trade Organization will be good for them—they're already big boosters—but to try to round up votes to ensure passage of the measure in Congress.

For corn and soybean growers, as well as pork producers, supporting this week's scheduled vote in Congress to grant Permanent Normal Trade Relations to China, as a prelude to its joining the WTO, is a no-brainer. It promises to boost sales and prices.

But for dairy, it's harder to see short-term tangible benefits, even though China has agreed to cut tariffs on cheese from 50 percent to 12 percent, and on lactose from 35 percent to 10 percent, both over a five-

year phase-in period.

Even Tom Suber, president of the U.S. Dairy Export Council, says that while China "will be a terrific market someday," benefits from the China accord will take years to realize. Not only does China have to negotiate accession into the WTO with 14 countries, including the European Union, but the terms of the agreement will also be phased in over time, with domestic issues creating their own barriers.

China is the world's biggest market, but in terms of income and diet, it's no Japan. Suber acknowledges that "dairy has not been a part of the Chinese diet, and most adults are lactose intolerant." Urban unemployment at record-high levels will also delay a shift to more costly food, such as dairy. Much of China's recent economic growth is due to government spending, and excess industrial capacity has led to more than two years of deflation.

Suiza cashes in on low milk prices

Over the past two years, dairy processors' bottom lines were hit by high milk prices, but no more. First quarter earnings of Dallas-based Suiza Foods, not only beat last year's, but were also higher than Wall Street expectations. Key reasons why, the company says, are "a significant reduction in raw milk costs," as well as volume growth and performance of acquisitions.

Suiza's operating profit for the quarter was \$21.3 million, or 71 cents per share, compared with \$20.9 million, or 60 cents per share, for the same period a year ago. Sales were up 21 percent. Suiza, the nation's largest fluid processor, has completed four acquisitions since Jan. 1. These include: Southern Foods Group, the third largest U.S. milk processor with 30 plants in 12 states; Valley of Virginia, a co-op with plants in two locations; Leche Celva, Spain's fourth largest milk processor; plus a water business.

Suiza also entered into a long-term supply agreement earlier this year with

Stop & Shop Supermarket Co., one of the largest grocery store operations in New England. Stop & Shop will distribute Suiza's private-label milk and other dairy products in New England and parts of New York.

Suiza also recently announced an agreement with Pink Dot Inc. in which customers will be able to buy Suiza's milk, half-and-half, coffee creamer, cottage cheese, sour cream, whipping cream, yogurt, ice cream, and novelty items over the Internet at www.pinkdot.com.

In its quarterly report, Suiza says boosting fluid milk sales through product innovation may be the only source for significant growth "because demand tends to be relatively flat, and we expect margins on non value-added dairy products to be compressed as our customer base consolidates." The company also says its outlook could be affected by the spread of the Northeast compact.

Suiza also recently introduced Sun Soy, a soymilk product. "It's not a fad. You're going to see yogurts and a lot of other soy products," Suiza's Tom Murin says in an Associated Press article.

Furthermore, even if China's dairy demand does grow over time, it doesn't necessarily follow that the U.S. will get the bulk of the action because the U.S. is no longer competitive on commodities in world markets, notes University of Wisconsin economist Tom Cox. USDEC predicts U.S. exports to China will be \$135 million per year after the five-year tariff reduction phase in. The biggest way U.S. producers could win internationally is through an agreement with China, but if gaining access to Canada, eliminating EU export subsidies, and increasing Mexican purchasing power, all of which are about as likely as \$18 milk later this year.

CCC cheese buying nearing its end?

The government is back full force in the cheese buying business, with its large purchases since 1991, but the volume of purchases is not high enough to be a clove over the market, and buying could start slacking off, some analysts say.

Through May 10, CCC has purchased 5.6 million pounds of cheese this marketing year, which began in October, compared with no purchases the previous year. The bulk of purchases has been processed cheese, 5.1 million pounds, with only 414,675 lbs. of that block cheese. Most purchases have been recent, with just 1.1 million pounds purchased as of March and none of that block.

Cheese purchases are still very small compared with both total production and the record 833 million pounds purchased in 1983, notes University of Wisconsin economist Ed Jesse. He also predicts that CCC purchases will stop within a month when block cheese prices rise above support. Historically, Jesse says, CCC purchases only become significant when cheese prices fall 2 cents below support currently at \$1.10 for block cheese.

More significant are commercial cheddar stocks, which have been running high. Even so, both Jesse and Mark Furth, general manager of Associated Milk Producers, Inc., New Ulm, Minn., look for block cheese prices to increase to \$1.30-1.40 this fall.

DPW May 22, 2000

Suiza's Stranglehold Yields No Comp

by Pete Hardin

Virtually no competition remains in Massachusetts' fluid milk industry, if the recent bidding for institutional and school milk contracts under the "State Procurement" contract is any measure.

In July, Massachusetts received only one bid for the state-wide contract to supply milk, dairy products, and non-dairy beverages to institutions and some school districts. That sole bidder was Garelick Farms of Lynn (formerly West Lynn Creamery) — part of Suiza Fluid Dairy Group's massive dairy empire in Southern New England.

School milk competition among dairy processors has been the key measure of competition used by the Antitrust Division of the United States Department of Justice ... at least west of the Hudson River. In New England, though, federal Antitrust overseers have been wearing blinders when it comes to concentrated market power amassed by the region's largest fluid milk processor/distributor.

The arrogant words and behavior of a high-level Suiza executive define the problem:

On July 11, 2000, at a meeting with the multi-agency procurement team at the Department of Corrections headquarters in Milford, Massachusetts, James Walsh, Garelick's Manager of Pricing and Analysis, replied that his firm already had 80% of the Massachusetts school milk business. He also stated that the state contract added little to Garelick's school milk business, because the firm already had so much.

Walsh's comments came in response to a July 7, 2000 letter from a state official, requesting to renegotiate prices on three milk products included in Garelick's sole, state-wide bid. Those items were: 8 oz. flavored, 8 oz. 1%, and 8 oz. homogenized milk. Massachusetts officials wanted to renegotiate costs of these items, due to large volume increases created by including more prison facilities and school districts. Walsh flatly refused to renegotiate. His implication: Garelick can do whatever it wants.

Various critics, including Vermont U.S. Senator Patrick Leahy, Massachusetts agriculture commissioner Jonathan Healy and *The Milkweed*, have warned of competitive dangers posed by Suiza's 70% (or more) share of New England's fluid milk industry. Healy has asserted that Suiza's market share in Massachusetts is 80% of fluid milk processing/distribution.

But federal antitrust regulators permitted Suiza to amass that awesome market share without challenge. In spring 2000, antitrust allowed Suiza to gain even more fluid market share with the takeover of fluid processing from Stop & Shop, a major regional supermarket chain.

Far wider antitrust issues at stake

Suiza's 70-80% fluid market share in Massachusetts and New England goes far beyond dairy and New England. The way federal antitrust oversight works, the largest market share allowed to a single firm in any region of the country in any food sector becomes the defining degree of "allowable concentration" permitted nationwide by federal regulators for the entire food industry.

Antitrust's decision to allow Suiza to accumulate an 80% fluid market share in Massachusetts means that any food firm, anywhere in the United States, may amass a 70-80% market share without Antitrust interference.

School milk bids: key competitive measure

School milk contract bidding is THE key measure of competition among fluid processors. Starting in Florida in the mid-1980s, federal and state antitrust officials rolled up 113 convictions and guilty pleas by milk processors in school milk bid-rigging conspiracies that covered two dozen states. The regulators uncovered this widespread bid-rigging conspiracy by inducing one processor to turn state's evidence and testify



Near-monopoly control lets Suiza

against co-conspirators. Prosecutors rolled it to testify against ever more "competitors." Federal task forces. The school milk price-fb

School milk bidding larceny inspired s forced Suiza to sell off dairy businesses in K

Somehow, though, Suiza's 70% market antitrust overseers' interests. Nothing approx has ever before been gained.

CT, MA and V

New Englanders take a different persp Connecticut announced a joint task force to Details are properly scarce.

Suiza executives have vigorously deny charges "ludicrous." But Walsh's comments i Massachusetts confirm Suiza's stranglehold

Last spring, spurred by Suiza's takeover, the U.S. Senate that would enhance antitrust c antitrust violations. Despite growing concern have not progressed

Suiza: Biggest Dairy Company Money Can Buy

Suiza Foods Corporation has literally come out of nowhere in the past seven years and bought its way to the top as the nation's largest fluid milk company. Based in Dallas, Suiza Foods is the dairy presence of some very acquisitive Texas venture capitalists. Suiza holds about a quarter of all fluid milk processed in the U.S.

They launched their dairy holdings with the late 1993 acquisition of Suiza, a Puerto Rican-based firm. Today, Suiza's greatest presence is in New England, where the firm controls 70% of the region's fluid milk processing, and 80% of the Massachusetts milk market.

Suiza's buying binge in New England started in July 1997, with purchase of Garelick Farms (Franklin, Massachusetts) for \$363 million. At the time, Garelick was New England's largest fluid processor. Garelick has evolved as Suiza's flagship in New England.

Subsequent purchases in New England included:

- West Lynn Creamery in Lynn, Massachusetts for \$215 million in June 1998.
- Cumberland Farms in Bridgewater, Massachusetts for \$200 million in August 1998.
- Along the way, Suiza picked up smaller firms like Nature's Best in Rhode Island and New England Dairies in Hartford, Connecticut.
- In spring 2000, Suiza Foods paid \$50 million to Stop & Shop, a major New England food retailer, to close its in-house fluid milk plant, and buy packaged milk products from Garelick. News of this deal really popped the cork on New Englanders' antitrust concerns about Suiza's dairy presence.

Suiza currently operates in the Northeast as Suiza GTL, LLC, which in turn is part of a jointly ventured national fluid milk processing firm, Suiza Fluid Dairy Group (SFDG). Dairy Farmers of America, the nation's largest milk co-op, owns 34% of the stock in SFDG.

Suiza's parts specialize in different areas

Suiza's New England holdings have assembled virtually all the major components of a mature regional industry where surviving firms had greatly specialized. Garelick specialized in supplying retail accounts. Cumberland Farms served its own chain of convenience stores. West Lynn Creamery's volume was heavily dedicated to school and institutional milk service, milk, juices and ice cream. And Stop & Shop was dedicated primarily to serving its own major retail chain.

No firm in the processing/distribution of a major food commodity enjoys a greater market share than Suiza's New England dairy holdings. There was never an ounce of interference from federal antitrust regulators as Suiza Foods took over New England. Suiza's control of Massachusetts' school milk business is without national precedent.

Other anti-competitive behaviors have been noted. In Connecticut, a competing processor, Guida-Siebert, complained that its milk was shut out of sales to a retailer because of an exclusive-supply deal worked out by Suiza.

Suiza's chairman and CEO, Gregg Engles, has worked hard at trying to beat the Northeast Interstate Dairy Compact — a regional fluid milk pricing plan that floors the value of raw fluid milk to boost prices for struggling dairy producers supplying the New England market.

Ho

School district First, school di tracts, which take of carton. Or school di Class 1 (fluid) milk v east Interstate Dairy ersal school districts: Massachusetts

"Procurement" cont certain state instituti fee. The Operating i ministration overse

School district contract in advance to Bill Gillmeister, i Agriculture, many n their school milk su

In spring 1998, a five-year basis. At dairies to bid on a s than one bid. Mas Creamery. Awardin some districts. That which had been the

The 1998 bid v quent years' prices increase. West Lyn 1998. West Lynn's juices, bottled water

In spring 1995 "held harmless" for percent increased co

ion for Massachusetts School Milk Bids



Profits from New England school milk bids.

ross the country as they convinced more dairy personnel
of dollars in fines and penalties were gained by state/
tagged out over 10 years.
antitrust oversight. In 1998, federal antitrust regulators
antitrust school contract competition.
England (80% in Massachusetts) has not piqued federal
arket share in a highly populated area like Massachusetts

antitrust probe of Suiza
March, attorneys general in Vermont, Massachusetts and
a regional market share. That investigation proceeds.

ew England market share is as high as 70%, calling such
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gions of the country, Leahy's measure (and similar bills)

assets' school/institutional bidding works
assets have two options to gain school milk suppliers.
announce bidding procedures for annual milk supply con-
y 1. These contracts may be for fixed rates per 8-ounce
solicit "variable" bids that list a margin atop the designated
z.) set by the Northeast federal milk order and the North-
Contracts are generally awarded to the low bidder. Sev-
gether into "collaboratives" that seek single bids.
icts have a second option: taking advantage of the "State
ge volume contract bids out multi-year rights to supply
regional institutions and public hospitals) for a specified
ision (OSD) of the state Department of Budget and Ad-
id performance of the State Procurement contract.
announce their intent to sign on to the State Procurement
ement, or hop on after the bid is announced. According
conomist at the Massachusetts Department of Food and
istricts are using the State Procurement contract to line up
se costs per unit are often less than if bid individually.

-year contract terminated early
ants institutional and school milk contracts were bid out on
YSD divided the state into five districts, but also allowed
for the entire state. Four of those districts received more
warded the contract on a statewide bid by West Lynn
:t on a statewide basis "trumped" lower bids, per unit, in
ous complaints by Guida-Siebert Dairies of Connecticut,
n one of the five districts.
m Creamery dictated a fixed price per year, with subse-
opened negotiations on price but limited to a 1% annual
(Lynn, Massachusetts) was acquired by Suiza in June
n Creamery (Suiza) reopened negotiations asking to be
raw milk costs. This request amounted to a five to seven
schesters.

In early 2000, West Lynn again approached OSD to reopen negotiations on the five-year contract gained in 1998. Among a variety of items, West Lynn (Suiza) wanted increases granted for packaging costs (prices for virgin plastic resin made into milk cartons had risen in tandem with crude petroleum costs). But economist Gillmeister noted that the net effect of these changes was another price increase in the six to seven percent range — far above the mandated one percent annual increase.

Members of the state's multi-agency procurement team found West Lynn's demands "completely unreasonable," Gillmeister states. The procurement team exercised its powers and terminated the five-year deal negotiated in 1998. They hoped re-bidding the state contract would inspire more competition and hold down some costs.

Vigorous search yields one bidder — Suiza

Give the procurement team credit for trying. Once the decision was made to reopen the State Procurement contract in spring 2000, the team tried several angles to make it easier to attract more bidders, according to Tricia McKim, with the state Department of Budget and Administration. Efforts to boost the number of bidders included:

- Expanding the number of districts to eight
- Sending notices to every licensed milk dealer in the state, informing them of the new state contract bidding process and directing them to a web site for specific information.

Bids for the new, three-year State Procurement contract were due July 6, 2000. Despite the OSD procurement team's efforts to unearth new bidders, only the newly christened Garelick Farms of Lynn (formerly West Lynn) submitted bids. Garelick bid in seven of the eight districts. The eighth district (in westernmost Massachusetts) garnered no bids, despite being just across the state line from Garelick's fluid milk plant at East Greenbush, New York.

Guida-Siebert Dairies did send a scathing letter to OSD, noting that it would not submit any bids because a low bid submitted by the firm in the 1998 round had not been accepted.

OSD's reopened bidding failed to generate any competitor! And Garelick's prices (per unit) in the new round came in virtually the same as the price increases the company had sought in spring 2000 while trying to renegotiate the 1998 contract! Those higher price demands had compelled OSD to open up new bidding in the first place!

Where to from here?

Thinking optimistically, perhaps Walsh's arrogant comments could cause antitrust investigators to focus on school milk bidding competition in Massachusetts. His comments about Garelick's (Suiza's) 80% percent share ought to set off alarm bells for a joint antitrust probe being conducted by the three New England states' attorneys general. Reasoned persons might hope that Walsh's claims would awaken Washington to review Suiza's control of the New England fluid milk business. But that might be expecting too much.

Trouble is: Federal antitrust officials find excuses to look the other way when it comes to Suiza's control of the New England dairy industry. In response to Suiza taking over Stop & Shop's fluid processing earlier this year, antitrust claimed it didn't have any oversight because the Garelick/Stop & Shop deal was a supply agreement, not an acquisition.

In response to New Englanders' concerns about Suiza's market share, federal antitrust officials stated that they had reviewed the situation and found no particular problems. Everything Suiza has gone after in New England, the company has obtained.

Suiza diminished school milk competition

In just two years, Suiza's increased presence in Massachusetts dramatically altered bidding patterns for the State Procurement contract. In 1998 several bidders participated in the five districts within the state. One firm, West Lynn Creamery, was the sole statewide bidder and won the auction.

But two years later, after West Lynn Creamery's repeated requests to reopen the 1998 contract and seek a 5-7% increase (in violation of the clause specifying only a one percent annual increase), state officials reopened

Continued on Page 8

Quotations from Chairman Gregg

Here are selected tidbits from Suiza Foods Corporation chairman and CEO Gregg Engles before the U.S. Senate Committee on Agriculture, Nutrition and Forestry, February 8, 2000:

"... We no longer need artificial pricing mechanisms to establish orderly market conditions or ensure a sufficient supply of raw milk. Clearly we are now operating in an environment where the market forces of supply and demand can and should be allowed to set the price of milk to be paid to the farmer."

"Dairy farmers in New England and elsewhere in the country have been exiting the business on average at a rate of 5% per year. That decline is due ... not to milk prices, but to increasing age of farmers, the unwillingness of children to take over the business and the attractiveness to farmers of market prices for their land. Our economy has created many opportunities and alternatives for our farmers and their families. There are many among us who believe that this represents progress and an intended result of the prosperous capitalistic economy ..."

"We must put the national interest of strengthening and advancing the dairy industry above the regional interests of a select few ..."

"Like every other successful industry in our country, we need market forces to drive supply and demand to set prices ..."

Antitrust Saw Kentucky Milk Bidding Dangers in '99

by Pete Hardin

What a difference a year makes!
In early 1999, federal antitrust lawyers moved to force Suiza Foods to divest a milk processing business it owned in Kentucky, because of fears that two Suiza-owned dairies would unduly restrict competition for school milk contracts in eastern Kentucky. Two Suiza-owned firms, Flav-O-Rich and Southern Belle, entered guilty pleas for school milk bid-rigging as part of the long-running state/federal investigation that totaled 113 convictions in 24 states. Those events occurred prior to Suiza's ownership. Suiza's plan to combine Southern Belle and Broughton Foods (Marietta, Ohio) troubled federal antitrust lawyers.

A review of certain documents from that bid-rigging case (99-CV-130 in U.S. District Court for the Eastern District of Kentucky/London Division), reveals that many of the legal precepts stated by antitrust lawyers in the Kentucky matter parallel events surrounding school and institutional milk contracts in Massachusetts. But for some strange reason, antitrust's concerns don't venture east of the Hudson River.

The facts of the Kentucky case: Suiza's proposed acquisition of Broughton Foods would have diminished competition for school milk bidding in 55 school districts in eastern Kentucky. Federal lawyers claimed that if Suiza acquired Broughton, only two competitors would remain in 32 of those 55 districts.

The federal complaint also noted: "In 23 of those listed school districts, the effect of the proposed acquisition would be to establish a monopoly."

Here's what federal lawyers stated in early 1999 about the nature of school milk contracts and the importance of school milk in their complaint:

"... school milk constitutes a relevant product market and a line of interstate commerce."

"Milk is a product that has special nutritional characteristics and practically no substitutes, and dairies sell milk to schools with special services ..."

"... school districts must provide milk in order to receive substantial funds under federal school meal subsidy programs."

"There are no other products that school districts would substitute for school milk in the event of a small but significant price increase. If the price of school milk rose by a small but significant amount, school districts would be forced to pay the increase."

In a "Motion for Preliminary Injunction, federal attorneys argued:

"The public interest in vigorous competition in the sale of milk to schools in Kentucky would be irreparably harmed if defendants proceed with the proposed acquisition before entry of a final judgment."

A March 24, 1999 "Memorandum of United States in Support of its Motion for Preliminary Injunction" noted:

"The proposed acquisition will eliminate competi-

tion in the sale of milk to schools in parts of Kentucky. This loss of competition is significant because Suiza and Broughton are two of the largest suppliers in these areas. In many school districts, Suiza and Broughton are the only two bidders on the milk contract, and in numerous other districts they are two of only three bidders.

"Through this acquisition of Broughton, Suiza would unlawfully gain market power in the sale of milk to school markets, enabling the merged firm to raise prices and to reduce quality of service. In the affected markets, concentration levels will far exceed that which constitute a *prima facie* violation of Section 7 of the Clayton Act..." (Emphases added)

Thus, in early 1999, federal officials opposed Suiza's ownership of both Broughton Foods and Southern Belle, due to reduced school milk competition in eastern Kentucky.

But Antitrust officials allowed Suiza to gain 80% of Massachusetts' fluid milk processing ... and an acknowledged 30% share of school milk business in Massachusetts.

Government lawyers wrote in the March 24, 1999 memorandum:

"The concentrated school milk markets here are conducive to coordinated interaction. Indeed, the simple elimination of a bidder in a concentrated school milk market can lead to higher prices or lower quality of service."

Massachusetts Ag Commissioner Worried About Concentration

Continued from Page 7

bidding. At that time, only one firm bid on the state contract. And no firms bid on any of the contracts for eight separate districts.

What better proof of diminished competition can antitrust officials want from Suiza's control of the Massachusetts and regional dairy processing sector? Post-Suiza, forget competition.

Ag Commissioner worried about concentration
Jonathan Healy, Commissioner of the Massachusetts Department of Food and Agriculture, is very worried about the "real consolidation of market power" taking place in the region's dairy industry.

Healy sees consumer prices rising with the lack of competition among fluid processors. He points to the irony of Suiza's opposition to the Northeast Interstate Dairy Compact. Suiza claimed that the Compact would cause higher consumer milk prices. But Suiza's ability to squeeze greater profit margins out of the region's consumers, in the absence of healthy competition, "... will make the Dairy Compact look like child's play," Healy believes.

Commissioner Healy also puzzles about the competitive dangers facing independent New England dairy producers supplying milk to Suiza. Will these farmers be forced to join Suiza's cooperative "partner" — Dairy Farmers of America (DFA)? DFA is the nation's largest milk cooperative and owns about one-third of the Suiza Fluid Milk Group — Suiza's fluid milk operations.

Even labor should be skeptical, Healy warns. He sees Suiza's strategy as closing milk plants in New England and trucking in increased amounts of packaged milk from distant states like Pennsylvania. Healy claims 44,000 Massachusetts jobs are connected to dairy processing/distribution.

In Healy's analysis, consumers, dairy producers and labor all lose as one firm consolidates New England's fluid milk industry — eliminating control, jobs ... and profits from the region.

Where's antitrust?

Suiza controlling 80% (or more) of Massachusetts' fluid milk processing/distribution and school milk volume begs review from antitrust officials. Suiza's

8 -- The Milkweed...September 2000

control of New England's dairy industry is not a theoretical debate to New Englanders, who are seeing lost jobs (due to plant closings), higher school milk costs, and fewer options for dairy producers to sell their milk. Recent quarterly profit statements by Suiza cite relatively low raw milk costs as reason for improved operating profits.

As noted, the legal precedents of Suiza's New

England market extend far beyond New England and milk. If the federal antitrust regulators allow Suiza's 80% market share to stand, this will become the "allowable concentration" which must be permitted in any food sector, anywhere in the country.

As New Englanders squirm under Suiza's tightening grip, citizens elsewhere should ponder the cold truth: As New England goes, so goes the nation.

Cheese, Milk Production Numbers Don't Square

Continued from Page 1

In July 2000, New York had 12,000 fewer cows than a year ago. But New York cheese plants produced more cheese this year. But New York produced no more whey. (Hint: MPC use reduces dry whey output, because it employs whey proteins.)

The cheese numbers don't add up

One plant in upstate New York is using MPC with the knowledge of New York Department of Agriculture & Markets. Regulators let this practice continue because "there is no standard of identity" for that plant's soft, Italian cheese.

However, since MPC does not fit the definition of milk, one puzzles how the plant can legally fail to list MPC as an ingredient on its product label.

In July, Wisconsin had 21,000 fewer cows than one year ago. But cheese production remains solid. The Upper Midwest beams with cheese inventories.

Out West they have more cows than one year ago. That explains some of the expanded cheese production, nationwide. But western cheese and nonfat dry milk output seem to be gaining faster than milk output. Some would argue that western cheese plants are adding more nonfat dry milk to cheese vats. But the American Dairy Products Institute just released a survey of 1999 nonfat dry milk utilization. Their surveys show that 22% less nonfat dry milk was used in cheese production last year, compared to 1998.

Part of the problem of illegal MPC use is that the wishes of the "big boys" are expected to prevail. Kraft, Leprino Foods, Borden Cheese, and Schreiber, belong to E. Linwood Tipton's National Cheese Institute, which is petitioning FDA to change the definition of milk so MPC can legally be used as an ingredient in the cheese vat. The current rush in using MPC is just

a little "premature hydration" by cheese makers excited about lowering protein costs by imported MPCs.

FDA looking the other way

According to the *Cheese Reporter*, Randy Elsberry of the Food and Drug Administration recently told processors in Idaho that no enforcement was being taken on use of ultra-filtered (UF) milk.

When a federal regulatory official conveys this message of "no enforcement" to a processor audience, it shouldn't be surprising that three trailer loads of UF milk per week come from New Mexico to the Leprino Foods plant at Waverly, NY or South Waverly, PA. (Pardon the confusion, the plant straddles the state border.) My sources tell me Leprino has been receiving this UF milk since September '99. The huge plant was just depooled from the Northeast milk order. What's that big construction at the Leprino plant up to?

There is a dangerous perception among regulators and others that this new MPC cheese making technology will soon be legal, barring political intervention. Some in industry ignorantly believe that any technological advances are good. The life support system for such an attitude is ignorance. Who benefits if such cheese making technology becomes legal? Do milk promotion tax-paying dairy farmers benefit from their dollars developing "alternate" cheese making processes? Do consumers receive equally nutritious cheese from UF technology? The cheese plants and New Zealand Dairy Board are the sole beneficiaries.

State and federal regulators could readily obtain proof of illegal MPC use by cheese plants if they wanted to. Instead, they are winking and nodding as the evidence builds.

John Bunting milks cows in Delaware County, New York.



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The Commonwealth of Massachusetts
COMMITTEE ON NATURAL RESOURCES AND AGRICULTURE
MASSACHUSETTS GENERAL COURT
STATE HOUSE, BOSTON 02133-1053

LOIS G. PINES
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May 27, 1998

REPORT BY THE
JOINT COMMITTEE ON NATURAL RESOURCES AND AGRICULTURE
ON THE OVERSIGHT HEARING ON THE
NORTHEAST INTERSTATE DAIRY COMPACT

The Joint Committee on Natural Resources and Agriculture held an oversight hearing on Tuesday, February 10, 1998, on the Northeast Interstate Dairy Compact (Compact). The purpose of the oversight hearing was to allow the Committee to hear the opinions of many interested parties, including farmers, dairy processors, consumers, and the public with respect to the Compact, its significance, and the real and putative impacts of the Compact on the lives of individuals who testified.

About this Report

What is the Northeast Interstate Dairy Compact?

The Compact is a regional milk pricing system that was ratified by the legislatures of all six New England states, and approved by the United States Congress. The General Court of the Commonwealth unanimously passed the Compact enabling law in 1993 (Chapter 370 of the Acts of 1993).

The avowed purpose of the Compact is to produce stability in the prices and supply of fluid milk that farmers in the Compact states sell, so that farmers can more accurately predict cash flow and expenses related to dairy farms. It is also designed to increase income to dairy farmers, in an effort to stem what is perceived as the escalating problem of dairy farm foreclosures in the Compact states. The Executive Office of Environmental Affairs has stated that the Compact is also intended to ensure a "...fresh, wholesome supply of *locally* produced milk."



Massachusetts Public Interest Research Group
29 Temple Place, Boston, MA 02111-1350 (617) 292-4800

TO: Committee on Natural Resources and Agriculture
FR: Deirdre Cummings, Consumer program Director
RE: Testimony in support of the Northeast Dairy Compact
2/10/98

My name is Deirdre Cummings and I am MASSPIRG's Consumer Program Director. MASSPIRG is a not for profit, nonpartisan consumer and environmental organization with 55,000 members across the state.

MASSPIRG is here today to testify in support of the Northeast Dairy Compact. The Compact serves to protect consumers from price gouging, encourage a local, diverse source of milk, and protect our environment by preserving dwindling areas of open space in the state.

The Dairy Compact is widely supported and was established by the approval of the 6 New England state legislatures (with three additional states, NY, NJ and Pennsylvania considering whether to join), the US Secretary of Agriculture, and Congress.

The Compact empowers New England consumers and farmers. In the long run, we hope the Compact will curb excessive profiteering by the processors and retailers, will lead to more consumer choice as it prevents further consolidation of the milk industry, and will halt the further migration of the industry out of the region.

In addition, one of the most important aspects of the commission is its authority to watchdog the milk industry and expose predatory market practices, price gouging and other abuses.

As you know, the federal government has set floor prices for milk for most of the last century. One of the goals was to make milk more accessible to the consumer. With larger milk processors and mega supermarket chains now intricately involved with delivering consumers milk, we see a new set of consumer problems.

Over the past 10 years the large milk processors and retailers have profited at the expense of the consumer and small farmers in the region.

For example, while today's consumer is paying more money for milk at the supermarket, local dairy farmers are making less money. Since 1981 the price consumers pay for milk has risen over 40% while the price the farmer receives has remained constant. The middlemen, the processors like Kraft/Philip Morris and large grocery chains like Shaw's are squeezing both the consumer and the farmer.

A 1991 General Accounting Office (GAO) report found that even when milk prices paid to farmers had decreased by 35% consumer prices at the supermarket remained the same. In general, for roughly the last decade, consumer prices have risen by 30% while farm prices have dropped to where farmers are being paid, in real dollars, what they were paid 20 years ago.

Further, in 1996, a USDA funded study by an economist at the University of Wisconsin found that Kraft Foods, owned by Phillip Morris, had manipulated cheese prices to drive down the price of milk from farmers and wholesale cheese. For every penny drop Kraft engineered on the thinly traded national Cheese Exchange, Kraft saved \$10 million a year in wholesale cheese and milk purchases. In late 1996 Kraft's actions caused a 25% drop in milk prices to farmers and at the same time the consumer saw no benefit on the supermarket shelves where prices held steady or dropped only a few percentage points.

A local example of price gouging took place in July of this past year when Shaw's Supermarket boosted their milk prices by 20 cents claiming the cause was the Compact, when in fact the Compact price was not paid to farmers until August.

For these reasons we feel strongly that the Northeast Dairy Compact should be maintained for the time being. We also feel that we should continue to monitor milk prices and the practices of the retailers and processors as well as any consolidation or migration pattern of area farms to determine if the Compact is successful in benefiting the consumer.



Gun Owners' Action League

37 Pierce Street, P.O. Box 567 - Northboro, MA 01532-0567
Phone: (508) 393-5333 - Fax: (508) 393-5222
Web site: <http://www.goal.org> - e-mail: staff@goal.org

Whereas, negotiations to establish the Northeast Interstate Dairy Compact began in 1988 and within five years had been ratified and signed into law with Massachusetts doing so in 1993, and;

Whereas the United States Congress has consented to the Compact and the Secretary of Agriculture after seeking public comment for nearly six months determined there was a compelling public interest in preserving small dairy farms as an essential part of the character and culture of our region, and;

Whereas, the Massachusetts Department of Food and Agriculture has seen substantial evidence that the Compact is a critical tool in stabilizing the Bay States Dairy Industry, and;

Whereas, there are 330 dairy farms covering nearly 100 Massachusetts communities which encompasses over 133,000 acres of environmentally sound, natural and scenic open space, and;

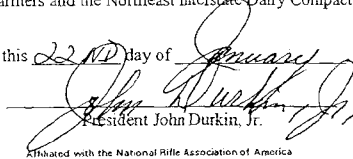
Whereas, the threat of discontinuance of the Compact would cause the loss of more than 70,000 acres of open space and wildlife habitat, and;

Whereas, dairy farmers have always represented the New England tradition of family businesses that bring fresh, safe, wholesome produce to the consumers, and;

Whereas dairy farmers have historically been partners with sportsmen, hunters, fishermen and all who enjoy both the shooting sports and the outdoors;

Now therefore be it resolved that the Board of Directors of Gun Owners' Action League, Inc., representing our individual, club and association members throughout the commonwealth do hereby proudly support the dairy farmers and the Northeast Interstate Dairy Compact by unanimous vote.

Signed this 22ND day of January 1998.


President John Durkin, Jr.

Affiliated with the National Rifle Association of America



Massachusetts Audubon Society

Legislative Affairs
Six Beacon Street, Suite 1025
Boston, Massachusetts 02108
(617) 523-8448

Testimony on
the Northeast Interstate Dairy Compact
Presented to the Joint Committee on Natural Resources and Agriculture
on February 10, 1998
by Marsha Westropp, Legislative Liaison

The Massachusetts Audubon Society strongly supports the Northeast Interstate Dairy Compact. Maintaining the compact is wise public policy that will enable the dairy industry to continue to operate in the state, assuring a local supply of milk and preserving thousands of acres of prime agricultural land.

Farmland provides valuable open space; serves as aquifer recharge areas for water supplies; offers valuable recreational opportunities such as hiking, fishing, cross country skiing, and bird watching; maintains the state's scenic character; provides wildlife habitat; and guarantees consumers a local supply of an important food source—dairy products.

In Massachusetts, the majority of dairy farms are small operations run by families. These dedicated farmers continue to maintain their farms during tough economic times and as a consequence provide us with a fresh supply of milk.

Dairy farmers are stewards of 133,000 acres of land in the Commonwealth. Since 1991, 30,000 acres of land formerly in dairy farming have been lost to development. Overall, Massachusetts has lost over ninety per-cent of its dairy farms. We can afford neither the loss of additional open space nor the negative economic consequences of such loss.

The loss of local agriculture burdens Massachusetts consumers in a state that imports 85% of its food. It costs \$.30 to \$.40 per gallon more in trucking costs to import milk from the midwest than to produce it locally. Economically, the Dairy Compact makes sense and should be continued.

Thank you for the opportunity to present this testimony.

Massachusetts Audubon Society is the largest conservation organization in New England, concentrating its efforts on protecting the nature of Massachusetts for people and wildlife. The Society protects over 27,000 acres of conservation land, conducts nature education programs for 200,000 schoolchildren annually, and advocates for sound environmental policies. Across the state, Massachusetts Audubon Society operates 36 wildlife sanctuaries that are open to the public and serve as the base for its conservation, education, and advocacy efforts.



JANE SWIFT
GOVERNOR

WILLIAM D. O'LEARY
SECRETARY

HOWARD K. KOH MD, MPH
COMMISSIONER

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

July 16, 2001

Hon. Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Chairman Leahy:

As the Director of the Massachusetts Women, Infants, and Children Nutrition Program (WIC) and the Massachusetts consumer delegate to the Northeast Interstate Dairy Compact Commission, I fully support the Northeast Dairy Compact. The WIC Program has benefited from the Compact because the Compact has helped to secure a local supply of fresh, wholesome milk to consumers at a reasonable and stable price. The Compact Commission has gone out of its way to accommodate not only the Massachusetts WIC Program but also the other State WIC Programs in New England. The benefits extend well beyond the WIC Program to include all consumers, and sustain the quality of life that Massachusetts consumers support as well.

The Massachusetts WIC Program serves approximately 130,000 women, infants, and children statewide and accounts for approximately 45 percent of New England WIC participants. Milk is a critical component in the nutritional needs of the families that WIC serves. Milk purchases account for some 20 percent of program food expenditures. Any increase to milk prices would force our WIC Program to decrease the number of participants it can serve.

The Compact Commission has worked hard to assure the WIC Program a fresh supply of milk at stable prices. The Commission has taken strong steps to protect the WIC Program and the School Lunch and Breakfast Program from any impacts due to the Compact. In the four years since its inception, the Compact has reimbursed the Massachusetts WIC Program an average of \$519,785 a year. Because of this, our WIC Program has been able to serve approximately 5,875 more participants with fresh wholesome milk without added costs.

Together with Massachusetts, the New England WIC state WIC programs have received reimbursements from the Compact that totals \$10,807,668 in the period from 1997 through 2000.

The Compact helps to maintain a local supply of fresh milk in Massachusetts. To do so, the Compact must secure the regional New England milk shed. Without the Compact, this milk shed will dwindle and milk

will be brought in from greater distances and at greater costs. Such increased costs, estimated to be in the range of 18 to 45 cents per gallon, would seriously hurt the Massachusetts WIC Program and, indeed, all New England WIC programs. With these higher costs of milk, our WIC programs will be forced to serve fewer women and children.

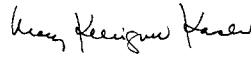
The Compact Commission also took the initiative to reimburse school districts for any increased costs to their School Lunch or Breakfast Programs. This is significant because the United States Congress required reimbursement to the WIC Program but left out reimbursement to School Lunch and Breakfast. The Massachusetts delegation to the Compact brought this to the attention of the Commission, and it took immediate steps to reimburse School Lunch and Breakfast Programs as well. Thus far, the Commission has returned over \$672,367 dollars to New England schools districts.

As the consumer representative, I have been concerned about an increase in milk prices resulting from Compact actions to maintain stable milk supply for Massachusetts. According to a study performed by the Food Marketing Policy Center at University of Connecticut, retail prices increased by 29 cents when the Compact initially came into effect. This study found that the Compact accounts for only 4.5 cents of the increase, with other factors accounting for the remainder¹.

The Northeast Interstate Dairy Compact has worked well to serve Massachusetts consumers. Beyond the consumer, the Compact has offered a market oriented solution to stabilizing milk prices for farmers and the intangible benefit of maintaining the open spaces that Massachusetts' citizens so greatly enjoy.

Thank you very much for your attention. If you have any further questions, please do not hesitate to contact me.

Sincerely,



Mary Kelligrew Kassler
Director
Massachusetts WIC Program

cc: Hon. Edward M. Kennedy

¹ The Public Interest and Public Economic Power: A case Study of the Northeast Dairy Compact; Catterill and Franklin, Food Marketing Policy Center, Department of Agriculture and Resource Economics, University of Connecticut, May 2, 2001



ARGEO PAUL CELLUCCI
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20 October 2000

Thomas F. Reilly, Attorney General
Office of the Attorney General
One Ashburton Place, 20th Floor
Boston, MA 02108

**RE: Suiza Foods Corporation
Massachusetts Milk Procurement**

Dear Attorney General Reilly:

Please accept this letter as a joint notification by the Executive Office for Administration and Finance and the Massachusetts Department of Food and Agriculture (Food and Agriculture) expressing concern regarding market concentration of milk processing facilities in the Commonwealth.

In three earlier letters to your office (copies enclosed), Food and Agriculture communicated concerns regarding Suiza Foods Corporation's (Suiza or Suiza Foods) aggressive market consolidation of fluid milk processing companies in Massachusetts and New England. In those letters, Food and Agriculture expressed several concerns, one of which was the impact of such consolidation on statewide school milk procurement.

As Suiza Foods has been progressively consolidating the New England fluid milk processing industry, Food and Agriculture has raised the specific concern of the



Thomas F. Reilly, Attorney General
20 October 2000
Page 2 of 2

breadth of market consolidation in the supermarket, convenience store, and institutional segments. Among those concerns listed in Food and Agriculture's 9 February 1999 letter, Suiza's acquisition of Garelick Farms, West Lynn Creamery, Nature's Best, and Meola's Mt. Wachusett Dairy are of particular local interest. These independent companies were all competing among themselves in the institutional segment of the fluid milk market. In the aforementioned earlier letters, Food and Agriculture also identified the potential for any one company to dictate milk prices to school districts. The experience of recent statewide milk bidding demonstrates that the consolidation of milk processing has reduced the number of bidders and increased the costs of milk procurement, thereby confirming our worst fears.

Consider the recent history of the Commonwealth's procurement of milk through the last two Requests for Responses (RFR): the first initiated in February 1998 and the second initiated in June 2000. In February 1998, the Operational Services Division's Dairy Procurement Management Team (procurement team) issued a Request for Response (RFR98) for a Statewide Contract for Dairy Products. The procurement team received six responses from six milk processors, namely: Bliss Brothers Dairy, Crowley Foods, Guida's Dairy, H.P. Hood, Meola's and West Lynn Creamery. In that process, bid prices were submitted and then resubmitted in response to the procurement team's request for a best and final offer. The procurement team then successfully negotiated a 1998 contract with West Lynn Creamery, stipulating prices almost 11.7% lower than West Lynn's original bid, and signed a Statewide Contract with West Lynn.

In June 2000, the procurement team issued a new Statewide Request for Response (RFR2000) for Dairy Products (#GRO-13). The procurement team went to great lengths to encourage competition among potential bidders pursuant to 801 CMR 21.00. This included dividing the Commonwealth into eight regions to allow smaller dairies to submit responses. The procurement team also notified all Massachusetts licensed milk dealers of the posting of the RFR on Operational Services' Internet site, Comm-PASS, in a further attempt to stimulate competition.

Despite affirmative actions to stimulate bids and in stark contrast to the RFR98 process, the procurement team was very disturbed to receive only a single response—Suiza GTL, LLC d.b.a. Garelick Farms of Lynn (formerly West Lynn Creamery)—for seven of the eight regions and none for the eighth. Furthermore, the procurement team attempted to negotiate with Suiza in the RFR2000, as it did with RFR98, because the bid prices were, on average, 16% higher than the 1998 contract price. Suiza, however, steadfastly refused to negotiate prices, even though volume would be increasing dramatically over the course of the two-year statewide contract. Suiza's response to the procurement team's request is a clear indication of its ability and desire to

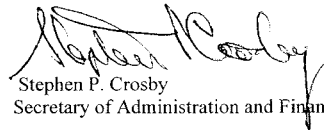
Thomas F. Reilly, Attorney General
20 October 2000
Page 3 of 3

exercise its monopolistic market power. Food and Agriculture's earlier warnings have been realized. Suiza possesses the ability to hold the line on milk prices to be paid by both state agencies and by local school districts, which can least afford such dramatic increases.

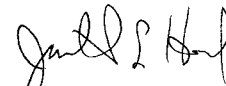
Please review our concerns at your earliest convenience, as we would like to meet with your appropriate staff in order to discuss this troubling situation. To schedule the meeting please contact Tricia McKim, Procurement Team Leader for Food and Groceries, at (617) 720-3132. In the interim, if you need any further information, please contact either Harold R. Fisher, Legal Counsel for Operational Services, (617) 720-3325 or Lawrence E. McCormick, General Counsel for Food and Agriculture, (617) 626-1705.

Thank you for your continued attention to this matter.

Sincerely,



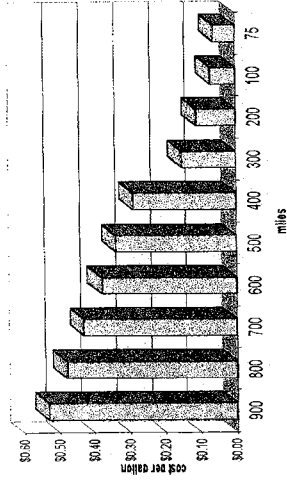
Stephen P. Crosby
Secretary of Administration and Finance



Jonathan L. Healy, Commissioner
Massachusetts Department of
Food and Agriculture

cc: Joint Committee on Commerce and Labor
Joint Committee on Natural Resources and Agriculture
Philmore Anderson III, Purchasing Agent
Leonard L. Lewin, Governor's Chief Legal Counsel

Cost of Transporting Milk to Massachusetts



MILEAGE TO DAIRY FARMS

OUTSIDE CURRENT "MILKSHED":

Lancaster County, PA:	350 miles	20 cents
Buffalo, NY	465 miles	32 cents
Central MI	850 miles	50 cents
Wisconsin Dairylands	1,200 miles	67 cents

source: Massachusetts Department of Food and Agriculture, February 2001



COMMONWEALTH OF MASSACHUSETTS
 EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF FOOD AND AGRICULTURE
 251 CAUSEWAY STREET, SUITE 500, BOSTON, MA 02114-2151
 TELEPHONE: (617) 626-1700 FAX: (617) 626-1850

JANE SWIFT
 Governor

July 6, 2001

BOB DURAND
 Secretary

JONATHAN L. HEALY
 Commissioner

Daniel Smith
 Executive Director
 Northeast Dairy Compact
 64 Main Street, Room 21
 Montpelier, Vermont 05602

Dear Mr. Smith:

Massachusetts has seen a decline in the number of dairy farm certifications since the beginning of the Northeast Dairy Compact. However, the raw numbers do not tell the entire story. Attrition occurs in any business. Some firms go out of business, others enter into business, and still others consolidate or change product lines.

On July 1, 1997, Massachusetts had 332 dairy farms. On the same date in 2001, we now have 261 or a net loss of 71 farms. Actually, 84 dairy farms went out of operation and thirteen new dairy operations began, for the net loss of 71 farms.

The 13 new dairy farms since the Compact came into being, is much higher than in any previous 3-year period. Also, ten other farms were consolidated into other existing farms within the state. In addition, four farms that went out of business in Massachusetts actually moved to adjoining states and are still in dairy and still operating in the New England region.

Massachusetts is a very diverse state agriculturally, and 40 farms have transitioned out of dairying to other agricultural enterprises. Thirty of these ventures are directly related to the dairy industry. They include the raising of replacement heifers, as well as growing silage, feed grain and hay. The remaining ten went into other agricultural venues such as vegetable production.

Only 24 dairy farms went totally out of farming during this period. The reasons varied but included selling the farm for development, retirement, death and other business decisions.

The Compact has helped stabilize the dairy industry in Massachusetts. It has served as an encouragement for farmers to stay farming and offered the incentive to new farmers to try. Without the Compact the attrition rate would have been precipitous.

Sincerely,

Jonathan L. Healy
 Commissioner



02/09/2001 23:13 FAX
04/24/01 18:18 FAX

02
003/003



JANE SWIFT
GOVERNOR

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133
(617) 727-5600

April 20, 2001

The Honorable J. Dennis Hastert
Speaker, United States House of Representatives
2263 Rayburn House Office Building
Washington, D.C. 20515

Dear Speaker Hastert:

I am writing to seek your support for the expansion and permanent authorization of the Northeast Dairy Compact. This agreement is currently in place among the six New England states and enjoys the support of consumers, environmentalists and sportsmen, as well as the agricultural community. The Compact maintains a local supply of fresh milk, and in the process, preserves rural communities as well as thousands of acres of prime agricultural land.

The agreement provides a living for farmers by assuring them of a minimum price, and it protects working families from price fluctuations and processing monopolies. Beyond these economic considerations, the Compact also has the benefit of preserving open space that is rapidly disappearing here in the Northeast.

The Compact works for Massachusetts and all of New England. It has stabilized prices and preserved the family farm, without the need for government subsidies. The agreement has been such a success for our region that eleven northeastern states have separately voted to join into the Compact. Thus far, Congressional authorization has only been extended to the six New England states and only for limited periods of time.

I recognize that you appreciate the importance of the American family farm, and I know that you understand how America's farmers sometimes struggle to make ends meet. I would encourage you to allow the expansion of the Northeast Dairy Compact between the northeastern states, and I also ask that you grant the Compact permanent authorization.

Sincerely,

Jane Swift

The Massachusetts Dairy Index

Our Disappearing Farms

Massachusetts dairy farmland, 1986:	183,822 acres
Massachusetts dairy farmland, 2001:	113,636 acres
Decline in Massachusetts dairy farmland 1986-2001:	-38%
Number of dairy farms in Massachusetts 1986	642
Number of dairy farms remaining in Massachusetts 2001:	261
Decline in number of Massachusetts dairy farms 1986-2001	-60%
Avg. ratio of Massachusetts local revenues to expenditures, farmland:	1: 0.4
Avg. ratio of revenues to expenditures, residential land (same towns)	1: 1.09

Economic Stress on Dairy Farmers

Percentage of Massachusetts dairy farms that are family-owned	97%
Average number of cows per farm 2001:	70
New England dairy farms under moderate or severe financial stress, 1995:	54%
New England dairy farms in healthy financial condition, 1995:	38%
Farms projected to be in healthy condition under Northeast Dairy Compact:	64%
Average number of hours worked by farmers, per week:	Up to 90
Average farmer hourly wage:	As little as \$3.65
Number of days per year cows must be milked:	365
Number of vacation days and holidays for farmers:	Few to none

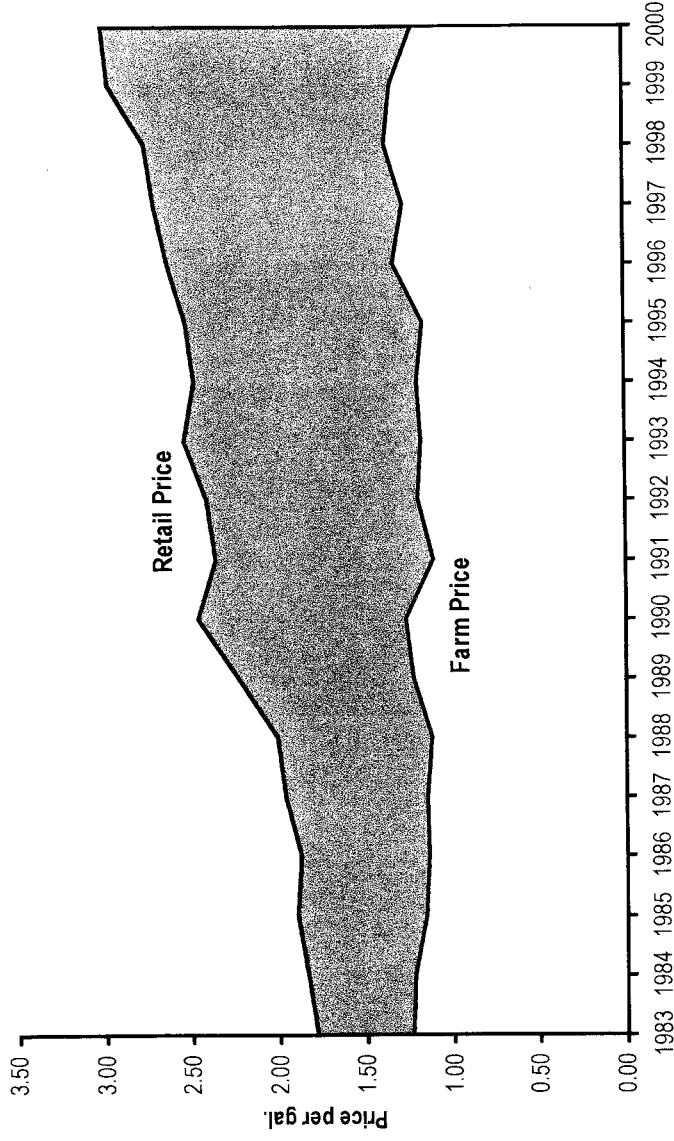
Consumers and Their Milk

Share of liquid milk consumed in Massachusetts that comes from farms in New England or New York:	Nearly all
Cost of transporting milk within the region (200 miles), per gallon:	10¢
Cost of transporting milk from Michigan or Wisconsin, per gallon:	50-67¢
Maximum retail milk price increase resulting from Compact, per gallon:	6¢
Difference between price Massachusetts consumers pay for New England milk under Compact and price they would pay for Midwest milk:	+46-60¢
Milk price increase for Women, Infants, and Children (WIC) Program due to Compact, per gallon:	0¢
Milk price increase for the School Lunch Program due to Compact, per gallon:	0¢

Positive Impact of the Dairy Compact

New dairy farms entering per year before the Compact (July 94-June 97):	3.7
New dairy farms entering per year after Compact (July 97-February 00):	7
Number of new dairy farms in Massachusetts since the Compact	21
Avg. annual Compact payment to Massachusetts dairy farmer in 2000	\$16,000
Cost of Compact to federal, state and local governments	\$0

Farm and Retail Milk Price Spread



Source: Massachusetts Department of Food and Agriculture, February 2001.

How the Northeast Dairy Compact Benefits Northeast Consumers

1. Maintains access to fresh, wholesome milk from nearby farms in the Northeast Compact region milkshed.
2. Provides a safeguard against the market power of large national milk processing companies and supermarket chains. It is these companies who ultimately have the most impact on the price paid for milk in the store, not dairy farmers or the Northeast Dairy Compact. *National statistics indicate that the dairy farmer received only 37 cents of every dollar spent on bottled milk in 1997. The remaining 63 cents went to processors and retailers who enjoy far greater market power than do dairy farmers.*
3. Keeps the politics out of stabilizing dairy farm incomes in low-price years. The Compact is an on-going counter-cyclical safety net for dairy incomes and our Northeast milk supply.
4. Maintains jobs, tax base and local economic activity here in the Northeast. This includes everything from the nearby bottling plant that processes the milk, to the trucker who moves it from farm to bottling plant to store, to the entire dairy farm business support network for milk marketing, feed/supplies and credit.
5. Farmers are indeed the original environmentalists. Land in dairy farming is a very significant variable in the environmental equation in certain parts of the rural Northeast in terms of open space, wildlife habitat and recycling of carbon dioxide from the atmosphere.
6. Northeast dairy farmers operate on a very tight margin. In the 1996-2000 period, the average Northeast dairy farmer earned 4.9% on his equity invested in the farm business...far less and at greater risk than many other alternatives for investing his/her equity. The average Northeast dairy farmer earned \$13 per hour for a "job" that demands 24-hour responsibility 365 days a year with no conventional benefits such as those enjoyed by most employees. (Source: **2000 Northeast Dairy Farm Summary**, Northeast Farm Credit, forthcoming.)
7. "Sends a message" to the dairy farming community, and indeed all farmers, that they are a valued part of the Northeast community and quality of life. As a group, dairy farmers do not earn a high monetary standard of living. *The Northeast Compact has become a highly visible community commitment to the 4.6 million acres of open space and thousands of jobs provided by our region's dairy farmers.*

The Northeast Farm Credit Associations

Contact Person: Bob Smith, Northeast Farm Credit, P.O. Box 9061, Springfield, MA 01102 (413-821-0212)
Source: Jim Putnam, First Pioneer Farm Credit, ACA May 01

Chairman LEAHY. Thank you, Commissioner, and thank you for taking the time to be here.

I understand Senator Edwards wished to introduce the next witness. Am I correct?

Senator EDWARDS. Yes, Mr. Chairman.

Chairman LEAHY. I yield to you.

Senator EDWARDS. And I had a brief statement, if I have time for that.

Chairman LEAHY. You can make the statement; that would have been on the time you had earlier. I know you were at another hearing and couldn't, so I will yield to you for that.

STATEMENT OF HON. JOHN EDWARDS, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator EDWARDS. Thank you very much, Mr. Chairman.

First, I want to welcome Harold Brubaker, Speaker Brubaker, who was the Speaker of our House of Representatives in North Carolina.

Mr. Speaker, we are glad to have you here and glad to have your testimony. I know this is an issue that you care deeply about and understand in great detail. We appreciate you taking time and sharing your expertise with the Senate on this issue.

Those of us who have represented agriculturally strong States lament the current crisis in agriculture. One particular concern I have talked about often is the extraordinary problems our dairy farmers face. Low prices are forcing our dairy farmers out of business.

North Carolina, which is what I am concerned about, is losing its dairy farms at an alarming rate. Ten years ago, there were 810 dairy farms in North Carolina. As of January of this year, that number has plummeted to 422. Almost half have been lost during that time.

And we are losing more than just a reliable source of milk. Last year, North Carolina's dairy industry generated \$600 million in economic activity, but that income will vanish as we lose more and more farms. That is an economic base that we in North Carolina cannot afford to lose.

The measure before us today is, in my judgment, the best tool to help our dairy farmers. I am sure we will hear the same arguments today, and some have already been stated, that we have heard for years: compacts raise the price of milk, compacts encourage over-production; they are milk cartels and they are unconstitutional. Let me just talk about a few of those.

The reality is compacts provide a steady supply and reliable price for consumers. This is especially important in my State of North Carolina, which is a milk-deficit State. Furthermore, compacts do not encourage over-production. Through financial incentives, the Northeast Dairy Compact encourages farmers to maintain current production levels.

Compacts are not cartels. Consumer representatives on the Northeast Dairy Compact Commission have just as much to say about the price paid to farmers as the farmers do. And as I am sure the chairman knows very well, the courts have consistently affirmed the constitutionality of dairy compacts.

Another argument I am sure we will hear today is compacts are harmful to our milk processors. Lobbyists for the dairy industry would have you believe milk processors are united against the Dairy Compact. That is not the case. In fact, in North Carolina two major milk processing plants are endorsing the Southern Dairy Compact.

Recently, Jim Green, the vice president of Meola Milk and Ice Cream Company, in New Bern, North Carolina, told the House Judiciary Committee that the decline of North Carolina's dairy industry has forced his company to look elsewhere for milk. In fact, since 1996, Meola has paid more than \$1.4 million in import charges for raw milk. That is more than \$1 million in freight and hauling charges that this locally owned company has to pay to bring in milk from another State.

Meola is the only remaining independent milk processing plant in my State. It can't continue to absorb these high import charges. Those import charges do nothing but drive up the price consumers pay for their gallons of milk.

Milkco is another North Carolina processing plant that supports this measure. Charles Gaither, president of Milkco, initially opposed the Southern Dairy Compact. However, after he has seen the success that has been created by the Northeast Compact, Mr. Gaither said that he now believes that the Southern Dairy Compact is the only answer to the volatile pricing conditions for raw milk.

Last week, I met with a group of dairy farmers. Jeff Bender, of Norlina, North Carolina, was a member of that group. Jeff knows that without a Southern Dairy Compact the volatility of milk prices will drive him and others out of business, as they have been continuously over the course of the last 10 years. He will be forced to lay off those who work for him, and the small rural town of Norlina—towns like that exist all over our State, as the Speaker well knows—will lose a huge part of its economic base.

Jeff should not have to give up his business or his way of life. Meola shouldn't have to depend on out-of-state farmers for its raw milk. North Carolinians shouldn't have to deal with an unsure supply and volatile milk prices, and my State shouldn't be forced to lose millions of dollars in economic activity that these farms generate for us. We have the tool to help these very hard-working men and women. We have answered the questions and laid to rest the concerns. It is time to pass this measure.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much, Senator Edwards.

Just because of scheduling conflicts, what we will do is we will have Mr. Brubaker's testimony and then we will recess until two o'clock this afternoon and come back to the hearing at that time. I mention this so that everybody can adjust schedules accordingly.

Mr. Brubaker?

STATEMENT OF HON. HAROLD BRUBAKER, STATE REPRESENTATIVE, STATE OF NORTH CAROLINA, ASHEBORO, NORTH CAROLINA

Mr. BRUBAKER. Thank you, Mr. Chairman. Senators, it is great to be with you today.

My name is Harold Brubaker, a member of the North Carolina House of Representatives for 26 years. I am pleased and honored to be here today before this committee and its many distinguished members to speak in favor of proposed legislation reauthorizing and extending the Northeast Interstate Dairy Compact and granting consent to the formation of a Southern Dairy Compact.

For the Southern States which are trying to form a compact, much is at stake. Family farmers in the South are threatened with the distinct possibility of extinction. In 1974, there were 1,646 dairy farms operating in North Carolina, and as the Senator from North Carolina said, today there are 427.

North Carolina and much of the South has experienced a drastic decrease in milk production since the 1990's. While the Nation's milk production increased 13 percent from 1990 to the year 2000, with 2000 marking the fourth consecutive year of record-breaking milk production, 7 of the top 10 largest production decreases in the United States since 1990 occurred in Southern States. These Southern States lost between 25 and 35 percent of their milk production in the last decade alone. Establishing regional compacts will benefit both farmers and consumers, and protect the fragile rural ecology that dairy farms provide.

Opponents of dairy compacts forget that the milk market has been regulated by the Federal Government since the 1930's. They forget that in the era of mega corporations, consolidating agribusinesses, and allegations of price gouging and widening retail and processor profit margins, regional and State milk commissions comprised of consumer representatives and government officials offer the public recourse and scrutiny into milk prices that are fair to consumers and farmers.

This is the framework of the Compact Commission, and perhaps some forget that our country was founded on Federalist principles, that States and regions have sovereign rights, as do their citizens and elected officials who are concerned about the long-term viability of a distinctly regional product.

Yes, milk is a regional commodity, bulky, perishable, and expensive to transport. In order to protect this regional commodity which forms the backbone of many rural communities, it is altogether fitting and proper that regional compacts be used to regulate in the public interest.

There are currently 35 States interested in compact legislation. No less than 25 States, their legislatures, my legislature and myself have voted to ratify language authorizing our participation in a dairy compact. I ask that Congress give due deliberation to our collective voices.

This legislation also calls to stake a fundamental issue, the ability of States to craft regional and State-based initiatives to solve problems inadequately addressed, in some cases, at the Federal level. Since 1990 alone, Arkansas has lost 36 percent of its milk production. In light of these numbers, would any member say that State leaders do not have a responsibility to their citizens to use their State governing body to formulate solutions?

The principles of federalism are the guiding touchstone behind the value of our political system, and it is in these principles that dairy compact legislation lies. Local experimentation by States are

in the finest tradition of a Constitution that embraces federalism. Through State program experimentation, new ideas can be tested and redefined. Programs and initiatives can percolate up to the Federal level where, if successful, their innovative techniques can be applied. Congress should be hesitant to choke such an experiment before it has had a chance to fail or succeed on its own merits.

Since the original six New England States passed compact legislation in 1996, well over half the country has moved toward embracing the idea of regional compacts for control of regional commodities. The Compact Clause of our Constitution anticipates the use of State instrumentalities, like compact commissions, through which matters of regional concern may be addressed through policies shaped by regional values and expertise.

We must keep in mind that there are limits to what can be achieved through uniform national regulation, especially when dealing with a regional commodity such as milk and milk production that by its very nature impacts each region of the country differently. Regional initiatives under the Compact Clause allow States to furnish a unique yet viable mechanism to respond to regional concerns and values. Congress should not forget this when discussing the dairy compact legislation.

As a colleague in the State Senate told me 1 day, Senator, Madison had a cow behind his house.

Thank you for your time and attention.

[The prepared statement of Mr. Brubaker follows:]

STATEMENT OF HAROLD BRUBAKER, STATE LEGISLATOR, NORTH CAROLINA

My name is Harold Brubaker. I am a state legislator from North Carolina. I am pleased and honored to be here today, before this committee and its many distinguished members, and to speak in favor of proposed legislation reauthorizing and extending the Northeast Interstate Dairy Compact and granting consent to the formation of a southern dairy compact.

For the southern states which are trying to form into a compact—much is at stake. Family farmers in the south are threatened with the distinct possibility of extinction. In 1974, there were 1,646 dairies operating in the state of North Carolina. Today, low milk prices and volatile markets have reduced these numbers to a total of 427. During the 1990's, milk price volatility resulted in the accelerated loss of over 400 dairy farms in that decade alone. And these trends are not isolated to North Carolina—much of the south has experienced dramatic decreases in milk production since the 1990s. While the nation's milk production increased 13% from 1990 to 2000—with 2000 marking the fourth consecutive year of record-breaking milk production, seven of the top 10 largest production decreases in the United States since 1990 occurred in southern states. These southern states lost between 25 and 35% of their milk production in the last decade alone.¹

Establishing regional compacts will benefit both farmers and consumers. Compacts also benefit the public interest by assuring a stable supply of fresh, regional milk and help to support the now fragile rural ecology that dairy farms provide. It is time to dispel the myth that compacts are government sponsored price fixing cartels—nothing could be farther from the truth. Opponents of dairy compacts forget that the milk market has been regulated by the government since the 1930's. They forget that in the era of mega-corporations consolidating agri-businesses and allegations of price gouging and widening retail and processor profit margins, regional and state milk commissions comprised of consumer representatives and government officials offer the public recourse and scrutiny into milk prices that are fair to consumers and farmers. That is the framework of the compact commission. And perhaps they forget that our country was founded on federalist principles—that states

¹ Those states in descending order of highest production loss are: Tennessee, Arkansas, Alabama, Mississippi, Missouri, Kentucky and Louisiana (data and USDA Milk Marketing Administrator—Central Order)

and regions have sovereign rights, as do their state citizens and elected officials, who are concerned about the long-term viability of a distinctly regional product. Even though the Mid-West would no doubt love to supply the entire country with fluid milk—milk is a regional commodity: bulky, perishable, and expensive to transport. In order to protect this regional commodity, which forms the backbone of many rural communities, it is altogether fitting and proper that regional compacts be used to regulate in the public interest. There are currently 35 states interested in compact legislation. No less than twenty-five states, their legislatures, my legislature, and myself have voted to ratify language authorizing our participation in a dairy compact. I ask that Congress give due deliberation to our collective voices.

This legislation also calls to stake a fundamental issue: the ability of states to craft regional and state-based initiatives to problems inadequately addressed at the federal level. Since 1990 alone, Arkansas has lost 36% of its milk production. In light of these numbers, would any member say that state leaders do not have a responsibility to their citizens to use their state governing body to formulate solutions? The principles of federalism are the guiding touchstone behind the value of our political system and it is in these principles that dairy compact legislation lies.

Local experiments by states are in the finest tradition of a Constitution that embraces federalism. Through state program experimentation, new ideas can be tested and refined, programs and initiatives can percolate up to the federal level, where if successful, their innovative techniques can be applied. Congress should be hesitant to choke such an experiment before it has had a chance to fail or succeed on its own merits. And, the results for dairy compacts are quite clear. Since the original six New England states passed compact legislation in 1996, well over half the country has moved toward embracing the idea of regional compacts for control of regional commodities. The compact clause of our constitution anticipates the use of state instrumentalities, like compact commissions, through which matters of regional concern may be addressed through policies shaped by regional values and expertise. We must keep in mind that there are limits to what can be achieved through uniform national regulation, especially when dealing with a regional commodity (such as milk and milk production) that by its very nature impacts each region of the country differently. Regional initiatives under the Compact Clause allow states to furnish a unique yet viable mechanism to respond to regional concerns and values. Congress should not forget this when discussing dairy compact legislation.

Thank you for your time and attention.

Chairman LEAHY. Thank you. I can't add to that.

We will stand in recess until two o'clock. Thank you.

[Whereupon, at 12:10 p.m., a luncheon recess was taken.]

[The committee reconvened in afternoon session at 2:17 p.m., Hon. Charles Schumer presiding.]

Senator SCHUMER [presiding]. The hearing will resume, and we want to apologize to the witnesses. Because of all sorts of scheduling and other problems, you have had to wait, and we appreciate it.

Let me introduce each of the witnesses. We have the Honorable Jonathan Healy, who is the Commissioner of Agriculture of the Commonwealth of Massachusetts; the Honorable Harold Brubaker, a State Representative from the State of North Carolina, from Asheboro; Lois Pines, a former Massachusetts State Senator and Polly Trotenburg's former boss. Polly is my legislative director. Welcome.

We have Dr. James Beatty, who is an economist from LSU, in Franklinton, and we have Richard Gorder, of the Wisconsin Farm Bureau.

With unanimous consent, each witness' entire statement can be read into the record, and we will ask each witness to try to keep their remarks to 5 minutes. We are up to Ms. Pines. Thank you very much. I didn't realize that the first two had spoken.

**STATEMENT OF LOIS G. PINES, FORMER MASSACHUSETTS
STATE SENATOR, NEWTON, MASSACHUSETTS**

Ms. PINES. Thank you very much, Senator Schumer. I am here today to tell the story of my experience when I was a Massachusetts State Senator with regard to the Northeast Dairy Compact.

Although I speak in opposition today to Senate 1157, I was once a supporter of the Compact. When opponents tried to obtain repeal of Massachusetts' membership in the Compact, I played a role in preserving it. Yet, since that time the evidence has convinced me that the Compact has not helped prevent the loss of family farms and it has hurt Massachusetts and New England consumers, despite the Compact supporters' claims to the contrary.

In my opinion, these failures of the Compact are more than enough reason to replace it with more effective programs to help preserve the family farm and preserve open space that do not have so many negative impacts on the general public.

In February 1998, together with my House Chair of the committee that I chaired on the Senate side, we convened an oversight hearing in the Massachusetts Legislature about the Compact, which had been in effect for only 7 months. Over and over again, Compact proponents assured us that consumers would not be hurt and that the Compact would save family farms.

After weighing the limited evidence that was available at that time, I decided to give the Compact the benefit of the doubt, but I insisted that the Compact be revisited after more evidence was available. The committee report that I signed supporting the retention of the Compact at that time stated, in addition, "If the Compact does not ameliorate the current trend of farm foreclosures and farmers leaving the dairy business, then the long-term proposed benefits of the Compact will have failed."

My reluctant decision in 1998 to not oppose the Compact has disturbed me in view of what we now know about the impacts of the Compact. Looking back, I can see that the claims made by Dairy Compact supporters have had two debilitating impacts on State and Federal policy processes.

One, they misled many, many lawmakers in Congress as well as in State legislatures, including myself, and persuaded them to mistakenly give their support to dairy compacts. Two, they have diverted lawmakers' attention from developing and implementing policies that could really keep small dairy farmers on the land, generally protect consumers, and effectively preserve open space in rural New England.

When Compact supporters came to me as a State Senator for help in advancing their agenda, they said "The Compact is the only way to stop the loss of dairy farms and protect irreplaceable open space." Now, however, we know that the Compact has not even reduced the loss of dairy farms. The American Farm Bureau Federation surveys have shown that more dairy farms were lost in New England since the Northeast Dairy Compact began in July 1997 than in the 3 years prior to the Compact.

I would note that Commissioner Healy's chart and numbers, although they are misleading, basically say the same thing. The number of farms have reduced since we instituted the Compact. This has grave implications for open space preservation, since it is

difficult, if not impossible, to reduce the rate of loss of dairy farmland without first reducing the loss of dairy farms.

In response to the obvious question of how can one raise dairy farmers' milk prices without hurting consumers, I was even told by Compact supporters that the Compact would somehow stabilize consumer prices and even keep them lower than they would have been in the absence of the Compact. In hindsight, I believe I was naive to believe their economic hocus-pocus that essentially says that more is less.

There is substantial evidence available to prove that increases in farm milk prices will lead to increases, not decreases, in retail milk prices. No amount of smoke and mirrors can hide the fact that the Compact price increases have been shouldered by consumers. That is why national consumer groups such as the Consumer Federation of America, headed by your former colleague Senator Metzenbaum, absolutely oppose Senate 1157.

Another myth that you have heard this morning is that the Federal feeding programs are exempted from harm by Compact milk price increases. In reality, nutrition programs that have no exemption from the Compact represent more than three times the milk consumption of WIC, the only program that is fully and effectively protected. New England's food stamp recipients, who can least afford it, have lost \$14 million in purchasing power due to the Compact. Child and elderly feeding programs such as Meals on Wheels are not protected and have absorbed more than \$1.5 million. This measure will exacerbate this kind of problem across the country.

In conclusion, Mr. Chairman, time is running out and each year that we continue the failed Northeast Dairy Compact experiment in New England, despite good intentions, policymakers are being distracted from the task of creating and funding programs that will really work for dairy farmers, consumers, and the environment.

For the past 4 years, the high costs and false hopes associated with the Compact have placed an unnecessary burden on the people of New England. By opposing Dairy Compact extension and expansion legislation, members of this committee can help prevent similar damage from being inflicted on consumers in other parts of the country.

Thank you.

[The prepared statement of Ms. Pines follows:]

STATEMENT OF LOIS G. PINES, ESQ., FORMER MASSACHUSETTS STATE SENATOR,
NEWTON, MASSACHUSETTS

INTRODUCTION

My name is Lois G. Pines. I live in Newton, Massachusetts, and have been a member of the Massachusetts Bar since 1964. I currently practice law and have been teaching public policy and advocacy at the John F. Kennedy School of Government at Harvard University, in Cambridge, Massachusetts. I want to thank you for giving me the opportunity to provide testimony pertaining to S.1157, a bill to reauthorize and expand the Northeast Interstate Dairy Compact and create new dairy compacts in southern, plains, mountain and western states.

I am here today primarily to tell the story of my personal experience with the Northeast Interstate Dairy Compact. Although I speak in strong opposition today to S.1157, I was once a supporter of the Northeast Dairy Compact and helped protect it from attacks by ardent opponents in Massachusetts, when heated debate and negative publicity brought the issue before the state legislature in 1998.

At that time, I was the Senate Chair of the Joint Committee on Natural Resources and Agriculture of the Massachusetts Legislature, which had jurisdiction over the dairy compact. Since that time, however, I have become convinced that the Northeast Dairy Compact has not helped prevent the loss of small dairy farms and has hurt New England consumers despite claims by dairy compact supporters that it would not. In my opinion, the Compact's failure to achieve its goals and the harm it has done to consumers and low-income families is more than enough reason to replace it with more effective programs that do not have negative impacts on the general public.

Mr. Chairman, for most of my more than twenty-five years of public service, I have fought for the interests of "the little guy", the underdog, and for consumers, who are at the mercy of the marketplace and government regulations like the Compact. For six of those years, I have fought not just for consumers and small businesses in Massachusetts, but for consumers and small businesses throughout all of New England. During the Carter Administration, I served as the Regional Director of the New England Office of the Federal Trade Commission with a mission to protect consumers and small businesses from fraud, misrepresentation and noncompetitive practices. More recently, since 1999, I have served as a Public Interest Director of the Federal Home Loan Bank of Boston, serving all six New England states. As a member of the Massachusetts House of Representatives and Massachusetts Senate for eighteen years, I fought for measures that would protect the state's consumers, small businesses and protect the environment.

WHY, AS A MA STATE SENATOR I SUPPORTED THE NORTHEAST DAIRY COMPACT IN 1998

In 1998, my longtime commitment to small business, consumers and the environment led me, as co-chair of the Joint Natural Resources Committee, to sympathize with the plight of the small dairy farms in Massachusetts and the rest of New England. I can recall the events of a Joint Committee on Natural Resources and Agriculture Oversight hearing in February of 1998 quite vividly. The room was filled with farmers and other supporters of dairy compacts, including the Governor of Vermont. Over and over again, compact proponents assured the Committee that consumers would not be hurt by continuation of the Compact and that the Compact would "save family farms!"

Although well-informed advocates and experts also presented testimony opposing the Compact, they had difficulty convincing committee members not to accept Compact supporters' claims about the cost and benefits to consumers, farmers and the environment. In hindsight, the overwhelming hurdle faced by the Compact's opponents at the Hearing was the fact that the Compact had been in existence for only seven months. Consequently, evidence about its actual impacts was limited or non-existent. Given conflicting claims by Compact supporters and opponents, I was inclined to give the benefit of the doubt to New England's small dairy farmers, especially since my House of Representatives committee co-chair was in favor of the Compact.

Even then, however, I had reservations given the testimony I heard from opponents of the Compact especially regarding the harm to working-class consumers, low-income families, and federal nutrition assistance programs. Their arguments convinced me that the legislature had a responsibility to the people of the Commonwealth to insist that the Compact be revisited by the legislature as soon as sufficient evidence was available about its actual impacts.

Although I cared a great deal about the fate of small dairy farms throughout the region, I was also deeply concerned about impacts of the Compact on consumers in Massachusetts and the rest of New England, whose interests I had championed for much of my time in public service. I was particularly concerned about Massachusetts consumers since more than 45% of the revenues generated by Dairy Compact price increases would come from higher milk prices paid by them. As a result, I insisted that the Committee Report on the Compact that emerged from the Oversight Hearing process include language requiring reconsideration of the evidence at a later date. The Report stated, "If the Compact does not ameliorate the current trend of farm foreclosures and farmers leaving the dairy business, then the long term proposed benefits of the Compact will have failed. A review of trends six months and one year from now should be instructive."

THE EVIDENCE FROM NEW ENGLAND COMPELS ME NOW TO VIGOROUSLY OPPOSE DAIRY COMPACTS

My reluctant decision in 1998 not to oppose the Northeast Dairy Compact has haunted me, particularly as more and more information about the impacts of the

Compact has become available. When the May 1998 report was prepared, we had barely nine months of data with which to work. Moreover, we had no data on changes in the number of New England dairy farms since the Compact began. This month, on the other hand, the Northeast Dairy Compact celebrated its fourth anniversary. That means we now have a great deal of evidence with which to assess the real impacts of the Compact.

Unfortunately, when I look at the evidence, I find that my worst fears have been justified. The evidence clearly shows that Compact supporters were wrong about how the Compact would save small family farms and protect the region's consumers. In an effort to do something to rectify my 1998 decision, I joined forces with the International Dairy Foods Association, which was working to replace the Compact in Massachusetts with an alternative. The State Senate proposed a state-funded dairy farm income support program, which I strongly supported, that would (1) provide extra state money for purchasing dairy farmland development rights; (2) establish a state fund to be used to fully replace the Dairy Compact payments that were being given to Massachusetts dairy farmers; and (3) establish a state Commission to consider what other initiatives might be taken by Massachusetts to truly assist the dairy farmers, with particular emphasis on the needs of the small dairy farmer.

In hindsight, I believe that the Compact has been a public policy failure. The claims made by dairy compact supporters have had two debilitating impacts on state and federal policy processes: 1) they have grossly misled hundreds of lawmakers in Congress and state legislatures, including myself, and persuaded them to mistakenly give their support to dairy compacts; and 2) they have diverted lawmakers' attention from developing and implementing policies that could really help keep small dairy farmers on the land, genuinely protect consumers, and effectively preserve open space in rural New England.

1. THE COMPACT HAS NOT SLOWED THE LOSS OF NEW ENGLAND DAIRY FARMS

No one can deny that the Compact has increased New England dairy farmers' incomes. However, when Compact supporters came to State Senator Lois Pines for help in advancing their agenda, they never said, "please give dairy farmers a subsidy or a handout." They knew that I would never support a blanket subsidy to the dairy farm sector. Instead, they said, "the Compact is the only way to stop the loss of dairy farms and protect irreplaceable open space." Now, however, we know that the Compact has not come close to stopping the loss of dairy farms. Moreover, the evidence suggests that the Compact has not even reduced the loss of dairy farms.

The annual surveys of commercial dairy farms conducted by the American Farm Bureau Federation tell the story. Since the fall of 1998, those surveys have consistently shown that more dairy farms were lost in New England since the Northeast Dairy Compact began in July 1997 than in the three years prior to the Compact's starting date. All told, 465 of New England's dairy farms, out of the 3,237 that existed in July 1997, left the business by June 2000. That's a loss of nearly 15% of the region's dairies in just three years. The statistics for Massachusetts are even more compelling. Between July 1997 and June 2000, 64 of the state's dairy farms were lost. Compared to a loss of 57 farms in the three years prior to the Compact. In other words, with the Compact in force, Massachusetts lost about 20% of its dairy farms. The next Farm Bureau survey will undoubtedly show that the losses have climbed to 25% in 2001. Something is clearly not working!

The high rate of loss in the face of the Compact really should not come as a great surprise to policy makers. Opponents of the Compact have pointed out for the last couple of years that, according to the latest (1997) Census of Agriculture, three-fourths of all New England farms leaving the business in the 1980s and 1990s had less than 50 cows. Since the Compact pays each farmer the same premium for every gallon of milk they produce, it is the larger farms, which produce the bulk of the region's milk, that benefit most from the Compact. Since these farms are most likely to stay in business anyway, why is anyone surprised that the Compact has not reduced the loss of dairy farms?

Some Compact supporters, in the face of the depressing Farm Bureau data, may claim that without the Compact, even more New England dairy farms would have left the business. I have been down that road of listening to unsubstantiated claims made by Compact supporters before. Based on my experience, I encourage you to take a hard look at the evidence before you embrace that viewpoint.

Even if such evidence did exist—and I certainly haven't seen any—the fact that so many dairy farms still went out of business in the presence of the Compact should give us all reason to question whether the Compact is an effective mechanism for stopping the hemorrhage of dairy farms. It's little consolation to policy makers and their constituents that more dairy farms did not go out of business in

view of the large number of dairy farms that did. If that's the best the Compact can do, then it is truly an inadequate policy instrument.

2. IF THE COMPACT DID NOT SLOW THE LOSS OF FARMS, IT COULD NOT SLOW THE LOSS OF OPEN SPACE

It goes without saying that the failure of the Compact to slow the loss of dairy farms undermines the claims by Compact supporters that the Compact will reduce the loss of open space throughout New England. To reduce the rate of loss of open space, the Compact has to first reduce the loss of dairy farms.

It has puzzled me the last couple of years to see a number of environmental groups from Massachusetts and New England argue, over and over again, that the Compact is the answer to the rapid conversion of New England dairy farmland to suburban and urban uses. They certainly have reason to be concerned about the loss of New England dairy farmland to nonfarm uses in the last couple of decades. I also share their concern for the plight of New England dairy farms.

However, I cannot understand how they can continue to support the Compact in the face of such rapid loss of dairy farms over the past three years. After all, every year of continued support for the Compact, in the absence of truly effective, well-funded programs to reduce dairy farm losses or purchase dairy farmers' development rights, means another 5% of the region's dairy farms lost.

Since July 1997, participating dairy farmers have received about \$140 million as a result of the Compact. The payoff has been no reduction in the loss of New England dairy farms. If we really wanted to reduce the loss of dairy farmland to urban or suburban development, just think about how much farmland could have been preserved by using that money to buy dairy farmers' development rights. Given the statistics on recent dairy farm losses, it is difficult not to conclude that, from an open space perspective, the \$140 million in Compact premiums has largely been wasted.

3. CONSUMERS HAVE SHOULDERED THE BURDEN OF PAYING FOR THE COMPACT

In response to the obvious question of how one can raise dairy farmers' milk prices without hurting consumers, I was always told by Compact supporters that the Compact would somehow stabilize consumer prices and keep them lower than they would have been in the absence of the Compact. In other words, we could have it both ways: higher milk prices for farmers; and lower milk prices for consumers.

In hindsight, I recognize that it was ridiculous to believe that the higher milk prices imposed by the Compact would not be passed on to consumers. There is plenty of evidence available to convince anyone with an open mind that most, if not all, of the Compact price increases have been shouldered by consumers. The fancy economic studies that have been done on this question are not much help. From what I understand, they each provide dramatically different results depending on the methods they employed and the assumptions they made. A better, commonsense approach is simply to look at the relationship between farm prices and retail prices in New England to see what happened when farm prices increased. In every graph of those prices that I have seen for the Boston area since the Compact began, whenever farm milk prices increased, retail milk prices increased by as much or more. In fact, in recognition of this pass-through of Compact premiums to consumers, the Consumer Federation of America said in a recent letter to Congress that "Several economic studies, including one ordered by the Northeast Compact Commission, have confirmed this pass-through of additional costs to consumers. The Consumer Federation of America estimates that the Northeast Compact has cost consumers more than \$165 million over 3½ years. . . Dairy Compacts are especially costly to low income consumers, who spend a greater percentage of their income on dairy products than other families."

Compact supporters have often misled policymakers into believing that federal nutrition programs are protected from harm from Compact price increases. The truth of the matter is, the feeding programs that have NO exemption from the Compact represent more than 3 times the milk consumption of WIC, the one program that is fully and effectively exempted. New England's food stamp recipients, who can least afford to pay more for a basic staple such as milk, lost \$14 million in purchasing power thanks to the Compact. Child and elderly feeding programs, such as "Meals on Wheels", which are NOT protected from harm by the Compact, have been forced to absorb more than \$1.5 million in higher costs.

S.1157 would only exacerbate this lamentable situation. If compacts had expanded to include states in the mid-Atlantic, Southern and Plains regions, studies that I have seen indicate that the costs to consumers last year alone would have been between \$600 and \$700 million dollars. Food stamp recipients would have seen their purchasing power drop by roughly \$100 million. In addition, S.1157 fails to protect

important child and elder care feeding programs from higher milk prices caused by the Compact. Those programs would have paid about \$20 million more in higher milk costs if S.1157 were enacted.

Compact proponents have often argued that the extra cost to consumers is worth it to ensure an inexpensive, local supply of fresh milk. They claim that without the Compact, milk would have to be shipped in from long distances at great cost to the consumer. The facts suggest otherwise. Without the Compact, there would be a more-than-adequate supply of fresh, locally supplied milk in New England. Moreover, it would be less expensive than it currently costs with the Compact in place.

Prior to the Compact's inception, New England milk production was stable. As a matter of fact, New England produces twice as much milk as it consumes as a beverage. Almost all of that is Grade A milk suitable for use as a beverage. Milk production in nearby New York state was also quite stable in the 1990s prior to the Compact. New York dairy farms produce one-and-a-half times the amount of fresh milk the state consumes. That means there is plenty of fresh milk available from nearby dairy farms to add to the New England supply. New England already relies on New York for 25% to 30% of its fresh milk needs.

Should more milk be needed to satisfy increased needs of New England consumers, plenty of milk will be available to be shifted from lower cost uses such as cheese, to higher priced beverage use.

Despite these factors, Compact supporters still claim that without the Compact, New England milk production would drop to such low levels that processors would relocate outside the region and ship milk from long distances—at great expense—to New England. In view of the abundance of milk available in New England and nearby states, this claim appears to be highly suspect.

SUMMARY AND CONCLUSION

Like many members of Congress, I too have had to make a difficult decision about supporting dairy compacts. Faced with a desire to help my region's dairy farmers, woefully limited evidence, and unsubstantiated claims about the benefits of the Northeast Dairy Compact to consumers and farmers, I gave my tentative support to the Compact three years ago.

Now, however, after four years of the Compact, we have sufficient evidence with which to make a truly informed judgement. In my opinion, in light of the overwhelming evidence, the Compact, as public policy, has failed miserably in achieving its stated goals.

No doubt the Compact has put extra money into the pockets of dairy farmers. Unfortunately, that is about the only positive thing that can be said about the impacts of the Compact. It has failed to slow the loss of dairy farms. As a result, it has been unable to reduce the loss of rural open space. It has forced consumers to pay more for milk in the name of a fictitious local supply shortage. It has imposed higher costs on cash-starved nutrition assistance programs and food stamp recipients.

Mr. Chairman, time is running out. Each year that we continue the failed Northeast Dairy Compact experiment in New England, despite our good intentions, policy-makers are distracted from the task of creating and funding programs that will really work for farmers, consumers and the environment.

Each year another five percent of the region's dairy farms leave the business.

Each year that much open space is dangerously exposed to urban or suburban development.

Each year another \$35 million or more is wastefully taken from New England's consumers.

In closing, I urge the members of the Judiciary Committee not to support S.1157. For the past four years, the cost and the false hopes of the Northeast Dairy Compact have placed an unnecessary burden on people of New England. By opposing Dairy Compact extension and expansion legislation, you can help prevent similar damage from being inflicted on more than 200 million others throughout the mid-Atlantic, southern, plains, mountain and western regions of the country.

Thank you.

Senator SCHUMER. Thank you, Ms. Pines, and now we are up to Mr. Beatty.

STATEMENT OF JAMES F. BEATTY, ECONOMIST, LOUISIANA STATE UNIVERSITY, FRANKLINTON, LOUISIANA

Mr. BEATTY. Thank you, Senator Schumer, Senator Kohl, for inviting me. I will try to touch briefly on the five points in my writ-

ten testimony and then maybe concentrate as much as I can on particularly the last one.

The Compact Commission includes consumers, and that is a very key point. I am a public employee. I have to consider the will of consumers in Louisiana in what I do. I don't think the Louisiana Legislature would have passed the legislation if consumers were not part of the Commission, and we have experience with the State in the past.

Dairy does make a substantial contribution to many rural areas in the Southeast, although we are a relatively small State in terms of milk production. We only produce a fourth of our milk needs in Louisiana, but it is an important contribution in some areas. And the States that are petitioning for a compact see it as a tool that might help us maintain that production.

Dairy compacts regulate fluid milk prices only. We need to keep that in mind. We are speaking specifically of fluid, which is a different animal, because again perishability has been mentioned, lack of inventory, those kinds of things.

The Southeast of the U.S.—and you can see the red area on that map; those States in red do not produce enough milk even for our fluid needs, just fluid. We have to import milk, no cheese, no powder, no nothing. We see a compact as a way to entice more milk into that region when we need it, without putting that cost on the farmers.

At the present time, our local producers, in order to maintain their market, subsidize the freight on milk that comes into that area. We can hopefully get the price in the area closer to either whatever it takes to produce it locally or get it moved.

Another point: A compact does not prevent the flow of milk in and out of a compact region. It does regulate the price. Federal milk market orders have regulated milk prices for 60 years. It has worked relatively well in terms of supplying fluid markets. That is why we have differentials.

I do agree with Senator Kohl. It is not working as well as it should, as we would like it, and I am sure as well as this gentleman from Wisconsin would like, the Federal orders are not. But this is another tool that we can use in specific regional cases to add to the signals that the Federal orders send. But, again, we have set minimum prices for years and we have done a good job of supplying a wholesome product at a reasonable price to consumers.

The fifth point, and I think that is the key point, is how much milk do we want to move and how far do we want to move it, you know, for fluid purposes. Now, keep in mind any comments I make relate basically to fluid. We are a fluid market.

But, again, if you look at the map, those States in red produce less milk than they need for fluid use. The States in that other color, and I am not sure what they call it, but the States that are not green produce less than their needs for their total milk consumption. They produce more than they need for fluid, but not enough for their total milk product needs. Of course, the States in green produce enough to supply their own needs, plus to help supply other areas.

You can see the big blob of red in the Southeast, and you can see it goes up the East Coast. The thing is, the Southeast is bleed-

ing for fluid milk, and we are hemorrhaging now and that red area is spreading north and east as we continue to go in the direction we are going.

In fact, recent figures, according to the Federal market administrator who put the basic figures for this map—this map comes out, of course, here—Texas, Tennessee and Virginia should be added to the red area, and also Nevada. Now, you see what that does to the Gulf Coast, for instance. Texas puts 100 million pounds of milk a month into Louisiana. They are losing production.

We are not sending a strong enough signal to that red area in terms of fluid milk, and that is what the Federal orders are designed to do, send a strong enough signal to do one of two things, and I think we always focus on one of the two. Send a signal that says produce it in Georgia, or send a signal that says to the guy in the green area, you can haul it to Georgia, take the freight off your cost, you know, pay the freight and still make as much money as you will at home.

I think that is the problem with the market the way it is operating. New Mexico has got a lot of milk, but it gets more money at home than the New Mexico price, plus the \$4 it costs to haul it to New Orleans. Again, part of that is the way the Federal market orders are working, you know, utilization, and I don't want to say predatory pooling. I didn't say that; opportunistic pooling.

But we need to send a stronger signal out of the Southeast to either get it produced locally or get it moved, because as of now our local producers are subsidizing our consumers. The processors in our area between August and October spend about \$2 to \$3.60 a hundredweight to go out in a region, get milk and bring it in. They take a net loss. That is spread across our local producers. The less local milk we have and the more we have to haul in, the higher that cost gets per hundredweight, and it is going to continue to drive our producers out of business.

So to me, the key question is neither farmer on either end is getting enough money. We don't have enough milk in the red area. We can't get the milk moved from the green area because we can't get the freight. So the question in my mind concerning the Compact is are we going to pay the money to farmers or are we going to pay the money to trucks. I have got nothing against trucks, but we are starving farmers on both ends.

Again, that says to me that we have got to have a stronger signal or a higher price in that red area and areas surrounding it.

[The prepared statement of Mr. Beatty follows:]

STATEMENT OF JAMES F. BEATTY, ECONOMIST, LOUISIANA STATE UNIVERSITY,
FRANKLINTON, LOUISIANA

Thank you Chairman Leahy, Ranking Member Hatch and members of the Committee for inviting me here today to discuss Dairy Compacts.

These are 5 points that should be considered when evaluating the effects of dairy compacts.

1. The proposed legislation includes consumers on dairy compact commissions. Therefore, any dispute over the level of price between producers and processors will be settled by consumers.
2. Milk production contributes a substantial economic impact and tax base in many rural areas in the states petitioning for formation/extension of dairy compacts. These states would like to use compacts as a tool for maintaining these contributions.

3. Dairy compacts regulate fluid milk prices at the farm only. Therefore, the ability to generate dairy farmer income is determined by the volume of fluid sales in the compact area and the level of compact price determined with input from consumers. A compact should help encourage milk produced in other parts of the country to come into the Southeast region when it is needed to supply the market.

4. The proposed legislation does not prevent the flow of milk, raw or packaged, into the compact region nor does it restrict the flow of money out of that region. The farmer who produced any milk sold as fluid milk in the compact region receives the revenue generated, regardless of his location.

5. The key question in the debate over fluid milk compacts is: should a substantial portion of the milk consumed as fluid be produced relatively close to the site of consumption? Twenty-five states have decided, through their state legislatures, the answer to that question is yes. That is the reason those states are petitioning this congress for permission to use a dairy compact as a tool in achieving that goal. Ten additional states are concerned enough that they are considering their need for compacts.

The U.S. dairy industry is constantly transporting ever increasing amounts of milk over increasing numbers of miles to supply fluid markets. At present, dairy farmers in the Southeast share in the cost of procuring and transporting supplemental milk. The dairy farmers contribution will cease if local production ceases.

Production capacity in the Southeast United States, Table 1, has deteriorated to the point that further decreases will push production below the point of no return. The loss of the critical mass necessary to maintain efficient support industries (milk hauling, feed, milking equipment, custom forage production) would lead to unbearably increased costs of production and marketing.

Production in the states of Louisiana, Mississippi, Alabama, Georgia, Florida, North Carolina and South Carolina was 5.7 billion lbs. less than required to supply the fluid markets in 1996. Regional production continues to decrease while consumption increases and supplemental supplies are farther and farther away. Texas, Missouri, Kentucky and Tennessee, who have traditionally provided supplemental supplies, have lost 16–26% of their production since 1995 (Table 1). The loss of production in Texas has been primarily in east Texas, and more recently in central Texas, leaving remaining supplies farther west. For Louisiana, Mississippi and Alabama this means the reserve supply is farther away and is more likely to be needed to supply consumers where it is produced.

Production trends in the Southeast U.S. prove prices have not been high enough to maintain supply (Table I). This down trend in production has continued even as farm milk prices reached record levels in 1996, set new records in 1998, and approached 1998 levels in 1999. These events occurred in spite of grain prices, the major factor affecting the cost of milk production, which have been extremely low since 1997. This is the case in most of the states east of the Rockies. (Table I, II and III).

Prudent consideration of recent and current milk production trends strongly suggests that the downward trend in production east of the Rocky Mountains should be slowed before it becomes irreversible. Are we are willing to commit to producing all or a very substantial portion of the milk needed for fluid consumption in a few states in the very northern and western regions of the country.

Is a decision to produce all milk in those areas where on-farm costs are lowest and routinely transport very large volumes of fluid milk very long distances a sound economic decision?

Will that decision remain economically sound in the future?

Are we giving proper consideration to current and future transportation costs?

Four lbs. of concentrate feed will produce 10 lbs. of fluid milk. Should the feed be transported rather than the milk? Transporting the feed is a lot cheaper.

Again, the key question in the debate over Fluid Milk Compacts is; will a reasonable amount of the milk consumed as fluid be produced relatively close to the site of consumption in the future? Doing so has served U.S. consumers very well for over 60 years.

If the milk production capacity in large areas of the country is destroyed, the cost of regenerating it in the future will be astronomical.

TABLE I

MILK PRODUCTION 1ST QUARTER 1995 VS 2001
Southeast U.S.

STATE	1 ST QTR ¹ 2001 Production Million LBS	LBS. ¹ CHANGE Million LBS	% CHANGE '95VS'01	% CHANGE /YEAR
ALABAMA	86	-52	-38	-6
ARKANSAS	125	-64	-34	-6
FLORIDA	666	-17	-2	0
GEORGIA	387	-46	-11	-2
KENTUCKY	426	-86	-17	-3
LOUISIANA	184	-74	-29	-5
MARYLAND	347	-2	-1	0
MISSISSIPPI	148	-53	-26	-4
MISSOURI	517	-185	-26	-4
N. CAROLINA	299	-81	-21	-4
OKLAHOMA	326	-7	-2	0
S. CAROLINA	99	-9	-8	-1
TENNESSEE	350	-112	-24	-4
TEXAS	1389	-257	-16	-3
VIRGINIA	481	-25	-5	-1
W.VIRGINIA	61	-9	-13	-2
TOTAL	5892	-1,079	-15	-3

-1,079 MILLION LBS/QTR
-12 MILLION LBS/DAY '95 VS '01
-250 TANKER LOADS/DAY

N.Mexico +414

¹Source: USDA NASS

Texas $\frac{-257}{+157}$

TABLE II
MILK PRODUCTION 1ST QUARTER 1995 VS 2001
NORTHEAST U.S.

STATE	1 ST QTR. ¹ 2001 Production Million LBS	LBS. ¹ CHANGE Million LBS	% CHANGE '95VS'01	% CHANGE /YEAR
CONNECTICUT	121	-16	-12	-2
DELAWARE	37	-2	-5	-1
MAINE	158	+1	+1	0
MASSACHUSET	91	-21	-19	-3
NEW HAMPSHIRE	80	+1	+1	0
NEW JERSEY	68	-16	-19	-3
NEW YORK	2848	-3	0	0
PENNSYLVANIA	2726	+95	+4	+1
RHODE ISLAND	6	-2	-25	-4
VERMONT	658	+37	+6	+1
TOTAL	6794	+74	+1	0

¹ Source: USDA NASS

TABLE III

MILK PRODUCTION 1ST QUARTER 1995 VS 2001
NORTH CENTRAL U.S.

STATE	1 ST QTR. 2001 ¹ Production Million LBS	LBS. CHANGE ¹ Million LBS	% CHANGE '95 VS '01	% CHANGE /YEAR
ILLINOIS	519	-118	-19	-3
INDIANA	630	+76	+14	+5
IOWA	965	-36	-4	-1
KANSAS	395	+90	+30	+5
MICHIGAN	1409	+26	+2	0
MINNESOTA	2327	-64	-3	0
NEBRASKA	295	+23	+8	+1
NORTH DAKOTA	165	-42	-20	-3
OHIO	1097	-62	-5	-1
SOUTH DAKOTA	405	+11	+3	0
WISCONSIN	5637	+24	0	0
TOTAL	13845	-72	-1	0

¹ Source: USDA NASS

TABLE IV

MILK PRODUCTION 1ST QUARTER 1995 VS 2001
WESTERN U.S.

STATE	1 ST QTR. ¹ 2001 Production Million LBS	LBS. CHANGE ¹ Million LBS	% CHANGE '95VS'01	% CHANGE /YEAR
ARIZONA	746	+156	+26	+4
CALIFORNIA	8082	+1885	+30	+5
COLORADO	480	+94	+24	+4
IDAHO	1815	+847	+88	+15
MONTANA	84	+7	+9	+2
NEVADA	119	+13	+12	+2
NEW MEXICO	1302	+414	+47	+8
OREGON	396	-21	-5	-1
UTAH	392	+39	+11	+2
WASHINGTON	1337	+43	+3	+1
WYOMING	15	-6	-29	-5
TOTAL	14769	+3471	+30	+5

TABLE V

MILK PRODUCTION 1ST QUARTER 1995 VS 2001
U.S.

¹Source: USDA NASS

	1ST QTR. 2001¹ Production Million LBS	LBS. CHANGE¹ Million LBS	% CHANGE '95 VS '01	% CHANGE /YEAR
U.S.	41,326	+2,385	+6	+1

* Information obtained from USDA - NASS

Senator SCHUMER. Thank you, Mr. Beatty. We appreciate it. I am sorry to move things along, but we have a vote in now about 7 minutes.

Mr. Gorder?

STATEMENT OF RICHARD GORDER, MEMBER, BOARD OF DIRECTORS, WISCONSIN FARM BUREAU FEDERATION, MINERAL POINT, WISCONSIN

Mr. GORDER. Well, thank you, Senator Schumer and Senator Kohl. I would like to thank Senator Feingold for his very nice comments this morning, and thank Senator Kohl for allowing me to participate and speak on behalf of the farmers of the State of Wisconsin.

I am a dairy farmer from Mineral Point, Wisconsin. I am also a member of the board of directors of the Wisconsin Farm Bureau Federation. I am considered by most to be a relatively small dairy, milking today just around 50 cows. However, in the last 18 months I reinvested in my dairy operation in excess of over \$200,000 and will be increasing my herd size in an attempt to remain economically viable.

When I started farming in 1979, there were over 46,000 dairy farmers in the State of Wisconsin, and today there are less than 19,000. Senator Feingold made the statement that there were less than 20,000. For the record, I would submit that just this last week the Wisconsin Department of Ag Trade and Consumer Protection released the fact that there are 18,245, a loss of over 1,600 dairy farms from July of 2000.

Wisconsin, like most States, has lost their dairy farmers for a variety of reasons—economics of profitability, urban pressures, normal retirement, and an adverse Federal dairy policy. Today, the subject of these hearings is dairy compacts, or as we refer to them in the upper Midwest, the dairy cartel.

Even one of your Southern colleagues, Senator Zell Miller, while Governor of Georgia, referred to the cartels as counterproductive and akin to a price-fixing scheme.

Will this hearing shed any new insight or documentation that has not already been discussed? For most, the issues and positions are established—those who have and want to preserve the Compact, those who want to expand the compacts, and those of us who look at the compacts as just bad dairy policy that promote regional division.

The Northeast Dairy Compact was never intended to be a permanent pricing structure, but a stop-gap measure to slow the decline of the number of dairies in the Northeast until Congress could address a national dairy policy as a whole. Today, we in this country still wait for a comprehensive, inclusive dairy policy that knows no regional barriers.

One of the remarks often touted for justification by Compact proponents is we are just trying to save our family farms. Yet, statistics do not support this. In the first 2 years of the Compact, the Northeast lost more dairy farms than in the previous 2 years. Yet, there was an increase in production more than twice the national average.

The debate is not just about the continuation of the Northeast Dairy Compact, but the adverse economic impact from the expansion of compacts into the South and even into some of the Western, Mountain and Pacific Northwestern States that have a high Class I utilization.

Regional dairy compacts place a floor under the price of milk used for fluid purposes in the compact region. This artificial price increase creates an incentive for more milk production in the region, yet represses consumption of fluid milk in that area. That surplus finds its way into manufactured milk products such as cheese, butter and milk powder.

While dairy compacts insulate the market from competition by placing restrictions on milk entering the compact region, they impose no restrictions on the surplus milk and milk products that must leave the region in search of a market. As a result, the market distortions of dairy compacts have a negative effect on the prices of producers in the non-compact areas.

You have heard a lot of numbers here today, Mr. Chairman. A 1999 University of Missouri study shows that with the expansion of compacts into the Southern States, Wisconsin dairy farmers would lose over \$64 million per year. Another report, The Inter-regional Analysis of Interstate Dairy Compacts, conducted by three noted economists from the University of Wisconsin, demonstrates that with the expansion of the compacts into 9 northeastern and 16 southern States, the economic impact on farmers in non-compact States to be at \$326 million per year. Whichever number is used, the long-range consequences would be even greater if you were to calculate the economic impact to our rural communities' infrastructure.

As we in this country attempt to gain access to foreign markets, we continue to battle countries that place tariffs on our goods that restrict our ability to compete in their market. While we decry those who place protectionist policies or tariffs on our goods, we in kind have allowed the same type of policy within our own borders. All milk that runs into a compact area must be priced at the established compact price, in essence a tariff.

Mr. Chairman and members of the committee, I urge you not to exacerbate an inferior policy, a defective policy that will come back and haunt us time and time again, not only from within our own borders but from those countries who wish to impose their own protective agenda.

You have the ability to right this wrong. There are two bills that are currently before you that attempt to address national dairy policy for the 21st century.

Senator SCHUMER. Mr. Gorder, I am going to have to ask that you begin to conclude.

Mr. GORDER. I have just one paragraph, if I could finish up, Mr. Chairman.

Senator SCHUMER. Please.

Mr. GORDER. Mr. Chairman, while my organization has not taken a specific stand on either of these bills, we believe that they could be a catalyst for a national dairy policy that attempts to unify a divided dairy industry. We also believe that these bills are consistent with our vision to be leaders in unfettered trade.

I thank you, Mr. Chairman and members of the committee, for the opportunity to address you today.

[The prepared statement of Mr. Gorder follows:]

STATEMENT OF RICHARD GORDER, MEMBER, BOARD OF DIRECTORS, WISCONSIN FARM BUREAU FEDERATION, MINERAL POINT, WISCONSIN

Thank you, Mr. Chairman and Members of the Committee for the opportunity to appear and testify before you today.

I am a dairy farmer from Mineral Point, Wisconsin. I am also a member of the Board of Directors of the Wisconsin Farm Bureau Federation.

I am considered by most to be a relatively small dairy, milking just 50 cows. In the last 18 months I have reinvested in my dairy operation in excess of over \$200,000 and will be increasing my herd size in an attempt to remain economically viable.

When I started farming in 1979 there were over 46,000 dairy farms in the state of Wisconsin. Today there are less than 19,000. Wisconsin like most states has lost dairy farms for a variety of reasons; economics/profitability, urban pressures, normal retirement, and an adverse federal dairy policy.

Today the subject of this hearing is dairy compacts, or as we refer to them in the upper Midwest, the dairy cartel. Even one of your southern colleagues Senator Zell Miller while Governor of Georgia referred to the cartels as "counterproductive" and akin to a "price fixing scheme".

Will this hearing shed any new insight or documentation that has not already been discussed? For most, the issues and positions are established. Those that have and want to preserve the compacts, those that want an expansion of the compacts, and those of us that view the compacts as just bad policy that promotes regional division.

The Northeast Dairy Compact was never intended to be a permanent pricing structure but a stop-gap measure to slow the decline of the number of dairies in the Northeast until Congress could address national dairy policy as a whole. Today, we in this country still wait for a comprehensive/inclusive federal dairy policy that knows no regional barriers.

One of the remarks often touted for justification by compact proponents is that the compact is a mechanism for saving our family farms. Yet statistics do not support this. In the first two years of the compact the Northeast lost more dairy farms than in the previous two years, yet there was an increase in production more than twice the national average. In the first two years of existence the compact cost Massachusetts milk consumers an estimated \$25 million. At that time the state had only 350 dairy farms, which equates to \$72,000/farm. Yet the average payment to each Massachusetts dairy was \$3000. Consumers in Massachusetts are basically subsidizing Vermont.

This debate is not just about the continuation of the Northeast Dairy Compact, but the adverse economic impact resulting from expansion of compacts into the south and even into some of the Western mountain and Pacific Northwestern states that have a high class 1 utilization.

Regional dairy compacts place a floor under the price of milk used for fluid purposes in the compact region. This artificial price increase creates an incentive for more milk production in the region, yet represses the consumption of fluid milk in that area. The surplus that results finds its way into manufactured milk products such as cheese, butter, and milk powder.

While dairy compacts insulate that market from competition by placing restrictions on milk entering the compact region, they impose no restrictions on the surplus milk and milk products that must leave the region in search of a market. As a result, the market distortions of dairy compacts have a negative effect on the prices of producers in non-compact states.

A 1999 University of Missouri study shows that with the expansion compacts to the southern states, Wisconsin dairy farms would lose over \$64 million per year. Another report "The Interregional Analysis of Interstate Dairy Compacts" conducted by three economists from the University of Wisconsin-Madison demonstrates that with the expansion of compacts into nine Northeastern and 16 Southern states, the economic impact on farmers in non-compact states would be about \$326 million per year. Whichever number is used, the long range consequence would be even greater if you were to calculate the economic impact to our rural community infrastructure.

As we in this country attempt to gain access into foreign markets, we continue to battle countries that place tariffs on our goods that restrict our ability to compete in their market. While we decry those who place protectionist policies or tariffs on

our goods, we in kind have allowed the same type of policy within our own borders. All fluid milk that moves into a compact area must be priced at the established compact price, in essence a tariff.

Regional compacts foster interstate trading barriers thus challenging the intent of the framers of the Constitution, who warned strongly against economic warfare between states. A number Commerce Clause cases arose out of attempts to protect local dairy farmers in the 1930's and later in the early 1990's. All were struck down by the Supreme Court stating that states cannot establish a policy for the purpose of creating a protective economic barrier against competition from another state. See *Baldwin v. G.A.F. Seelig*, 294 U.S. 511, 523, 527 (1935)

Mr. Chairman and Members of the Committee I urge you not to exacerbate a inferior policy. Regional dairy compacts are a defective policy that will come back to haunt us time and time again, not only from within our own borders but from those countries who wish to impose their own protective trade agenda.

You have the ability to right this wrong. There are a couple of bills that attempt to address national dairy policy for the 21 st century. The National Dairy Farmers Fairness Act of 2001 (S.294) introduced by Senators Kohl and Santorum, and National Family Farm Dairy Equity Act (H.R.1878) introduced Congressman Kind. These bills attempt a counter-cyclical approach to the pricing of all milk. Simplified, when prices are good there wouldn't be a payment and when prices fall below a designated level a support mechanism is activated.

My organization has not taken a formal position on either of these bills. We believe, however, that they can be the catalysts for establishing a national dairy policy that attempts to unify a divided dairy industry. We also believe that these bills are consistent with our vision to be leaders in unfettered trade.

Thank you Mr. Chairman and Members of the Committee for the opportunity to come before you today. I urge your support for a sensible national dairy policy that can benefit farmers in all regions, without pitting farmers in one region against farmer in another.

Senator SCHUMER. I thank you, Mr. Gorder, and I want to thank all the witnesses. We are not going to have questions because we have about a minute-and-a-half left to vote.

Senator FEINGOLD. Mr. Chairman, I would like to ask a couple of questions, if I could.

Senator SCHUMER. Well, then would you mind chairing the hearing and then asking questions?

Senator FEINGOLD. I would be delighted.

Senator SCHUMER. You have a fine Chair, someone I don't agree with on this issue, but respect tremendously. Senator Feingold will Chair and then ask some questions.

Thank you, and I thank the witnesses.

Senator FEINGOLD [presiding]. Thank you very much, Mr. Chairman. I just have a couple of questions.

First, again, Mr. Gorder, I am so glad you are here. You talked about your support for a national dairy policy, one that helps all farmers. I strongly agree with you that Congress should focus on a unified national dairy policy that can help all of America's dairy farmers fairly compete in the modern marketplace.

I would like you, as the only dairy farmer who is speaking at this entire hearing, to please talk a little bit about the merits of a national dairy policy versus a fractionalized dairy structure.

Mr. GORDER. Thank you, Senator Feingold. As you know, Wisconsin has a strong infrastructure in its dairy and we are dependent on the Nation as a whole and even an export market into the world, for all practical purposes. There is no way that we in Wisconsin are going to be able to consume all of our dairy products, and so we are dependent on an expansive export program.

What happens when you get the regional compacts that we have today—and there has been much discussion as to the fact that

there is no barrier for our milk going into, let's say, the Northeast. The fact is that any time you have an established price, and take whatever price that raw product is coming in, and you add the transportation cost, that transportation cost has to be added on top of that established price. That in itself is restrictive for us to move into that market.

So what we certainly propose is a national policy that knows no regional barriers. We understand that there are areas in the country that can't produce milk as efficiently as Wisconsin. I will tell you that we even have sometimes competition with California, but that is the way the system works, and we are certainly willing to work within the system. We would just like the bridle taken off and allow us to go where the market leads us.

Senator FEINGOLD. Thanks so much.

I just have one other question for Senator Pines. I am sorry I missed your testimony, but I certainly know some of your background on this and where you come down on this issue. I am very encouraged by the comments in your written testimony supporting alternatives to the Northeast Dairy Compact. Again, I believe that Congress should be focusing its attention on legislation that helps all dairy farmers instead of just specific regions.

I wonder if you could tell us a little bit about your experience in advocating for alternative proposals to help dairy farmers in Massachusetts and why you pushed for these programs as an alternative to the Compact. Did you, for example, feel these were simply better alternatives or did you feel that the Compact had failed?

Ms. PINES. Senator, I had indicated earlier, and so stated in my written testimony that I was very ambivalent in terms of initially being supportive of the Dairy Compact. We had only information for a 7-month period and I was concerned that I was proposing to eliminate the Compact before we had an opportunity to see it work. As a result, I supported it back in 1978.

I left the Senate in December 1998, and I felt insecure as I found out more and more about the Compact because I had been so ambivalent in my efforts as Chair of the committee. As the years passed and I became a little bit more alert to what had transpired, I was more disturbed because I had hoped that my instincts were wrong.

I have spent my career, over 25 years, working on behalf of consumers and small business people, and I am very proud of my record. I ran the Federal Trade Commission under President Carter, protecting consumers and working to enforce laws in the areas of antitrust.

In my entire career, I had fought for consumers and it disturbed me to find that people who were poor were being forced to pay a disproportionate amount in purchasing milk. I am very proud of an initiative that we established in Massachusetts on behalf of osteoporosis. We were the first State in the country to try to educate the public about the need to have young people drink milk and use other calcium products. I spent a long time on that issue and we have a wonderful program in our State trying to encourage the elderly to exercise and to take calcium with vitamin D.

And here I was in a position where I had proposed legislation, or allowed the continuation of a program and not aggressively op-

posed it which charged these individuals, the elderly as well as poor people and people on food stamps, more for the price of milk. It seemed so counterintuitive to where I had been for my career.

So I guess about a year-and-a-half ago I learned that some of my colleagues in the legislature were contemplating revisiting the issue, and I had hoped that they would. I no longer was there and no longer chaired the Committee on Natural Resources and Agriculture, but others took my place and there was an effort in the Massachusetts Senate to provide an alternative.

Forty-five percent of the fund in the Northeast Dairy Compact comes from Massachusetts consumers. Yet, only 7 percent of our farmers contribute. The money goes to New York and to Vermont. I had understood that that would be the case, but I thought it would be offset by helping to preserve farms, but it wasn't.

So my colleagues in the Senate proposed a measure which passed the Senate but was defeated in conference committee which would have increased the program that we have in place to provide for development rights to farmers. It would have provided funding to replace all the funds that our farmers in Massachusetts had received under the Compact.

We would have established a commission which would have aggressively looked at other alternatives that the State of Massachusetts might take to help preserve the family farm and to preserve open space, which is very important. I felt that these other alternatives really were more appropriate as someone who has been concerned with public policy.

I had been teaching public policy and advocacy at the Kennedy School of Government at Harvard, and looked at this particular issue specifically because of all of the policy issues and the problems that occurred. I thought that it might be an interesting issue for my students to consider and to evaluate.

As it turned out, I didn't use the case study, but I had the opportunity to really think through the issue again and I truly believe that the Compact in and of itself is not doing what we all hoped it would do. It is not saving the family farm and preserving open space. Dairy farmers need to be helped and this is not, in my opinion, the best way to do that.

Senator FEINGOLD. Well, Senator, that is very effective testimony coming out of the heart of New England, and I think we will find your comments being repeated as the debate goes on. I appreciate your being here. I want to thank all of the witnesses on both panels. It has been a long day, but we are grateful.

I would ask unanimous consent to keep the record open for 3 weeks for questions and further submissions.

With that, the hearing is concluded. Thank you very much.

[Whereupon, at 2:46 p.m., the committee was adjourned.]

[Submissions for the record follow:]

SUBMISSIONS FOR THE RECORD

ALLIED FEDERATED CO-OPS INCORPORATED, CANTON, NEW YORK, 13617
July 27, 2001

Senator Charles Schumer
 313 Hart Senate Office Building
 Washington, DC 20510

Dear Senator Schumer,

On behalf of the members of Allied Federated Milk Cooperatives, I wish to share several comments on the Dairy Compact versus other proposals to assist dairy farmers. First, I will share a bit of background of our organization. Allied Cooperatives has a total of 36 milk cooperatives as members of our organization. The total number of member is an average of 1850. Our members are principally in New York and Pennsylvania, with a few in Massachusetts and Maryland.

At a recent Allied Board of Directors meeting, I handed out copies of the Kohl-Santorum bill S.294—Many have given me feed back. All favor the Compact over the bill. As one producer put it—the compact paid him an average of 94 cents per hundredweight last year on all of his milk not a portion. He originally “sacrifices” seven cents more to the commission but because he did not increase production, he gets an additional seven and one half cents back. So his average price was \$1.01/cwt higher than mine.

Now the proposed bill would only raise prices 50 cents during low milk prices like last year. They all expressed similar sentiments that:

- a) the Compact had all the players sitting at the table to set the price
- b) it is the first time that farmers have been able to directly influence a portion of their pay price
- c) it is a no cost program to the government
- d) it maintains supply for the area
- e) it does not limit expansion by those who would like to move their business to a higher level (understand that even though many do not like the seven cent supply management portion they know that this is not a deterrent to their expanding if they chose, where quotas or other ways usually are)
- f) they all expressed the concern that programs such as Kohl’s only last as long as the economy is good, taxes are not increasing and the program does not become a target of some group determined to change it,
- g) in contrast, the compact has the ability to revise the price as needed by the commission’s agreement.

Additionally,, the compact puts a value on fluid milk which typically varies very marginally in supermarket price year round. Cheese prices or class III prices fluctuate widely based on many factors such as world pricing, import levels and a limited number of players buying and selling on the Chicago Mercantile Exchange. No one including the members from Lanco (600 members), our coop in Pennsylvania, wish to see the Compact end. All however agree the compact must be expanded and allow others to set up other compact areas. All are unanimous in saying that the Compact can not remain a New England thing. Everyone expresses the desire for dairy farmers to have the right to negotiate prices with the other parties in the industry to reflect their input costs among other things.

I think that other areas should be able to set their compact pricing off whichever portion of the pay price they want in their area. For example, California and the Mid-west might chose to set a class III price under a compact. Obviously, the class utilization rate has a great deal of impact on the final price an area receives. The reason why the class I price in the Compact works for our area is our higher utilization rate. I also think Compacts will be more responsive to maintaining supply to match demand than the government has shown itself to be. I believe Compacts have a better chance of responding to world market as well as local market prices with their commission. I think it encourages the processors, handlers, supermarkets and consumers to work with the farmer to ensure all industries remain healthy. It allows leadership and communication to develop that in the end benefits everybody and again at no cost to the government.

So the question comes, do dairy producers deserve the right (the equal right, I might add) to negotiate their price as all other commodities do or not? Is the government serious in it’s desire to empower the farmer to be competitive and earn a living wage? Is the government committed to preserving a land base for agriculture to provide food for America if not for the world? Are they interested in a safe secure supply of food for the United States? Or do they want to pat one another on the

back and say they gave us something? Farmers are not asking to be given anything! They are willing to work very hard. They do want to see a profit that allows them to support their families and business. Whatever the farm bill looks like it must be able to respond to the conditions that develop not only stateside but worldwide. Most people also believe that anything the government does will be challenged by the WTO. But most people believe the compact is not able to be challenged by the WTO successfully since it is not initiated as a government program and it does have producer involvement.

On behalf of our organization, I ask you to submit our comments to others and that you speak in favor of the extension and expansion of the Dairy Compact on our behalf. If anyone has questions on these comments, they may direct them to me. I can be contacted at Allied Federated Cooperatives at 315-386-8116 during normal business hours, 8 Am to 5 PM. M-F. Or they may email their questions to me at infodir@slc.com.

Finally, I would like to reiterate our thanks to you for your representation of all facets of agriculture. Your willingness to listen and act on our concerns is very important to us. Thank you!

Sincerely,

JUDITH ALDRICH
Director of Information



GOVERNORS' COUNCIL FOR INTERSTATE COMPACTS

209 Pennsylvania Ave, SE
Washington, D.C. 20003
(202) 454-5225 phone
(202) 454-5272 fax

govcouncil@yahoo.com

July 24, 2001

Dear Members of the 107th Congress:

We write this letter to urge Congressional approval of the dairy compact legislation. Since the dairy compacts have already been debated and subsequently passed overwhelmingly within our states, we call upon Congress to respectfully honor the will of the representatives of our states and our citizens and approve the dairy compact legislation.

We strongly believe that the interests of all citizens will be served through the participation in dairy compacts. The successful operation of the existing Northeast Dairy Compact demonstrates that states working collectively, through a Commission composed of milk processors, consumer representatives, farmers and elected officials, achieve consensus in milk price stability. Since its inception in 1997, the desire for compact legislation has grown from the original six New England states to over half the country. This overwhelming support for dairy compacts gives Congress compelling reason to take action on this promising solution to the continuing dairy crisis.

At no cost to the federal, state or local government, dairy compacts restore the traditional federal/state balance to milk regulation. The design of dairy compacts also protects states' sovereignty as consuming milk states and producing milk states have equal voice in determining price structures for milk.

Maintaining our dairy farms is in the best interest of the public and essential to the economic well being of our rural communities. Our right to locally manage our milk markets through dairy compacts is essential to the survival and future of our family farms. Please support the rights and interests of our states and pass the dairy compact legislation.


Respectfully,



Governor George Pataki
State of New York


Governor Howard Dean
State of Vermont


Governor Mike Huckabee
State of Arkansas



Governor Mike Foster
State of Louisiana


Governor Tom Ridge
Commonwealth of Pennsylvania



Governor John Rowland
State of Connecticut

Dear Members of the 107th Congress
July 24, 2001
Page 7



Governor Angus King
State of Maine



Governor Bob Holden
State of Missouri



Governor Don Siegelman
State of Alabama

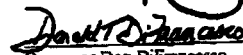

Governor Lincoln Almond
State of Rhode Island



Governor Don Sundquist
State of Tennessee



Governor Jeanne Shaheen
State of New Hampshire


Governor Mike Easley
State of North Carolina

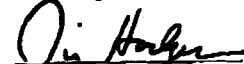

Governor Ronnie Musgrove
State of Mississippi


Governor Don DiFrancesco
State of New Jersey

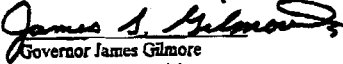

Governor Jane Swift
Commonwealth of Massachusetts


Governor Bob Wise
State of West Virginia


Governor Roy Barnes
State of Georgia


Governor Jim Hodges
State of South Carolina


Governor Ruth Ann Minner
State of Delaware


Governor James Gilmore
Commonwealth of Virginia


Governor Paul Patton
State of Kentucky



Exhibit A

**New England Public Interest Groups Supporting
Reauthorization of the Northeast Interstate Dairy Compact**

July 25, 2001

- Association of Vermont Conservation Commissions
- Audubon Vermont
- Bay Circuit Alliance (MA)
- Berkshire Natural Resources Council (MA)
- Community Involved in Sustaining Agriculture
- Conservation Law Foundation
- Environmental League of Massachusetts
- Essex County Greenbelt Association (MA)
- Food Works (VT)
- Historic Massachusetts
- Lincoln Land Conservation Trust (MA)
- Maine Organic Farmers and Gardeners Association
- Massachusetts Association of Conservation Commissions
- Massachusetts Audubon Society
- Massachusetts Watershed Coalition
- MASSPIRG
- Nashua River Watershed Association (MA)
- National Wildlife Federation
- New England Small Farm Institute
- New Hampshire Association of Conservation Commissions
- QLF - Atlantic Center for the Environment
- Rural Vermont
- Sheffield Land Trust (MA)
- Shelburne Farms (VT)
- Sierra Club - Northeast Region
- Sippican Land Trust (MA)
- Sudbury Valley Trustees (MA)
- The Trustees of Reservations (MA)
- Upper Valley Land Trust (NH)
- Valley Land Fund (MA)
- Wildlands Trust of Southeastern Massachusetts
- Vermont Natural Resources Council
- Vermont PIRG

(Incomplete list)

62 Summer Street, Boston, Massachusetts 02110-1016 • Phone: 617-350-0990 • Fax: 617-350-4030 • www.clf.org

MAINE: 120 Tillson Avenue, Suite 202, Rockland, Maine 04841-3416 • 207-594-8107 • Fax: 207-596-7706

NEW HAMPSHIRE: 27 North Main Street, Concord, New Hampshire 03301-4930 • 603-225-3060 • Fax: 603-225-3059

RHODE ISLAND: 69 Washington Street, Providence, Rhode Island 02903-1726 • 401-323-7608 • Fax: 401-351-0118

VERMONT: 15 East State Street, Suite 4, Montpelier, Vermont 05602-3010 • 802-223-5992 • Fax: 802-223-0060

Groups endorse compact

Environmentalists join dairy farmers

By Erin Kelly
Free Press Washington Writer

WASHINGTON — Forget the whales. Environmentalists have a new rallying cry: Save the dairy cow!

With the numbers of small dairy farms dwindling, more than 30 environmental groups in New England have banded together to support a controversial program that helps keep dairy farmers in business by guaranteeing them a minimum price from the processors who buy their milk.

The program — the Northeast Interstate Dairy Compact — is set to expire Oct. 1 and its supporters in Congress are battling not only to continue it in New England, but also expand it throughout the Northeast and Middle Atlantic states. Southern dairy farmers also want congressional approval to create a compact of their own.

Environmental groups want to keep dairy farms in business because all too often failed farms are replaced by housing tracts and strip malls.

Environmentalists and dairy farmers have in the past found themselves at issue on many fronts — including nutrient runoff, pesticide use and growth hormones — but are finding shared interests in the economic challenge.

A powerful national ally — the 4 million-member National Wildlife Federation, which has come out in support of dairy compacts as a way to fight suburban sprawl and the air and water pollution that comes with uncontrolled growth, has joined New England environmentalists.

"The environmental community, perhaps somewhat

See COMPACT, back page

Dairy compact

■ HISTORY: The federal government since 1937 has aided dairy farmers by setting minimum milk prices for various regions of the country. In 1996, Congress let Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont form the Northeast Dairy Compact to regulate milk prices in that region.

■ WHAT IT DOES: The compact commission sets minimum prices, which can be higher than the federal price. Milk processors make payments into a pool, and money from that pool is returned to the dairy farmers from whom they bought milk.

COMPACT: Environmental groups join farmers

Continued from Page 1A

belatedly, has really recognized the contribution that farmers make to our landscape and our community," said Eric Palola, the federation's northeast director. "If the compact can create a small incentive to stay in business and keep fields and woodlands open, that's a benefit to all of us."

Compact supporters are hopeful they can use that argument to persuade pro-environment lawmakers in states with few dairy farms to support them.

"I think everybody looks at farm issues like the dairy compact as simply being economic," said Sen. Patrick Leahy, D-Vt. "But the compact is every bit as much of an environmental issue as it is an economic one."

Leahy, chairman of the Judiciary Committee, has scheduled a hearing on dairy compact legislation for Wednesday and invited leaders of the Conservation Law

Foundation — a New England environmental group — to testify.

"I think the compact legislation is the most important piece of environmental legislation that will be taken up in the coming year," said Sandy Levine, an attorney in the foundation's Montpelier office. "At least 2 million acres of New England dairy farmland hangs in the balance."

However, with the exception of the National Wildlife Federation, most environmental groups outside New England have stayed clear of the issue. That's because dairy compacts are opposed by lawmakers from Wisconsin and Minnesota, who see compacts as unfair price-fixing cartels. Senators from those regions have been strong allies of national environmental groups on most other issues.

That has made groups like the Sierra Club reluctant to take a stand. Although the club's north-

east chapter has endorsed the dairy compact, the group's national lobbyists in Washington, D.C., say they are not involved in the issue. Still, Sierra Club Executive Director Carl Pope recently praised Sen. James Jeffords, I-Vt., for his support of the compact, saying it "helps preserve family farms and protects open space."

Sen. Paul Wellstone, D-Minn., said he supports preserving family farms and preventing sprawl but doesn't believe dairy compacts can do that. His aides point to figures that show that 465 New England dairy farms failed under the first three years of the compact, compared with 444 that went under during the three years before the compact took effect.

"The Northeast Dairy Compact has not stopped the loss of dairy farms," said Allison Dobson, Wellstone's press secretary. "It has not reduced the rate of farm failures, and it cannot be re-

lied upon for preservation of farmland. It also pits farmers from one region against farmers from another, which is not constructive."

Each year, an average of 4 percent of all dairy farmers go out of business, according to Byron Moyer at the Vermont Department of Agriculture.

In 1999, 123 farms, or 6.9 percent of the total, went out of business in the Green Mountain State. New England dairy farmers and their advocates say farms would be failing at a much greater rate without the limited price stability provided by the compact.

"Dairy farming is still a difficult way to make a living," said Andrew Meyer, executive director of the Governors' Council on Interstate Compacts, "but it would be even riskier without the compact."

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