Memorandum

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To:	Tom Freedman
From:	Kevin Brown
Date:	September 16, 1997
Subject:	Tobacco settlement-farmers
Cc:	Sarah Bianchi
	Jeanne ~~Lambrew~~

Senate Agriculture, Nutrition and Forestry Committee, Senator Lugar (R-IN) Chairman
Topic: tobacco settlement re: tobacco growers and the tobacco program
9:00 a.m. Dirksen Senate Office Building 106
(note: I had to leave at 11:30, and only half of the scheduled witnesses had appeared)

Senators in attendance: Lugar, Helms, McConnell, Grassely, Coverdell

Witnesses: Rep. Etheridge (NC) and Rep. Eva Clayton (NC)
Indiana's AG and Ga. Comm. of Agriculture, Irwin
several tobacco/agriculture economists including Will Snell (Univ. of Ky.)
(several farmers and other agricultural leaders were to testify later)

The hearing centered mainly around the issue of why farmers should be included in the settlement with other comments addressing how farmers should be included and the various advantages of the tobacco program. I will list each Senator who spoke and briefly summarize their remarks since that seems to be the information you were interested in. I will end with various remarks made to the press by Senators after POTUS's announcement yesterday.

Lugar: Indicated that he was in favor of a buy out and suggested an $8 pound figure which could be included in a one-time or series of payments to growers. Remarked that there were many factors which affected tobacco farmers, not just the settlement (weather, etc). Asserted that the settlement was the right thing to do, but that farmers should also be included.

Helms: Stressed that tobacco farmers AND the tobacco companies have been "good" citizens in that they have contributed billions to governments in taxes and have been involved in the community, endowed universities etc. Said that he is tired of the attacks on the industry and that it is an individual's choice to smoke. Mentioned the "coincidence" that Mr. Rodham was "the brother-in-law to someone in this town" and that he was involved in the settlement. Stressed that farmers be included.

McConnell: Mainly outlined the importance of tobacco to Kentucky: 88,000 small farms with 50% of farm receipts coming from tobacco. Asked whether farmers were mentioned in the settlement negotiations. Indiana's AG said that farmers where mentioned, however, the parties (companies) considered their inclusion in the settlement a "deal breaker."

Coverdell: Stressed that rural tobacco communities should not be left out of the debate and that they must be considered in the settlement. He mentioned the problem Canada had with regulating cigarettes (first mentioned by Helms) and how that contributed to black market trading. He stressed that we must not pass a settlement that would lead to this kind of situation.

Grassely: Very concerned that the POTUS was not specific on proposals for farmers. Indicated that since the POTUS had strong views on this issue since he came into office, he should also have ideas and specific proposals on how to solve the farmer issue. Said this represented a "vacuum of political leadership" and wondered if there was "something wrong."

Summary: Several Senators seemed concerned that the POTUS did not have anything specific in mind on this issue. It should be noted, however, that no Senator who spoke/asked questions had anything negative to say about helping farmers/communities. It should also be noted that Democratic representation on the committee was noticeably absent. Specific ways to help farmers were not discussed, only outlined, and several "what if" scenarios were discussed. It is interesting to note that if the tobacco program (system of quotas, etc) were eliminated as some suggest, the price for tobacco would actually drop, therefore giving the tobacco companies more profit per pack and leaving remaining farmers with less money. A voluntary buy out was discussed and would mean that farmers voluntarily take payment to retire their quotas and those that don't remain in the tobacco program

Congressional comments in the press:

Rep. Thomas J. Bliley, Jr.: Said he would hold hearings on tobacco after Congress recessed in October or early November. Indicated that the POTUS's refusal to submit a detailed legislative proposal has eliminated the possibility of being able to enact the settlement this year.

Sen. Wendell Ford: In an AP report, Sen. Ford indicated that the numerous new provisions to the settlement would weigh it down and it would be defeated under its own weight.

I will pass along other comments as I come across them.

Option 1 — Immediate End of the Program and Replacement with State Program

(a) TERMINATION OF FEDERAL PROGRAM FOR TOBACCO -- Notwithstanding any other provision of law, beginning, as soon as determined by the Secretary to be practicable taking into consideration the desire to avoid undue disruption of tobacco marketings, federal price support for tobacco, and restrictions on the production of tobacco as conducted or provided for under the provisions of the Agricultural Act of 1949 and the Agricultural Adjustment Act of 1938, shall terminate.

(b) ALLOWANCE OF STATE PROGRAMS - - Upon such termination as is provided for in (a), individual States may provide for their own price support program for tobacco and may regulate the production and sale of tobacco in their respective states in such manner as they determine appropriate in order to insure the well being of tobacco producers. Further, Congress hereby consents to the forming of interstate compacts between States to provide for income and other support of tobacco producers and regulation of tobacco to replace the current system of federal support and regulation. All such intrastate or interstate programs shall be subject to review by the Secretary of Agriculture of the United States to determine the consistency of such programs with obligations of the federal government and to rejection in the case of any such inconsistency.

Option 2 – End of the Federal Program after 7 years and Replacement with State Program

(a) TERMINATION OF FEDERAL PROGRAM FOR TOBACCO – Notwithstanding any other provision of law, effective beginning with the 2005 crops of tobacco, all federal price support for tobacco or restrictions on the production of tobacco as would otherwise be conducted or provided for under the provisions of the Agricultural Act of 1949 and the Agricultural Adjustment Act of 1938, shall terminate.

(b) ALLOWANCE OF STATE PROGRAMS – – Upon such termination as is provided for in (a), individual States may provide for their own price support program for tobacco and may regulate the production and sale of tobacco in their respective states in such manner as they determine appropriate in order to insure the well being of tobacco producers. Further, Congress hereby consents to the forming of interstate compacts between States to provide for income and other support of tobacco producers and regulation of tobacco to replace the current system of federal support and regulation. All such intrastate or interstate programs shall be subject to review by the Secretary of Agriculture of the United States to determine the consistency of such programs with obligations of the federal government and to rejection in the case of any such inconsistency.

Northeast Interstate Dairy Compact

The United States Constitution provides that individual states may, with the consent of Congress, form compacts among themselves to solve common problems. An interstate compact is the highest and most binding legal tool available for formal cooperation among states. A compact is essentially a treaty between two or more states and is authorized by Article 1, Section 10 of the United States Constitution.

The Constitution requires compacts to be approved by Congress if they will effect either the political balances within the federal system or a specific government power. Once a compact receives approval from two or more participating states' legislatures and is approved by Congress, Congress then has the power to amend or rescind the interstate compact at any time. Since the late 1700's, nearly 200 compacts have been formed in the United States.

In 1988, legislators in several northeastern states begin developing language for the Northeast Interstate Dairy Compact (the compact). The compact grew out of previous meetings and concerns that dairy farmers throughout the Northeast were receiving a low price for their milk. There were also concerns expressed over the lack of uniformity in milk marketing regulations, which inhibited the efficient marketing of milk in the Northeast.

After approval of the compact by six northeastern states, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island andVermont, legislation granting congressional consent was introduced in the Senate on May 2, 1994. This bill, S. 2069, provided that six additional northeastern states, Delaware, Maryland, New Jersey, New York, Pennsylvania and Virgina could also enter the compact along with states contiguous to compact states following congressional approval provided each state passed authorizing legislation. That bill failed to reach the Senate floor.

There were various attempts to include language in the 1996 Farm Bill authorizing the compact. Both the House and Senate versions of the Farm Bill failed to include Congressional approval, but the final Conference bill contained a provision that provided Congressional consent for the compact under certain conditions. The 1996 Farm Bill provided that the Secretary could grant the States that had ratified the Compact the authority to implement based upon a finding of a compelling public interest in the Compact

The Northeast Interstate Dairy Compact would establish a commission to administer the compact. The commission would be composed of delegations consisting of not less than three nor more than five persons from each state included in the compact. Delegation members must be residents and voters in the appointing state and at least one member of each delegation must be a dairy producer and at least one must be a consumer representative.

The commission would have authority limited to the area served by the compact to: (1) review existing laws and regulations and measure their impact on the production, marketing and shipments of milk, (2) prepare model dairy laws and regulations dealing with inspection, sanitary codes, labelling, standards, producer security programs and fair trade laws, (3) encourage the solution of problems, (4) review and recommend changes in the existing structure for assembly and distribution of milk, (5) investigate costs and charges for producing, hauling, processing, distributing, selling and other services, (6) examine current economic forces affecting production, consumption, farm prices, and the financial conditions of dairy farmers, and (7) establish an over-order price to producers above the Federal order minimum price. This last authority has been by far the most controversial.

The commission must hold a public hearing prior to the initial adoption of regulations establishing a compact over-order price. At the public hearing, the commission is required to make findings with respect to: whether the public interest will be served by the establishment of minimum milk prices and what the level of prices that will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the compact states and for manufacturing purposes.

The commission's authority to impose an over-order price only applies to milk used as fluid (Class I). The commission would be required to take into account the following factors when establishing the over-order Class I price: the supply-demand balance for milk in the compact states, the costs of producing milk, the prevailing price for milk outside the compact, the purchasing power of the public and the price necessary to yield a reasonable return to milk producers and distributors. The commission cannot establish the over-order Class I price higher than $1.50 per gallon times the change in the Consumer Price Index since 1990. After deciding on a price level, the commission would hold a producer referendum on the proposed price with two-thirds of the voting producers required for approval. The commission must take such actions as necessary to ensure that the over-order price does not create an incentive for producers to generate additional milk supplies. The commission would have the authority to require that all handlers, except producer-handlers, receiving milk from producers located in the compact states pay producers the over-order price for milk used in fluid products.

Regulations establishing a compact over-order price may contain provisions for the reimbursement to participants of the Women's, Infants and Children Special Supplemental Food Program (WIC) to offset the increased cost of fluid milk products. In addition, the commission is required to compensate the Commodity Credit Corporation (CCC) for the cost of any increase in CCC dairy purchases which results from milk production in the compact states increasing faster than the national rate.

Agri-Mark
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To: Interested Parties

From: Bob Wellington

Date: April 4, 1996

RE: Northeast Dairy Compact

Duration

The Northeast Dairy Compact has been ratified by Congress as part of the Farm Bill passed by the U.S. Senate on March 28 and the U.S. House of Representatives on March 29. The approval of the Compact was for a limited duration and is linked to the time table for reducing the number of Federal Milk orders from 33 to 14 (or fewer). This should take approximately two to three years, but could last longer if legal or administrative problems delay the mergers.

USDA Approval

Congress has also established one last hurdle before the Compact can become effective. The Farm Bill dictated that the U.S. Secretary of Agriculture must determine that there is a "compelling public interest" in the New England region before allowing the Compact to proceed. We are in the process of providing both political motivation and economic and social justification for the Secretary. Although his approval is not assured, I believe it is likely within the next month or so.

Compact Members

While the Secretary is deliberating, we are encouraging the six New England states to go ahead and appoint their Compact Commission members. As written in law, each state must have from three to five members on their state Compact delegation; one member must be a dairy farmer and another must be a consumer representative. The rest can be of the state's choosing.

In Vermont, the delegation must have three dairy farmers (including one independent), one consumer representative, and one handler, with the Commission of Agriculture serving as a non-voting member. In Massachusetts, the delegation must have two dairy farmers, one consumer, one handler, and the Commissioner of Food and Agriculture (as a voting member). Generally the Governor appoints the Compact Commission members. In most states the Compact law also includes the appointment of a handler and a government representative to the delegation. Agri-Mark supported this concept since handler and government input is crucial to making this effort successful. Each state will have one vote in the Compact Commission. The 3 to 5 member delegation from each state will determine how their state will vote on each issue and on setting a price.

Once the Secretary has approved the Compact and each state has chosen its delegation, the Commission must establish the rules and regulations by which it must operate. Most of these rules and regulations are spelled out in detail in the Compact legislation; however, many are not. As primary examples, the Commission must appoint an executive director, establish a Class I price along with the means to collect funds and audit compliance, and finally determine how the revenue will be distributed among dairy farmers. This last point will no doubt be the most controversial.

State Participation

All dairy farms physically located in the six New England states will share in the Compact pool, unless their state chooses not to participate. Individual states can opt out. Some New York producers (and perhaps others outside of New England) will also share in the Compact over-order price to the extent they serve the New England Market.

New York State can only join the Compact by obtaining both state and Congressional approval. Other Northeast states could then follow using the same procedure, but only after New York is approved, since additional states must share a common border with a Compact state in order to participate. Although Agri-Mark will pursue New York state inclusion, it is unlikely that this would happen within the limited life span of the current Compact.

Hearing/ Referendum

The Commissioner must conduct an informal rule-making proceeding to provide interested persons with an opportunity to present data and views before establishing any regulations. A public hearing must also be held prior to the adoption of such regulation. Finally, a producer referendum must be held to seek approval of the issuance or amendment of all regulations. Cooperatives can block vote in that referendum.

Class I Price

price for milk used in fluid milk products

Once the rules and regulations have been established, the New England Class I price must be set. The Commission is limited to setting a Class I price only; it cannot set prices for other classes of milk. This Class I price needs to be established by the fifth of the proceeding month, so Class I handlers can coordinate it with the Federal Order Class I price. It's hard to tell what the price level would be at this point; a possible benchmark might be a $16.50 price at Boston since that level has worked well under the Maine vendor tax. Given the April 1996 Class I price, that would establish a $.69 Class I premium and return about $.35 per cwt. to dairy farmers. Given Class I prices at their 1995 low (July), it would have established a $2.14 Class I premium and returned more than $1.00 per cwt. to dairy farmers. Once again, what the actual price will be is up to the Compact Commission. The Compact does set a maximum Class I price level of $17.40 adjusted by the Consumer Price Index.

Presently, minimum is $16.94

Administration

At the end of each pricing month, the money must be collected according to the information filed by Class I handlers. In the Farm Bill, the New England Market Administrator (MA) is directed to assist the Compact efforts. The use of his reports will make life easier for handlers and the Compact Commission. The MA could probably bill the handler for the Compact premium, but he will probably be reluctant to handle the money involved. The Compact Commission staff can perform that function. It is also likely that the Commission can piggy-

The Commission may impose an administrative assessment on handlers who purchase milk from producers within the region. That assessment may not exceed one-tenth of one percent of the Federal Order blend price (about 1.2 to 1.4 cents per cwt.).

Regulated Handlers

While the Farm Bill provisions were very positive regarding the role of the MA, they were conversely as negative regarding the use of compensatory payments under the Compact. Compensatory payments are allowed under the Federal Orders and involve the option of Class I payments into the pool by unregulated handlers who sell Class I packaged milk into the marketing area as an alternative to buying regulated pool milk. This payment assures regulated handlers that they will not have a competitive disadvantage relative to those unregulated handlers. Such payments are no longer allowed under the Compact. However, under the Compact, anyone who sells Class I packaged milk into the six New England states or buys milk from producers located in those states must be either a fully regulated or partially regulated handler according to the law establishing the Compact Commission. This provision will effectively regulate everyone selling milk in the area and keep a level competitive playing field. While it would be easier to have compensatory payments for handlers with small volumes of outside milk, it can still be done using the partially regulated plant concept.

Competitive Credits

The Compact Commission has a provision which would allow competitive credits with respect to regulated handlers who market outside the regulated area. In addition, producer-handlers, as defined under the Federal Order, are not subject to a compact over-order price since they are not subject to the Federal Order Class I price.

Payment Dates

Payment dates by handlers and to producers under the Compact should follow Federal Order dates to every extent possible although there may be an additional week or so lag each month as the additional step of sending information from the MA office to the Compact staff takes place. Under the Federal Orders, handlers make payments to the pool by about the middle of the following month and producers are paid by the 20th of the following month. Although there may be delays initially, I would expect handlers to pay the Compact pool by the 20th of the following month (or sooner) and producers should be paid by the end of that month.

Time Table

The current time table for enacting the Compact is not firm, however, even if everything falls into place perfectly, farmers will probably not receive a payment until late August or early September at the earliest. An optimum time table is shown below.

Month		Action
1996	April	USDA Secretary approves Compact; States name delegation members
	May	Compact Commission meets, establishes rules and regulations and holds a producer referendum
	June	Sets a July Class I price by June 5th.
	July	Compact price in effect
	August	Handlers pay July Compact price by 20th of month. Producers get

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Any delay on the part of the Secretary or the Compact Commission could push the first payment into the fall months. A legal challenge could do likewise. However, if the Compact is sued by an out-of-area handler, we would urge the Court to escrow the amount of money involved and not stop the Compact provisions.

Lawsuit

A lawsuit against the Compact is highly likely. Keep in mind that Federal Orders were regularly challenged in court during their first years in existence. However, the Compact was written to survive a court challenge and that is the reason why we sought congressional approval.

CCC

The Farm Bill also includes a provision that the Compact Commission must compensate the Commodity Credit Corporation (CCC) if that agency is buying surplus product that is generated from increases in milk production in the Compact region which is in excess of the projected national average rate of increase. This is almost a non-issue since the CCC is not expected to buy much, if any, product in the next three years unless U.S. milk production as a whole increases significantly.

As I said at the beginning of the Compact project several years ago, each step in the process will become increasingly more difficult. First, we had to get all producers to agree on basic Compact provisions, then we had to pass it in all six New England states, and then on to Congress. Now we must get the Secretary to approve it, get beyond any legal challenges and then make it work. The last item will probably be the most challenging task of all.

:mc