Saputo

September 27, 2006

Via Federal Express

Hearing Clerk
United States Department of Agriculture
Stop 9200
Room 1031, South Building
1400 Independence Ave., S.W.
Washington, DC 20250-9200

Re: **Docket No. AO-14-A74, *et al.*; DA-06-01**

Dear Sir/Madam:

Saputo Cheese USA Inc. submits this post-hearing brief regarding the proposed updating of the Class III and IV make allowances. I, Greg Dryer, testified in person as our Company representative at the January 2006 make allowance hearings. We testified to the emergency nature of the conditions that provoked the petition and gave an indication of the extent to which our costs have increased in the period subsequent to that on which the current make allowances are based. We appealed to USDA to move as expeditiously as possible to the issuance of a final decision and a final rule.

Despite our appeal and that of many others trapped in the same outdated system, we are dismayed to see that another eight months have passed with no indication of imminent relief. Over those eight months many appeals have been made to USDA and much information has been published in further support of the industry's position.

We were pleased that USDA recently reopened the make allowance hearing to take into evidence Cornell University's study of processing costs for those products employed in establishing minimum milk prices.

We have read Dr. Stephenson's testimony and support the use of Cornell's data by USDA to set make allowances. It is, to the best of our knowledge, the only reliable national source of processing cost data for the pertinent commodities.

Dr. Stephenson testified to costs of 20.28 cents per pound of cheese, 19.41 cents per pound of dry whey, 11.08 cents per pound of butter and 14.23 cents per pound of

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nonfat dry milk. He adjusted his original weighted average cheese cost of 16.38 cents per pound because the stratified method of sampling he employed over-represented large plants. Unfortunately, he did not have enough information to do the same for the other commodities. We suggest this be investigated in the future. Since his data did not include marketing costs, we would implore USDA to add 0.15 cents to his costs as it did for the current make allowances. We also ask that USDA incorporate the updated energy cost factors which were presented as a part of Dr. Stephenson's testimony in order to reflect the most current costs. An automatic energy cost adjuster should probably be considered, but for the sake of expediency, at some subsequent hearing.

The justification and urgent need for a make allowance revision has been well established through this process. Furthermore, the short-term well being of dairy producers ***should not*** be a consideration in the establishment of realistic make allowances for dairy processors. We note on page 241 of the reconvened hearing transcript from day 1, the judge allowed "official notice" to be taken of the California hearing decision for the record. The following excerpt is quoted from The California Department of Food and Agriculture June 1, 2006 Hearing Panel Report:

> "When regulated prices are set too high, or more specifically when there is not enough of a wedge between the commodity price and the milk price, manufacturing plants have no ability to create the margin they need to operate successfully. If they increased finished product prices to customers, they are in turn reflected in higher commodity prices that then translate through the formula into even higher raw milk prices. The circuitous pricing formula means that there is no escape for plants from regulatory pricing mistakes. Regulated prices that are too high also artificially stimulate milk production, at least initially, while at the same time the formula's inadequate plant margins reduce the incentive for plants to procure milk. The result is more milk looking for a home in plants that have reduced incentive to buy it."

If, after establishing fair and realistic make allowances for processors, USDA determines the resultant minimum prices to producers to be inadequate, it is incumbent on the government then to employ the alternative means of support to producers it deems necessary. Processors are ill equipped to fill this void on the government's behalf.

Following are further excerpts from the California Panel Report:

> "It must be recognized that it is the collective actions/decisions of dairy producers at the farm level, not the actions/decision of

processing plants, that determine the size of the nation's total milk supply relative to the nation's commercial demand. Only dairy producers have the collective ability to directly influence the number of cows on dairy farms and the quantity of milk produced."

"In a regulated market using end product pricing, all the market risks and rewards for equating milk production supply with commercial demand is taken by the producer. When supplies are surplus to the market needs, the producer receives low prices (risks)."

"When the supplies are short, the producer enjoys high prices (rewards). When supply and demand are in balance, then the resulting prices would provide reasonable returns to producers. These regulated market dynamics are consistent with fundamental economic theory for basic commodity production under a competitive market system."

For the long-term well being of the entire dairy complex, we urge USDA to issue an interim final decision as soon as possible employing the make allowances submitted by Cornell as adjusted for marketing and energy costs as detailed above.

Sincerely,

R. Gregory Dryer

R. Gregory Dryer
Executive Vice President
Administration & Services
Saputo Cheese USA Inc.