



DEPARTMENT OF JUSTICE
Antitrust Division

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Assistant Attorney General

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November 14, 1994

Mr. Danny McKinney
Chief Executive Officer
Burley Tobacco Growers Cooperative Association
P.O. Box 860
Lexington, Kentucky 40587

Dear Mr. McKinney:

This letter responds to your request dated October 13, 1994, for the issuance of a business review letter pursuant to the Department of Justice's business review procedure, 28 C.F.R. 50.6. You have requested a statement of the Antitrust Division's present enforcement intentions with respect to a plan of the Burley Tobacco Growers Cooperative Association ("the cooperative") to offer for sale all or a substantial portion of its inventory stock of tobacco to United States cigarette manufacturers.

We understand that the cooperative, by contract with the Commodity Credit Corporation ("CCC"), administers a portion of the tobacco loan program of the United States Department of Agriculture ("USDA") for burley tobacco. Under the program, tobacco not purchased on the open market at or above the government support price is automatically consigned to the cooperative, and the grower is paid the support price by the cooperative from funds loaned by the CCC. These loans plus interest are repaid to the CCC when the cooperative resells the tobacco that it has purchased from its members. Pursuant to the No Net Cost Tobacco Program Act of 1982, losses incurred on the sale of tobacco held by the cooperative are borne by the growers and tobacco purchasers, each of whom pays an assessment for each pound of tobacco sold, whether on the open market or to the cooperative. These assessed funds are held by the CCC as a reserve fund to cover losses and carrying charges for tobacco inventory of the cooperative.

You have told us that inventory stocks held by the cooperative have risen dramatically in the recent past. This is because the government support price is higher than the world price of tobacco. Thus, the cooperative is holding a great deal of surplus tobacco and paying very significant carrying charges. In addition, you have informed us that the failure of your cooperative to sell a substantial portion of its inventory within the next few months would have the effect under the current statutory framework of reducing the quota for burley tobacco for next year, thereby imposing significant losses on growers. Sale of the surplus at a price lower than the

support price, as contemplated by the cooperative, thus will eliminate both the high carrying charges presently borne by the tobacco growers and the risk of a reduced quota for next year.

We understand the cooperative's plan to be as follows. The cooperative will meet individually with each of the domestic cigarette manufacturers in an attempt to sell them a pro rata portion of the tobacco inventory, based on their respective shares of the domestic cigarette market. The cooperative will attempt to negotiate with the manufacturers separately to establish a price for the inventory. Its willingness to offer the tobacco at a price lower than the support price will be contingent on its ability to dispose of the entire stock. You believe that it will be necessary to sell the tobacco to the cigarette manufacturers at the same price to each, and we understand that the cooperative's decision to sell its inventory at a uniform price was reached unilaterally.

After discussing the proposal with you and consulting with USDA about the tobacco program, and absent any evidence that the program is a product of any agreement among cigarette manufacturers, we have concluded that the Department has no present intention of challenging your offer of the inventory to the cigarette manufacturers. This conclusion is based on your representations that you have decided that disposal of the inventory in its entirety is in the best interest of your members and that the cooperative is most likely to achieve its goal if it offers the inventory for sale at the same price to all of the manufacturers on a pro rata basis.

Pursuant to 28 C.F.R. 50.6, this letter and your business review request will be made publicly available immediately and any supporting materials will be made publicly available within 30 days of the date of this letter, unless you request that any part of the material you submitted be withheld in accordance with paragraph 20(c) of the business review procedure.

Sincerely,

Anne K. Bingaman
Assistant Attorney General