

June 5, 2002

Rep. Philip M. Crane
Chairman, Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, DC

Re: Miscellaneous Tariff Legislation / H.R. 1786

Dear Chairman Crane:

On May 3 you invited public comment on a number of bills proposed for inclusion in a package of miscellaneous tariff measures. These comments are submitted on behalf of Fonterra Co-operative Group Limited, Auckland, New Zealand, in opposition to the inclusion of H.R. 1786 in that package.

In brief, this bill would establish tariff rate quotas (TRQs) on milk protein concentrate and casein (including caseinate) at severely restrictive levels – only about 30% of the milk protein concentrate actually imported in calendar year 2000 would be allowed entry at the existing duty rate, while just 45% of the casein imported in 2000 would enter at current rates. In both cases the above TRQ rate, based on current import values, would be over 50% *ad valorem*, thus clearly prohibitive.

In an attempt to add a patina of legitimacy to such onerous trade restrictions, the bill has been drafted in terms of the withdrawal of concessions under Article XXVIII of the GATT. However, dressing up these proposals as purported legitimate exercises of WTO rights cannot hide the significant costs of the legislation, both in real dollars to consumers and manufacturers, and in trade policy terms to the United States. To erect a barrier under the guise of Article XXVIII, when in fact the motivation for the measure lies in domestic politics, invites others to renege on their trade commitments at the behest of changing political winds.

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The facts about MPC and casein imports are as follows:

- Casein and MPC are not commodity products – they are technologically sophisticated products produced in a maze of specifications tailored to particular customer needs.
- Casein is not produced in the US and has been imported for over 40 years – the trend is steady and growth moderate. In 2000 total imports were about 108,000 metric tons, compared to 95,600 tons in 1996, an average annual increase of just about 3%.
- Like casein, MPCs are not manufactured in the US. While MPC imports have increased over the last several years, the increase is “dramatic” only because it is from a very low base. MPC import levels in fact declined in 2001 and remain well below those for casein.
- Casein imports, in particular, have been the subject of numerous trade studies. In 1981 the ITC specifically found that casein imports did not interfere with the US dairy price support program.
- Both milk protein concentrate and casein imports substantially benefit US industry and consumers by:
 - making available specialized products not available from domestic sources
 - contributing to the ability of industry to utilize new technology to make new products
 - encouraging the introduction of new products targeted toward particular market segments such as geriatric foods and athletic drinks
 - improving process efficiency by increasing yields and reducing waste product, the disposal of which is a continuing problem for the industry.
- The introduction of quotas would impose additional costs on the US food industry and would reduce their competitiveness substantially. Rather than providing additional benefits for the food and dairy industries, the imposition of quotas would have significant downsides.
- In most end uses imported MPC and casein do not replace US non-fat dry milk (NFDM) or other milk supplies, as both MPC and casein have nutritional, functional and flavor attributes not shared by NFDM. For example, for nutritional products, NFDM contains too much lactose and too little protein. Other proteins such as soy are often better substitutes for MPC and casein than NFDM.
- To illustrate the widespread application of casein and MPC, we have attached to this

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letter a list of some generic uses for them. As you will note, the uses are strikingly broad. A catalog of branded products containing these ingredients would certainly number in the hundreds, and likely in the thousands.

- MPC and casein duties were bound in the WTO by the US in the Uruguay Round. Thus the US may not increase the tariffs or impose quotas on these items without backtracking on its international obligations. We understand that the Irish Dairy Board has supplied the International Trade Commission with an estimate of the costs that would be involved in Article XXVIII compensation, which they estimate to be 447 million dollars.
- The US surplus of NFDM is a product of the operation of the dairy price support program – not MPC or casein imports. US milk production increased 3.4% in 1999 and another 3% in 2000, while NFDM production increased by 110,000 metric tons between 1998 and 1999, and by another 37,000 metric tons in 2000. Thus, the support program creates an economic incentive to produce NFDM while discouraging the development and production of innovative products like MPC and casein.
- Clearly Article XXVIII was not intended to be utilized in the erection of barriers to newly developed and technologically sophisticated products, whose domestic development has been inhibited by US support policies.

In summary, the adoption of this bill would limit the access of US manufacturers of a wide range of food, nutritional and medical products to ingredients which have been tailored to their particular products. It would drive up their costs or force them to substitute functionally inferior ingredients such as soy based proteins. In either case, both they and the consumers they supply would be ill served. Moreover, the US would be obligated to pay significant compensation to supplying countries, while creating a terrible precedent for others to renege on their international obligations

Sincerely,

Edward J. Farrell

EJF:vsf

Enclosure

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Uses of Casein, Caseinate and MPCs

Casein	Caseinate	MPCs
Processed Cheese	Bakery items	Bakery items
Imitation cheese	Processed cheese	Processed cheese
Non dairy creamer	Confectionery	Confectionery
Formulate blends for bakery	Dry mixes	Dry mixes
Dairy blends for ice cream	Breads	Breads
Dairy blends for bakery	Sauces	Sauces
Chocolate	Soups	Soups
Starter media	Gravies	Gravies
Nutritional bars	Frozen desserts	Frozen desserts
Nutritional snack foods	Substitution dairy products	Substitution dairy products
Cereal	Medical formula	Medical formula
Meal replacers	Infant formula	Infant formula
Yoghurt products	Geriatric formula	Geriatric formula
Bakery products	Sports food	Formulated blends for bakery
Infant formula	Chopped meats	Chopped meats

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Medical formula	Sausages	Sausages
Whipped toppings	Surimi	Surimi
	Cookie manufacture	Salad dressings
	Chocolate	Yoghurt products
	Spreads	Coffee creamers
	Candy	Starter media
	Pates	Chocolate
	Canned ready to eat foods	Imitation cheese
	Binder in burgers	Dairy blends for bakery
Plasters	Mousse-type desserts	Dairy blends for ice cream
Luxury art cardboard	Snack foods	Nutritional bars
Electronics	Low fat spreads	Snack foods
Glues	Cream liquors	Meal replacers
Luxury art paper	Low calorie diet foods	Cereal
Cement	Dietetic milk & dairy products	Sports food
Video screens	Whipped toppings	Sports bars
	Beverages	Starter media
	Sports drinks	Sports drinks

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	Nutritional bars	
	Imitation cheese	
	Binder in hot dogs	
	Binder in hams	
	Binder in poultry	
	Binder in fish	
	Non dairy creamer	
	Bakery frosting	
	Bakery cream filling	
	Meal replacers	
	Yoghurt products	
	Cereal	
	Ice cream	
	Oral therapy nutrition	
	Enteral therapy nutrition	
	Diets for athletes	
	Starter media	
	Chip dips	
	Cheese without standard of identity	