

[BY PERMISSION OF THE CHAIRMAN:]

Embassy of New Zealand

5 June 2002

US/NZ/1/5/2

Chairman Philip M Crane
Trade Subcommittee
House Committee on Ways and Means
1102 Longworth House Office Building
Washington DC 20515-6348

Dear Chairman Crane

I am writing in response to your invitation of 3 May for public comment on the miscellaneous tariff bills that currently rest with your committee. In particular I would like to raise with you the strong objections New Zealand has to HR 1786, which would seek to impose tariff-rate quotas (TRQs) on imports of milk protein concentrate (MPC) and casein.

As a significant global exporter of dairy products, and a country with a strong interest in the liberalisation of trade in agricultural products, New Zealand is opposed to this draft legislation, especially given that it appears to have been developed without a full understanding of the current trade in MPC and casein.

The tariff classification structure, and associated duty rates, which are applied to imports into the United States of most forms of milk protein products have not changed in recent times, and are far from new. Casein and caseinates have been imported into the United States for more than 50 years under the general tariff regime that now applies. With respect to milk protein concentrates, a separate tariff item was introduced in the 1980s but modest tariff levels have also always applied.

What has changed, grown and developed are the requirements of the United States food processing and manufacturing industry. This is a dynamic industry stimulated by a competitive market environment. It has deployed new technologies and developed innovative products which have generated new demand for specialised ingredients of all types, including dairy-based ingredients such as casein and MPC. These ingredients are

not manufactured in the United States, and there are only limited cases where other dairy products such as milk powders can replace them as alternatives. At the same time, because

of the limited possibility to use alternative products, limiting imports of MPC and casein will not have a significant effect on providing so-called relief to US dairy producers. Placing tariff rate quotas on the import of MPC and casein will directly impact the profitability of the United States' food processing and manufacturing industries and the many jobs these companies provide.

Renegotiation of US Concessions under WTO Article XXVIII

HR 1786 would compel the Administration to re-negotiate market access concessions with the full list of countries which supply MPC and casein to the United States market. Contrary to the arguments put forward by proponents of HR 1786, this would not be a cost-free exercise for the United States. We cannot see how adequate compensation can be provided. Any decision to breach the binding and restrict trade by placing tariff rate quotas on MPCs and casein would need to be compensated for through other market access to offset the lost trade as stipulated by Article XXVIII of the GATT. It is to be expected that New Zealand and other supplier countries (eg Australia and the European Union) would seek concessions in increased market access for other dairy products. If compensating concessions cannot be agreed then the GATT provides for affected parties to exercise their rights to retaliate by restricting market access for US exports of dairy and other agricultural products.

Beyond these immediate facts there are strong trade policy reasons why placing tariff rate quotas on MPCs and casein would be a negative step for the United States:

- Apart from New Zealand's obvious immediate concern about the direct effects of the proposed tariff rate quota on our casein and MPC exports, we are also concerned that invoking Article XXVIII risks setting a bad precedent for other WTO members. Other countries may see such US action as an endorsement of tariff re-negotiation and may be tempted to follow suit, ultimately leading to major unravelling of Uruguay Round commitments. All trading nations, including trade from the US and New Zealand, would stand to lose valuable concessions under such a scenario. The outcomes achieved in the Uruguay Round were a significant step forward for trade liberalisation and form an interlocking network which balance the interests of all countries world-wide. This is something both New Zealand and the United States have indicated they wish to build on.
- The clear objective of HR 1786 is to implement protectionist measures. This would appear contrary to strong messages from the US that agricultural trade liberalisation is a priority for the US. HR 1786 is inconsistent with this policy and its carriage would send the wrong message to other WTO members.

- The US Administration has indicated that progress at the WTO on trade liberalisation is important to it, especially for agricultural products. The US action of imposing protectionist measures at the same time when WTO Members are moving ahead with agriculture liberalisation through the Doha Development Agenda would send confusing signals about the US's own approach to establishing a fair and market oriented agricultural trading system.

- The world-wide trend is towards more trade liberalisation and the reduced use of subsidies and market barriers. In New Zealand, for example, the prosperity of the dairy sector is dependent on trade. The New Zealand dairy sector receives no government subsidies, direct or indirect, and has evolved as a producer of internationally competitive dairy products. It would be detrimental to the long-term prospects of US dairy farmers if the United States was to act against the world-wide trend. US agriculture, and the dairy industry specifically, has gained significantly from the WTO Agricultural Agreement and the US dairy industry's annual exports of dairy products is well over \$1 billion.

I trust that the comments which I have provided here are helpful as you consider the composition of the package of miscellaneous tariff measures. Should any of the points I have made require further elaboration, please do not hesitate to contact me.

With kind regards

Yours sincerely

John Wood
Ambassador