

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, DC 20436

MEMORANDUM TO THE COMMITTEE ON FINANCE OF THE UNITED STATES  
SENATE ON PROPOSED TARIFF LEGISLATION <sup>1</sup>

**[Date approved: March 4, 2002]**<sup>2</sup>

**Bill No.:** S. 847 ; 107<sup>th</sup> Congress

Introduced by: Mr. DAYTON et al.

Similar and/or related<sup>3</sup> bills: H.R. 1786; 107<sup>th</sup> Congress.

Summary of the bill.<sup>4</sup>

The bill would impose tariff-rate quotas on imports of casein, caseinates, milk protein concentrates and other casein derivatives.

Effective date: The 15th day after the date of enactment.

Through: indefinitely

Retroactive effect: None.

*[The remainder of this memorandum is organized in five parts: (1) information about the bill's proponent(s) and the product which is the subject of this bill; (2) information about the bill's revenue effect; (3) contacts by Commission staff during preparation of this memorandum; (4) information about the domestic industry (if any); and (5) technical comments.]*

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<sup>1</sup> International trade analyst: Jonathan R. Coleman (202-205-3465); attorney: Jan Summers (202-205-2605).

<sup>2</sup> Access to an electronic copy of this memorandum is available at <http://www.usitc.gov/billrpts.htm>. Access to a paper copy is available at the Commission's Law Library (202-205-3287) or at the Commission's Main Library (202-205-2630).

<sup>3</sup> "Similar bills" are bills in the other House, in the current Congress, which address, at least in part, the substance of this bill. "Related bills" are bills in the **same** House, in the current Congress, but which are either earlier (or later) in time than the bill which is the subject of this memorandum.

<sup>4</sup> The product nomenclature is as set forth in the bill. See technical comments for suggested changes (if any).

– THE PROPONENT AND THE IMPORTED PRODUCT –

The proponent firm/organization(s)			
Name of firm	Location contacted (city/state)	Date contacted	Response received? (Yes/No) <sup>5</sup>
National Milk Producers Federation	Arlington, VA	07/31/01	Yes

*Does the proponent plan **any** further processing or handling<sup>6</sup> of the subject product after importation to its facilities in the United States (Y/N):* N

*If “Yes,” provide location of this facility if different from above (city/state):* n/a

*If “No,” provide location of proponent’s headquarters or other principal facility if different from above (city/state):* n/a

The imported product	
Description and uses	Country(s) of origin
<p>Casein is the principal protein in milk, accounting for 80% of the total protein content (whey proteins make up the remaining 20%). Milk protein concentrate (“MPC”) is milk protein—comprising both casein and whey proteins--separated from skim milk through the use of ultra-filtration technology. It is one of a small number of products of chapter 4 of the Harmonized Tariff Schedule of the United States (HTS) not covered by tariff-rate quotas. Additional U.S. note 13 to chapter 4 defines MPCs of HTS subheading 0404.90.10 as any complete milk protein (casein plus lactalbumin) concentrate—usually a nonfat dry milk powder--containing at least 40% by weight of protein. The method of production would not affect the classification of an import; the upper limit is estimated to be approximately 90% by weight of protein, after which the product may be classifiable as casein. However, many products entered as MPCs are reportedly blends of 2 or more dry dairy ingredients, such as nonfat dry milk of heading 0402, whey powder and whey protein concentrates of subheading 0404.10, and casein of heading 3501.</p> <p>Casein is used in food production in creating artificial dairy products such as artificial cheese, confectionary, mayonnaise, ice cream, coffee whiteners, whipping powders, instant breakfasts, and imitation milk. Industrial uses of casein include paper coating, adhesives, plastics, and man-made fibers. The uses of MPCs depend on the amount of protein they contain. MPCs with low protein levels (42-56% protein by weight) can be added to the raw milk used to make non-standardized cheeses (e.g., brie, ricotta,</p>	<p>New Zealand Australia European Union (especially Ireland, France, Netherlands, and Germany) India</p>

<sup>5</sup> Non-confidential written responses received prior to approval of this report by the Commission, if any, will be included in appendix C.

<sup>6</sup> The phrase “further processing or handling” can include repackaging, storage or warehousing for resale, etc.

**The imported product**

pizza cheese). MPCs are also added to starter culture in the manufacture of standardized cheese (such as cheddar and Mozzarella); however, the Code of Federal Regulations significantly limits the amount that can be used for this purpose. Low protein MPCs are also used in ice cream and other frozen deserts, and in bakery and confectionary products. MPCs with high protein content (70-85%) are chiefly used in sport-, adult- and hospital-nutrition products. Concentrates containing 90% protein are generally used by manufacturers of food products for which lactose- and sugar-free claims are made.

– EFFECT ON CUSTOMS REVENUE –

*[Note: This section is divided in two parts. The first table addresses the effect on customs revenue based on the duty rate for the HTS number set out in the bill. The second table addresses the effect on customs revenue based on the duty rate for the HTS number recommended by the Commission (if a different number has been recommended). Five-year estimates are given based on Congressional Budget Office “scoring” guidelines. If the indicated duty rate is subject to “staging” during the duty suspension period, the rate for each period is stated separately.]*

<b>HTS number used in the bill: 0404.90.10, 3501.10.10, 3501.10.50, 3501.90.60 <sup>7</sup></b>					
	2002	2003	2004	2005	2006
<b>Existing provisions</b>					
General rate of duty (\$/metric ton)	3.7	3.7	3.7	3.7	3.7
Estimated volume dutiable imports (metric tons) <sup>8</sup>	97,462	107,208	117,929	129,721	142,694
Current customs revenue (\$1,000)	361	397	436	480	528
<b>Proposed provisions</b>					
In-quota general rate of duty (\$/metric ton)	3.7	3.7	3.7	3.7	3.7
Over-quota general rate of duty (\$/m.t.): MPC	1,560	1,560	1,560	1,560	1,560
Over-quota general rate of duty (\$/m.t.): Casein	2,160	2,160	2,160	2,160	2,160
In-quota imports (tons)	69,869	69,869	69,869	69,869	69,869
Over-quota imports (tons) <sup>9</sup>	0	0	0	0	0
Customs revenue under new regime (\$1,000)	259	259	259	259	259
Net Loss (\$1,000)	102	138	178	221	269

<sup>7</sup> The HTS number is as set forth in the bill.

<sup>8</sup> Dutiable imports are assumed to increase 10 percent per annum during 2002-2006.

<sup>9</sup> The data assume that the proposed over-TRQ duty rates would be financially prohibitive, preventing imports.



HTS number recommended by the Commission: <u>n/a</u> <sup>10</sup>					
	2002	2003	2004	2005	2006
General rate of duty (AVE)					
Estimated value <i>dutiable</i> imports					
Customs revenue loss					

– CONTACTS WITH OTHER FIRMS/ORGANIZATIONS –

Contacts with firms or organizations <i>other than the proponents</i>			
Name of firm	Location contacted (city/state)	Date contacted	Response received? (Yes/No) <sup>11</sup>
International Dairy Foods Association	Washington, DC	07/27/01	Yes
Committee to Assure the Availability of Casein	Washington, DC	07/27/01	Yes
Lactalis Industrie	Wapakoneta, OH		Yes
Grocery Manufacturers of America	Washington, DC		Yes
Galaxy Nutritional Foods	Orlando, FL		Yes
Galaxy Foods	Orlando, FL		Yes
Ross Products Division	Columbus, OH		Yes
Slim Fast Foods Company	West Palm Beach, FL		Yes
Novartis Nutrition Corporation	St. Louis Park, MN		Yes
Glanbia Ingredients	Monroe, WI		Yes
Glanbia Foods	Monroe, WI		Yes
Kerry Ingredients	Beloit, WI		Yes
Dean Foods	Rockford, IL		Yes
Morningstar, a Suiza Foods Co.	Dallas, TX		Yes
European Union Delegation of the European Commission	Washington, DC		Yes

<sup>10</sup> If a different HTS number is recommended, see technical comments.

<sup>11</sup> Non-confidential written responses received prior to approval of this report by the Commission, if any, will be included in appendix D. Only statements submitted in connection with **this** bill will be included in the appendix.

Contacts with firms or organizations <i>other than</i> the proponents			
Eucolait (European Union of Dairy Trade)	Brussels		Yes
European Dairy Association	Brussels		Yes
Irish Dairy Board	Dublin		Yes
Government of Australia	Canberra		Yes
Tighe Patton Armstrong & Teasdale (legal counsel to the Australian Dairy Corporation)	Washington, DC		Yes
Government of New Zealand	Wellington		Yes
Blank Rome Comisky & McCauley (legal counsel to the New Zealand Dairy Board)	Washington, DC		Yes

– THE DOMESTIC INDUSTRY –

*[Note: This section is divided in two parts. The first part lists non-confidential written submissions received by the Commission which assert that **the imported product itself** is produced in the United States and freely offered for sale under standard commercial terms. The second part lists non-confidential written submissions received by the Commission which assert either that (1) the imported product will be produced in the United States in the future; or (2) another product which **may compete** with the imported product is (or will be) produced in the United States and freely offered for sale under standard commercial terms. All submissions received by the Commission in connection with this bill prior to approval of the report will be included in appendix D. The Commission cannot, in the context of this memorandum, make any statement concerning the validity of these claims.]*

Statements concerning current U.S. production			
Name of product	Name of firm	Location of U.S. production facility	Date received
None.			

Statements concerning “future” or “competitive” U.S. production			
Name of product	Name of firm	Location of U.S. production facility	Date received
National Milk Producers Federation	Arlington, VA	Economy wide	08/14/01

– TECHNICAL COMMENTS –

*[The Commission notes that references to HTS numbers in temporary duty suspensions (i.e., proposed amendments to subchapter II of chapter 99 of the HTS) should be limited to **eight digits**. Ten-digit numbers are established by the Committee for Statistical Annotation of Tariff Schedules pursuant to 19 U.S.C. 1484(f) and are not generally referenced in statutory enactments.]*

*Recommended changes to the nomenclature in the bill:* None.

*Recommended changes to any CAS numbers in the bill (if given):* None.

*Recommended changes to any Color Index names in the bill (if given):* None.

*Basis for recommended changes to the HTS number used in the bill:*<sup>12</sup> n/a

*Other technical comments (if any):* We would note that the unilateral establishment of the proposed TRQs, outside of the provisions of the General Agreement on Tariffs and Trade allowing limited exceptions from negotiated concessions, may give rise to complaints and/or responsive actions from affected trading partners.

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<sup>12</sup> The Commission may express an opinion concerning the HTS classification of a product to facilitate the Committee's consideration of the bill, but the Commission also notes that, by law, the U.S. Customs Service is the only agency authorized to issue a binding ruling on this question. The Commission believes that the U.S. Customs Service should be consulted prior to enactment of the bill.

## APPENDIX A

### TARIFF AND TRADE AGREEMENT TERMS

In the **Harmonized Tariff Schedule of the United States** (HTS), chapters 1 through 97 cover all goods in trade and incorporate in the tariff nomenclature the internationally adopted Harmonized Commodity Description and Coding System through the 6-digit level of product description. Subordinate 8-digit product subdivisions, either enacted by Congress or proclaimed by the President, allow more narrowly applicable duty rates; 10-digit administrative statistical reporting numbers provide data of national interest. Chapters 98 and 99 contain special U.S. classifications and temporary rate provisions, respectively. The HTS replaced the **Tariff Schedules of the United States** (TSUS) effective January 1, 1989.

Duty rates in the **general** subcolumn of HTS column 1 are normal trade relations rates, many of which have been eliminated or are being reduced as concessions resulting from the Uruguay Round of Multilateral Trade Negotiations. Column 1-general duty rates apply to all countries except those listed in HTS general note 3(b) (Afghanistan, Cuba, Laos, North Korea, and Vietnam) plus Serbia and Montenegro, which are subject to the statutory rates set forth in **column 2**. Specified goods from designated general-rate countries may be eligible for reduced rates of duty or for duty-free entry under one or more preferential tariff programs. Such tariff treatment is set forth in the **special** subcolumn of HTS rate of duty column 1 or in the general notes. If eligibility for special tariff rates is not claimed or established, goods are dutiable at column 1-general rates. The HTS does not enumerate those countries as to which a total or partial embargo has been declared.

The **Generalized System of Preferences** (GSP) affords nonreciprocal tariff preferences to developing countries to aid their economic development and to diversify and expand their production and exports. The U.S. GSP, enacted in title V of the Trade Act of 1974 for 10 years and extended several times thereafter, applies to merchandise imported on or after January 1, 1976 and before the close of September 30, 2001. Indicated by the symbol "A", "A\*", or "A+" in the special subcolumn, the GSP provides duty-free entry to eligible articles the product of and imported directly from designated beneficiary developing countries, as set forth in general note 4 to the HTS.

The **Caribbean Basin Economic Recovery Act** (CBERA) affords nonreciprocal tariff preferences to developing countries in the Caribbean Basin area to aid their economic development and to diversify and expand their production and exports. The CBERA, enacted in title II of Public Law 98-67, implemented by Presidential Proclamation 5133 of November 30, 1983, and amended by the Customs and Trade Act of 1990, applies to merchandise entered, or withdrawn from warehouse for consumption, on or after January 1, 1984. Indicated by the symbol "E" or "E\*" in the special subcolumn, the CBERA provides duty-free entry to eligible articles, and reduced-duty treatment to certain other articles, which are the product of and imported directly from designated countries, as set forth in general note 7 to the HTS.

Free rates of duty in the special subcolumn followed by the symbol "IL" are applicable to products of Israel under the **United States-Israel Free Trade Area Implementation Act** of 1985 (IFTA), as provided in general note 8 to the HTS.

Preferential nonreciprocal duty-free or reduced-duty treatment in the special subcolumn followed by the symbol "J" or "J\*" in parentheses is afforded to eligible articles the product of designated beneficiary countries under the **Andean Trade Preference Act** (ATPA), enacted as title II of Public Law 102-182 and implemented by Presidential Proclamation 6455 of July 2, 1992 (effective July 22, 1992), as set forth in general note 11 to the HTS.

Preferential free rates of duty in the special subcolumn followed by the symbol "CA" are applicable to eligible goods of Canada, and rates followed by the symbol "MX" are applicable to eligible goods of Mexico, under the **North American Free Trade Agreement**, as provided in general note 12 to the HTS and implemented effective January 1, 1994 by Presidential Proclamation 6641 of December 15, 1993. Goods must originate in the NAFTA region under rules set forth in general note 12(t) and meet other requirements of the note and applicable regulations.

Other special tariff treatment applies to particular **products of insular possessions** (general note 3(a)(iv)), **products**

**of the West Bank and Gaza Strip** (general note 3(a)(v)), goods covered by the **Automotive Products Trade Act** (APTA) (general note 5) and the **Agreement on Trade in Civil Aircraft** (ATCA) (general note 6), **articles imported from freely associated states** (general note 10), **pharmaceutical products** (general note 13), and **intermediate chemicals for dyes** (general note 14).

The **General Agreement on Tariffs and Trade 1994** (GATT 1994), pursuant to the Agreement Establishing the World Trade Organization, is based upon the earlier GATT 1947 (61 Stat. (pt. 5) A58; 8 UST (pt. 2) 1786) as the primary multilateral system of disciplines and principles governing international trade. Signatories' obligations under both the 1994 and 1947 agreements focus upon most-favored-nation treatment, the maintenance of scheduled concession rates of duty, and national treatment for imported products; the GATT also provides the legal framework for customs valuation standards, "escape clause" (emergency) actions, antidumping and countervailing duties, dispute settlement, and other measures. The results of the Uruguay Round of multilateral tariff negotiations are set forth by way of separate schedules of concessions for each participating contracting party, with the U.S. schedule designated as Schedule XX. Pursuant to the **Agreement on Textiles and Clothing** (ATC) of the GATT 1994, member countries are phasing out restrictions on imports under the prior "Arrangement Regarding International Trade in Textiles" (known as the **Multifiber Arrangement** (MFA)). Under the MFA, which was a departure from GATT 1947 provisions, importing and exporting countries negotiated bilateral agreements limiting textile and apparel shipments, and importing countries could take unilateral action in the absence or violation of an agreement. Quantitative limits had been established on imported textiles and apparel of cotton, other vegetable fibers, wool, man-made fibers or silk blends in an effort to prevent or limit market disruption in the importing countries. The ATC establishes notification and safeguard procedures, along with other rules concerning the customs treatment of textile and apparel shipments, and calls for the eventual complete integration of this sector into the GATT 1994 over a ten-year period, or by Jan. 1, 2005.

Rev. 1/4/00

**APPENDIX B**

**SELECTED PORTIONS OF THE  
HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES**

*[Note: Appendix may not be included in the electronic version of this memorandum.]*

## **APPENDIX C**

### **STATEMENTS SUBMITTED BY THE PROPONENTS**

*[Note: Appendix C may not be included in the electronic version of this memorandum posted on the Commission's web site if an electronic copy of the statement was not received by the Commission.]*

## **APPENDIX D**

### **STATEMENTS SUBMITTED BY OTHER FIRMS/ORGANIZATIONS**

*[Note: Appendix D may not be included in the electronic version of this memorandum posted on the Commission's web site if an electronic copy of the statement was not received by the Commission.]*



1 (A) in note 1, by striking “subheading  
2 3501.10.10” and inserting “subheadings  
3 3501.10.05, 3501.10.15, and 3501.10.20”; and

4 (B) by adding at the end the following new  
5 note:

6 “2. The aggregate quantity of casein, caseinates, milk  
7 protein concentrate, and other casein derivatives entered  
8 under subheadings 3501.10.15, 3501.10.65, and  
9 3501.90.65 in any calendar year shall not exceed  
10 54,051,000 kilograms. Articles the product of Mexico shall  
11 not be permitted or included under this quantitative limi-  
12 tation and no such article shall be classifiable therein.”.

13 (2) RATES FOR CERTAIN CASEINS, CASEINATES,  
14 AND OTHER DERIVATIVES AND GLUES.—Chapter 35  
15 of the Harmonized Tariff Schedule of the United  
16 States is amended by striking subheadings 3501.10  
17 through 3501.90.60, inclusive, and inserting the fol-  
18 lowing new subheadings with article descriptions for  
19 subheadings 3501.10 and 3501.90 having the same  
20 degree of indentation as the article description for  
21 subheading 3502.20.00:

“ 3501.10	Casein:			
	Milk protein concentrate:			
3501.10.05	Described in general note 15 of the tariff schedule and entered pursuant to its provisions .....	0.37¢/kg	Free (A*, CA, E, IL, J, MX)	12¢/kg
3501.10.15	Described in additional U.S. note 2 to this chapter and entered according to its provisions .....	0.37¢/kg	Free (A*, CA, E, IL, J)	12¢/kg
3501.10.20	Other .....	\$2.16/kg	Free (MX)	\$2.81/kg
	Other:			

3501.10.55	For industrial uses other than the manufacture of food for humans or other animals or as ingredients in such food .....	Free	Free (A*, CA, E, IL, J, MX)	Free
	Other:			
3501.10.60	Described in general note 15 of the tariff schedule and entered pursuant to its provisions .....	Free	Free (A*, CA, E, IL, J, MX)	12¢/kg
3501.10.65	Described in additional U.S. note 2 to this chapter and entered according to its provisions .....	0.37¢/kg	Free (A*, CA, E, IL, J)	12¢/kg
3501.10.70	Other .....	\$2.16/kg	Free (MX)	\$2.81/kg
3501.90	Other:			
3501.90.05	Casein glues .....	6%	Free (A*, CA, E, IL, J, MX)	30%
	Other:			
3501.90.30	For industrial uses other than the manufacture of food for humans or other animals or as ingredients in such food .....	6%	Free (A*, CA, E, IL, J, MX)	30%
	Other:			
3501.90.55	Described in general note 15 of the tariff schedule and entered pursuant to its provisions .....	0.37¢/kg	Free (A*, CA, E, IL, J, MX)	12.1¢/kg
3501.90.65	Described in additional U.S. note 2 to this chapter and entered according to its provisions .....	0.37¢/kg	Free (A*, CA, E, IL, J)	12.1¢/kg
3501.90.70	Other .....	\$2.16/kg	Free (MX)	\$2.81/kg

1 (b) MILK PROTEIN CONCENTRATES.—

2 (1) IN GENERAL.—The Additional U.S. notes to  
3 chapter 4 of the Harmonized Tariff Schedule of the  
4 United States are amended—

5 (A) in note 13, by striking “subheading  
6 0404.90.10” and inserting “subheadings  
7 0404.90.05, 0404.90.15, and 0404.90.20”; and

8 (B) by adding at the end the following new  
9 note:

10 “27. The aggregate quantity of milk protein con-  
11 centrates entered under subheading 0404.90.15 in any  
12 calendar year shall not exceed 15,818,000 kilograms. Arti-

cles the product of Mexico shall not be permitted or included under this quantitative limitation and no such article shall be classifiable therein.”.

(2) RATES FOR CERTAIN MILK PROTEIN CONCENTRATES.—Chapter 4 of the Harmonized Tariff Schedule of the United States is amended by striking subheading 0404.90 through 0404.90.10, inclusive, and inserting the following new subheadings with the article description for subheading 0404.90 having the same degree of indentation as the article description for subheading 0405.10 and the article description for subheadings 0404.90.05, 0404.90.15, and 0404.90.20 having the same degree of indentation as the article description for subheading 0405.20.40:

0404.90	Other:				
0404.90.05	Milk protein concentrates: Described in general note 15 of the tariff schedule and entered pursuant to its provisions .....	0.37¢/kg	Free (A*, CA, E, IL, J, MX)	12¢/kg	
0404.90.15	Described in additional U.S. note 27 to this chapter and entered pursuant to its provisions .....	0.37¢/kg	Free (A*, CA, E, IL, J)	12¢/kg	
0404.90.20	Other .....	\$1.56/kg	Free (MX)	\$2.02/kg	”.

(c) EFFECTIVE DATE.—The amendments made by this section apply to goods entered, or withdrawn from warehouse for consumption, on or after the first day of the first month after the date that is 15 days after the date of enactment of this Act.

1 **SEC. 2. COMPENSATION AUTHORITY.**

2 (a) IN GENERAL.—If the provisions of section 1 re-  
3 quire, the President—

4 (1) may enter into a trade agreement with any  
5 foreign country or instrumentality for the purpose of  
6 granting new concessions as compensation in order  
7 to maintain the general level of reciprocal and mutu-  
8 ally advantageous concessions; and

9 (2) may proclaim such modification or continu-  
10 ance of any existing duty, or such continuance of ex-  
11 isting duty-free or excise treatment, as the President  
12 determines to be required or appropriate to carry  
13 out any such agreement.

14 (b) LIMITATIONS.—

15 (1) IN GENERAL.—No proclamation shall be  
16 made pursuant to subsection (a) decreasing any rate  
17 of duty to a rate which is less than 70 percent of  
18 the existing rate of duty.

19 (2) SPECIAL RULE FOR CERTAIN DUTY REDUC-  
20 TIONS.—If the rate of duty in effect at any time is  
21 an intermediate stage under section 1102(a) of the  
22 Omnibus Trade and Competitiveness Act of 1988,  
23 the proclamation made pursuant to subsection (a)  
24 may provide for the reduction of each rate of duty  
25 at each such stage proclaimed under section 1102(a)  
26 by not more than 30 percent of such rate of duty,

1 and may provide for a final rate of duty which is not  
2 less than the 70 percent of the rate of duty pro-  
3 claimed as the final stage under section 1102(a).

4 (3) ROUNDING.—If the President determines  
5 that such action will simplify the computation of the  
6 amount of duty computed with respect to an article,  
7 the President may exceed the limitations provided in  
8 paragraphs (1) and (2) by not more than the lesser  
9 of—

10 (A) the difference between such limitation  
11 and the next lower whole number, or

12 (B) one-half of one percent ad valorem.

○