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June 22, 2012

Rep. David Camp
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Re: Miscellaneous Tariff Legislation

Dear Chairman Camp:

On May 24, 2012 you invited public comment on a number of bills, including H.R. 2813, proposed for inclusion in the Miscellaneous Tariff Bill (MTB). These comments are submitted on behalf of Fonterra (USA), Inc., Rosemont, IL opposing the inclusion of H.R. 2813 in the MTB for two principal reasons. H.R. 2813 does not meet the criteria set forth in the Committee's guidance attached to your letter to colleagues of March 30, 2012, and it is controversial.

First, with respect to the criteria established by the Committee, the referenced guidance document directs that for inclusion in the MTB a bill should fall into one of three categories:

1. A new temporary duty suspension or duty reduction on one product or item;
2. An extension of an existing temporary duty suspension or duty reduction on one product or item; or
3. A technical correction.

In brief, H.R. 2813 would establish tariff rate quotas (TRQs) on milk protein concentrate and casein (including caseinate) with above TRQ *ad valorem* rates that are significantly higher

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than current rates. As such it is neither a duty suspension nor reduction, or an extension of a duty suspension or reduction. Moreover, although “technical correction” is not defined in the Committee’s guidance, in normal legislative parlance a “technical correction” bill is one which is non-substantive, for example, correcting erroneous statutory references, nonstandard tabulations, grammatical problems, and misspellings. To the contrary, H.R. 2813 is clearly substantive, creating new provisions in the United States Tariff Schedules.

In an attempt to fit a square peg into a round hole, the sponsors of H.R. 2813 maintain that the bill “addresses an oversight in the U.S tariff schedule whereby important tariff lines covering imported milk protein concentrate, casein and caseinates were not treated in a similar manner to other comparable dairy tariff lines such as those for milk powder. H.R. 2813 seeks to remedy this historical oversight in a trade-compliant manner through use of U.S. GATT rights.” However, assertions such a these have been made, and answered, before.

Specifically, in May of 2003 Senate Finance Committee Chairman Grassley requested that the International Trade Commission (ITC) investigate the competitive conditions surrounding imported milk proteins. In May of 2004 the ITC reported on its unprecedented year-long investigation into the economics of imported milk proteins (*Conditions of Competition for Milk Protein Products in the U.S. Market*, Investigation No. 332-453, USITC Publication 3692, May 2004). That report clarifies the facts and dispels the myths regarding these milk protein imports. With respect to the claim that the tariff treatment of these milk proteins was somehow the result of an “oversight” and that U.S. policymakers failed to reflect upon these proteins in developing and implementing U.S. trade policy, the ITC report notes that, “*The Trade and Tariff Act of 1984 created a new TSUS rate line for MPC. Specifically section 123 of that Act established TSUS item 118.45, covering MPC, with a duty rate of 0.2 cents per pound (the same rate then in effect for casein under TSUS 493.17) and not subject to fees or quantitative restrictions under section 22. Section 123 also created a TSUS legal note defining the scope of the new MPC rate line. The note stated, that “for purposes of item 118.45, the term ‘milk protein concentrate’ means any complete milk protein (casein plus albumin) concentrate that is 40 percent or more protein by weight. In 1986, Congress modified the definition by changing “albumin” to “lactalbumin.”* (Page 8-4). Clearly both the Congress and Administration have been paying attention for a long time.

Second, as to the controversial nature of H.R. 2813, one need only look to the history of the attempts over the last 15 years to limit the importation of milk protein concentrate, casein, and caseinate by measures like H.R. 2813 to understand the depth of opposition from the U.S. industry to such measures, as the adoption of this bill would limit the access of U.S. 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

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substitute functionally inferior ingredients. 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.

Perhaps most importantly though, Fonterra, in a joint venture with Dairy Farmers of America, is a domestic producer of milk protein concentrate in Portales, New Mexico, and in that capacity objects to the inclusion of H.R. 2813 in the MTB.

Sincerely,

Edward J. Farrell