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22nd June 2012

Rep. David Camp
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515
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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 by Dairy Australia on behalf of the Australian dairy industry.

Dairy Australia is a not-for-profit industry services organisation, solely funded and owned by economically active dairy farmers. The company acts as the collective investment arm of the industry, investing in essential research, development, extension and industry services. Industry services include generic promotion of the goodness of dairy including advice on health and nutritional, domestic and trade policy issues and market intelligence gathering and analysis.

The Australian dairy industry has been a long-term, committed, competitive, high quality, non-subsidised and reliable supplier of milk protein concentrates, casein and caseinates (milk proteins) to the United States market.

The Australian dairy industry is of the view that H.R. 2813, by introducing tariff rate quotas (TRQs) on milk proteins is sending an inappropriate legislative and policy signal at a time when the Trans Pacific Partnership (TPP) negotiations are proceeding. The TPP negotiations are aimed at creating a high standard, genuinely trade liberalizing agreement across all goods (agricultural and industrial) sectors.

The Industry also notes that as a result of Ways and Means Committee guidance the MTB is explicitly reserved for non-controversial bills that suspend duties on needed inputs not produced in the United States.

Milk proteins, though, are needed as an essential ingredient in health food formulations. Milk proteins form the basis for production of high quality and nutritious ingredients with diverse applications. Value-added ingredients in the form of milk protein concentrate and casein boost yields and the functionality of foods ranging from sports bars to health care products. Milk proteins also have wide ranging non-food applications.

The sponsors of H.R. 2813 maintain that the bill addresses an “oversight” (loophole) in the U.S tariff schedule whereby 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. This observation is inaccurate. In May of 2004 the International Trade Commission (ITC) report '*Conditions of Competition for Milk Protein Products in the U.S. Market*[1]') notes with respect to the loophole claim 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).
- Additionally, in 2003, U.S. Customs found that imported MPC's, casein and caseinates did not circumvent non-fat dry milk TRQ's and were correctly classified under non-quota provisions

Therefore and clearly H.R. 2813 does not provide a valid technical correction to the U.S. tariff schedule.

Other considerations that weigh negatively on this proposed Bill are:

- The U.S. is a net exporter of dairy proteins, primarily in the form of whey protein products and skim milk powder/ non-fat dry milk powder;
    - In effect imported milk proteins are unlikely to have other than a zero or at the very most a tiny influence on domestic milk prices
- The U.S. has emerged as a substantial producer of MPC; volumes range between 86 million pounds and 89 million pounds in the four years 2008 to 2011
    - In effect U.S. manufacturers have developed the capability to expand production to substantial, import replacing levels
- The U.S. has run a major dairy trade surplus in value terms in three of the four past calendar years and is forecast to do so again in 2012;
    - In effect U.S. producers are benefitting from growing exports creating the opportunity to expand production and make productivity and profitability gains beyond the constraints of domestic market demand

In conclusion the protectionist H.R. 2813 bill is being advanced within the context of major efforts by a number of countries including the United States and Australia to conclude an ambitious TPP agreement. H.R. 2813 is the antithesis of this approach and would send inappropriate signals to negotiating parties about the willingness of the U.S. to substantively liberalise dairy (and agricultural) trade and likely encourage stonewalling in other sectors of the negotiation, noting that:

- Under the Australia-US free trade agreement the latter has zero constraints on exporting of dairy products compared to TRQ's in place for the earlier covering a wide range of dairy products and food ingredients and
- For the first time in 2011 the U.S. ran a bilateral dairy trade surplus in both value and volume terms

Adoption of H.R. 2813 would also limit the access of U.S. manufacturers of a wide range of food, nutritional and medical products to an essential ingredient, namely milk proteins which have been functionally tailored to their particular products. The Bill would likely increase ingredient purchasing costs or require manufacturers to substitute functionally and nutritionally inferior non-dairy proteins.

Yours sincerely,

Robert Pettit

Robert Pettit
Manager Americas and Caribbean

[1] Investigation No. 332-453, USITC Publication 3692, May 2004

Trade and Strategy Group
Dairy Australia