

**MEMORANDUM ON PROPOSED TARIFF LEGISLATION  
of the 109<sup>th</sup> Congress <sup>1</sup>**

[Date approved: September 28, 2005]<sup>2</sup>

**Bill No. and sponsor:** H.R. 521

**Proponent name, location:** Mr. Sherwood et al.

**Other bills on product (109<sup>th</sup> Congress only):** None

**Nature of bill:** The bill would impose permanent tariff-rate quotas (TRQs) on imports of certain casein, caseinates, milk protein concentrates and other casein derivatives under 12 new HTS subheadings subordinate to Harmonized System subheadings 3501.10 and 3501.90. It would also authorize compensation to be paid by the United States for any responsive actions by U.S. trading partners claiming to be adversely affected, based on agreements negotiated by the President.

**Retroactive effect:** None.

**Suggested article description(s) for enactment (including appropriate HTS subheading(s)):**

**Check one:**     Same as that in bill as introduced  
                   Different from that in bill as introduced (explain differences in Technical comments section)

**Product information, including uses/applications and source(s) of imports:**

Casein is the principal protein in milk, accounting for 80 percent by weight of the total protein content (whey proteins make up the remaining 20 percent). Milk protein concentrate (“MPC”) is milk protein—comprising both casein and whey proteins—that is 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 TRQs. 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 percent by weight of protein. The method of production would not affect the classification of an import as an MPC under that note; the upper limit is estimated to be approximately 90 percent 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.

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 percent protein by weight) can be added to the raw milk used to make non-standardized cheeses (e.g.,

<sup>1</sup> Industry analyst preparing report: Jonathan Coleman (202-205-3465); Tariff Affairs contact: Jan Summers (202-205-2605).

<sup>2</sup> Access to an electronic copy of this memorandum is available at [http://usitc.gov/tata/hts/other/rel\\_doc/bill\\_reports/index.htm](http://usitc.gov/tata/hts/other/rel_doc/bill_reports/index.htm)

brie, ricotta, 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 percent by weight) are chiefly used in sport, adult and hospital high-nutrition products. Concentrates containing 90 percent protein are generally used by manufacturers of food products for which lactose- and sugar-free claims are made.

Major foreign suppliers include New Zealand, Australia, the European Union (especially Ireland, France, Netherlands, and Germany), and India.

**Estimated effect on customs revenue:**

<b>HTS numbers used in the bill: 0404.90.10, 3501.10.10, 3501.90.60 <sup>1</sup></b>					
	2002	2003	2004	2005	2006
<b>Existing provisions:</b>					
General rate of duty (\$/ton)	3.7	3.7	3.7	3.7	3.7
Estimated volume dutiable imports (tons)	77,000	77,000	77,000	77,000	77,000
Current customs revenue (\$1,000)	285	285	285	285	285
<b>Proposed provisions:</b>					
In-quota general rate of duty (\$/ton)	3.7	3.7	3.7	3.7	3.7
Over-quota general rate of duty (\$/ton): MPC	1,560	1,560	1,560	1,560	1,560
Over-quota general rate of duty (\$/ton): 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)	0	0	0	0	0
Customs revenue under new regime (\$1,000)	259	259	259	259	259
Net Loss (\$1,000)	26	26	26	26	26

<sup>1</sup>/ The higher over-TRQ-trigger quantity rates of duty are intended to be economically prohibitive and to reduce or prevent imports of covered goods.

**Contacts with domestic firms/organizations (including the proponent):**

The table in this section lists the industry representatives contacted by the Commission and the submissions received in the summer of 2001 in relation to identical bills of the 107<sup>th</sup> Congress, H.R. 1786 and S. 847 (for which reports are available at the Commission’s website). No entity that submitted material in conjunction with those bills has indicated a change of position or supplied a new submission.<sup>3</sup> Copies of all submissions received by the Commission are attached in the appendices to this report.

<sup>3</sup> For a detailed discussion of the subject goods, see the Commission’s report in investigation No. 332-453, *Conditions of Competition for Milk Protein Products in the U.S. Market*, Publication 3692 (May 2004). The study updated the information submitted in 2001, as reflected in the table below.

Name of firm/organization	Date contacted for this report	US production of same or competitive product claimed?	Submission attached?	Opposition noted?
		(Yes/No)		
National Milk Producers Federation Arlington, VA	08/13/2001, 08/14/2001	Yes	Yes	No
International Dairy Foods Association Washington, DC	08/17/2001	No	Yes	Yes
Committee to Assure the Availability of Casein Washington, DC	08/07/2001	No	Yes	Yes
Lactalis Industrie Wapakoneta, OH	08/13/2001	No	Yes	Yes
Grocery Manufacturers of America Washington, DC	08/14/2001	No	Yes	Yes
Galaxy Nutritional Foods Orlando, FL	08/15/2001	No	Yes	Yes
Galaxy Foods Orlando, FL	08/15/2001	No	Yes	Yes
Ross Products Division Columbus, OH	08/07/2001	No	Yes	Yes
Slim Fast Foods Company West Palm Beach, FL	08/21/2001	No	Yes	Yes
Novartis Nutrition Corporation St. Louis Park, MN	08/17/2001	No	Yes	Yes
Glanbia Ingredients Monroe, WI	08/17/2001	No	Yes	Yes
Glanbia Foods Monroe, WI	08/17/2001	No	Yes	Yes
Kerry Ingredients Beloit, WI	08/15/2001	No	Yes	Yes
Dean Foods Rockford, IL	08/10/2001	No	Yes	Yes
Morningstar, a Suiza Foods Co. Dallas TX	09/13/2001	No	Yes	Yes
European Union Delegation of the European Commission Washington, DC	08/15/2001	No	Yes	Yes
Eucolait (European Union of Dairy Trade) Brussels	07/19/2001	No	Yes	Yes
European Dairy Association Brussels	08/30/2001	No	Yes	Yes
Irish Dairy Board Dublin	08/17/2001	No	Yes	Yes
Government of Australia Canberra	08/31/2001	No	Yes	Yes

Tighe Patton Armstrong & Teasdale (legal counsel to the Australian Dairy Corporation) Washington, DC	08/17/2001	No	Yes	Yes
Government of New Zealand Wellington	08/31/2001	No	Yes	Yes
Blank Rome Comisky & McCauley (legal counsel to the New Zealand Dairy Board) Washington, DC	08/31/2001	No	Yes	Yes

**Technical comments:**

We note that the proposed new provisions do not contain special rates of duty for originating goods of Australia under the United States-Australia FTA, implemented on January 1, 2005. The current duty rate for these goods of Australia is 0.3 cents per kilogram. While these duties are subject to staged reductions already proclaimed by the President, they are not eliminated completely until January 1, 2018. It is suggested that the special duty rate for Australia be inserted in all of the subheadings relating to general note 15 to the HTS or to the in-quota rate lines in each TRQ, and that language be added to the bill to continue the scheduled staged reductions for originating goods of Australia.

Although the Commission does not express a view on the bill, we note that the unilateral imposition of TRQs may be challenged at the World Trade Organization by affected trading partners of the United States. It is suggested that the Office of the United States Trade Representative be consulted with respect to the drafting of section 3 of the bill on compensation authority. Last, although there are transition provisions for the administration of the TRQs in the event that the bill becomes effective in the middle of a calendar year or middle of a month, the implementation of a TRQ may nonetheless be difficult to administer and costly for both Customs and importers—especially those firms with long-term contracts that may face limitations on the quantity of goods that could be entered during a partial-year initial TRQ period. There is no provision in this transition section that would insert the initial TRQ quantities into the HTS, but section 604 of the Trade Act of 1974, as amended, should authorize any necessary changes to be proclaimed.

109TH CONGRESS  
1ST SESSION

# H. R. 521

To impose tariff-rate quotas on certain casein and milk protein concentrates.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2005

Mr. SHERWOOD (for himself, Mr. OBEY, Mr. MCHUGH, Mr. SIMMONS, Ms. BALDWIN, Mr. GOODE, Mr. HOLDEN, Mr. LARSEN of Washington, Mr. ETHERIDGE, Mr. McNULTY, Ms. SLAUGHTER, Ms. WOOLSEY, Mr. MCGOVERN, Mr. SHUSTER, Mr. OBERSTAR, Mr. RAHALL, Mr. LEWIS of Kentucky, Mr. COSTELLO, Mr. SANDERS, Mr. NUNES, Mr. MCINTYRE, Mr. PITTS, Mr. WELDON of Pennsylvania, Mr. KILDEE, Mr. STRICKLAND, Mr. FILNER, Mr. CARDOZA, Mr. BOUCHER, Mr. ABERCROMBIE, Mr. DUNCAN, Ms. MCCOLLUM of Minnesota, Mr. PETRI, Ms. HART, Mr. BUTTERFIELD, Mr. SWEENEY, Mr. WILSON of South Carolina, Mr. JINDAL, Mr. GRIJALVA, Mr. KIND, Mr. WALSH, Mr. BOEHLERT, Mr. PETERSON of Pennsylvania, Mr. KUHLMAN of New York, Mrs. KELLY, Mr. STUPAK, Mr. SENSENBRENNER, Mr. HALL, Mrs. JOHNSON of Connecticut, Mr. GRAVES, Mr. DOYLE, Mr. ENGLISH of Pennsylvania, Mr. TAYLOR of Mississippi, Mr. GERLACH, Mr. KANJORSKI, Mr. DENT, Mr. ENGEL, Mr. FARR, Mr. GALLEGLY, Mr. MURTHA, Mr. REHBERG, and Mr. SAXTON) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To impose tariff-rate quotas on certain casein and milk protein concentrates.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Milk Import Tariff  
3 Equity Act”.

4 **SEC. 2. IMPOSITION OF TARIFF-RATE QUOTAS ON CERTAIN**  
5 **CASEIN AND MILK CONCENTRATES.**

6 (a) CASEIN AND CASEIN PRODUCTS.—

7 (1) IN GENERAL.—The Additional U.S. Note to  
8 chapter 35 of the Harmonized Tariff Schedule of the  
9 United States is amended—

10 (A) by striking “Additional U.S. Note”  
11 and inserting “Additional U.S. Notes”;

12 (B) in note 1, by striking “subheading  
13 3501.10.10” and inserting “subheadings  
14 3501.10.05, 3501.10.15, and 3501.10.20”; and

15 (C) by adding at the end the following new  
16 note:

17 “2. The aggregate quantity of casein, caseinates, milk pro-  
18 tein concentrate, and other casein derivatives entered  
19 under subheadings 3501.10.15, 3501.10.65, and  
20 3501.90.65 in any calendar year shall not exceed  
21 54,051,000 kilograms. Articles the product of Mexico  
22 shall not be permitted or included under this quan-  
23 titative limitation and no such article shall be classifi-  
24 able therein.”.

25 (2) RATES FOR CERTAIN CASEINS, CASEINATES,  
26 AND OTHER DERIVATIVES AND GLUES.—Chapter 35

1 of the Harmonized Tariff Schedule of the United  
 2 States is amended by striking subheadings 3501.10  
 3 through 3501.90.60 and inserting the following new  
 4 subheadings, with the article descriptions for sub-  
 5 headings 3501.10 and 3501.90 having the same de-  
 6 gree of indentation as the article description for sub-  
 7 heading 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, CL, E, IL, J, JO, MX, SG)	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, CL, E, IL, J, JO, SG)	12¢/kg
3501.10.20	Other .....	\$2.16/kg	Free (MX)	\$2.81/kg
	Other:			
3501.10.55	Suitable only for industrial uses other than the manufacture of food for humans or other animals or as ingredients in such food .....	Free		Free
	Other:			
3501.10.60	Described in general note 15 of the tariff schedule and entered pursuant to its provisions .....	0.37¢/kg	Free (A*, CA, CL, E, IL, J, JO, MX, SG)	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, CL, E, IL, J, JO, SG)	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, CL, E, IL, J, JO, MX) 4.5% (SG)	30%
	Other:			
3501.90.30	Suitable only for industrial uses other than the manufacture of food for humans or other animals or as ingredients in such food .....	6%	Free (A*, CA, CL, E, IL, J, JO, MX, SG)	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, CL, E, IL, J, JO, MX, SG)	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, CL, E, IL, J, JO, SG)	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 concentrates  
11 entered under subheading 0404.90.15 in any cal-  
12 endar year shall not exceed 15,818,000 kilograms.  
13 Articles the product of Mexico shall not be permitted  
14 or included under this quantitative limitation and no  
15 such article shall be classifiable therein.”

16 (2) RATES FOR CERTAIN MILK PROTEIN CON-  
17 CENTRATES.—Chapter 4 of the Harmonized Tariff  
18 Schedule of the United States is amended by strik-  
19 ing subheadings 0404.90 through 0404.90.10 and  
20 inserting the following new subheadings, with the ar-  
21 ticle description for subheading 0404.90 having the  
22 same degree of indentation as the article description

1 for subheading 0404.10 and with the article descrip-  
 2 tions for subheadings 0404.90.05, 0404.90.15, and  
 3 0404.90.20 having the same degree of indentation as  
 4 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, CL, E, IL, J, JO, MX, SG)	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, CL, E, IL, J, JO, SG)	12¢/kg
0404.90.20	Other .....	\$1.56/kg	Free (MX)	\$2.02/kg

5 (c) EFFECTIVE DATE.—

6 (1) IN GENERAL.—The amendments made by  
 7 this section apply to goods entered, or withdrawn  
 8 from warehouse for consumption, on or after the  
 9 first day of the first month after the date that is 90  
 10 days after the date of enactment of this Act.

11 (2) TRANSITIONAL PROVISIONS.—

12 (A) CHAPTER 35.—Notwithstanding the  
 13 amendments made by subsection (a)(1)(B) of  
 14 this section, in the case of any calendar year  
 15 that includes the effective date described in  
 16 paragraph (1), the aggregate amount of casein,  
 17 caseinates, milk protein concentrate, and other  
 18 casein derivatives entered under subheadings  
 19 3501.10.15, 3501.10.65, and 3501.90.65 shall  
 20 not exceed an amount equal to 148,085 kilo-

1           grams multiplied by the number of calendar  
2           days remaining in such year beginning with  
3           such effective date.

4           (B) CHAPTER 4.—Notwithstanding the  
5           amendments made by subsection (b)(1)(B) of  
6           this section, in the case of any calendar year  
7           that includes the effective date described in  
8           paragraph (1), the aggregate amount of milk  
9           protein concentrates entered under subheading  
10          0404.90.15 shall not exceed an amount equal to  
11          43,337 kilograms multiplied by the number of  
12          calendar days remaining in such year beginning  
13          with such effective date.

14 **SEC. 3. COMPENSATION AUTHORITY.**

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

17               (1) may enter into a trade agreement with any  
18               foreign country or instrumentality for the purpose of  
19               granting new concessions as compensation in order  
20               to maintain the general level of reciprocal and mutu-  
21               ally advantageous concessions; and

22               (2) may proclaim such modification or continu-  
23               ance of any general rate of duty, or such continu-  
24               ance of duty-free or excise treatment, or any quan-  
25               titative limitation, as the President determines to be

1 required or appropriate to carry out any such agree-  
2 ment.

3 (b) LIMITATIONS.—

4 (1) IN GENERAL.—No proclamation shall be  
5 made pursuant to subsection (a) decreasing any gen-  
6 eral rate of duty to a rate which is less than 70 per-  
7 cent of the existing general rate of duty.

8 (2) SPECIAL RULE FOR CERTAIN DUTY REDUC-  
9 TIONS.—If the general rate of duty in effect is an  
10 intermediate stage under an agreement in effect be-  
11 fore August 6, 2002, under section 1102(a) of the  
12 Omnibus Trade and Competitiveness Act of 1988 or  
13 under an agreement entered into under section 2103  
14 (a) or (b) of the Bipartisan Trade Promotion Au-  
15 thority Act of 2002, the proclamation made pursu-  
16 ant to subsection (a) may provide for the reduction  
17 of each general rate of duty at each such stage by  
18 not more than 30 percent of such general rate of  
19 duty, and may provide for a final general rate of  
20 duty which is not less than 70 percent of the general  
21 rate of duty proclaimed as the final stage under  
22 such agreement.

23 (3) ROUNDING.—If the President determines  
24 that such action will simplify the computation of the  
25 amount of duty computed with respect to an article,

1 the President may exceed the limitations provided in  
2 paragraphs (1) and (2) by not more than the lesser  
3 of—

4 (A) the difference between such limitation  
5 and the next lower whole number, or

6 (B) one-half of 1 percent ad valorem.

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