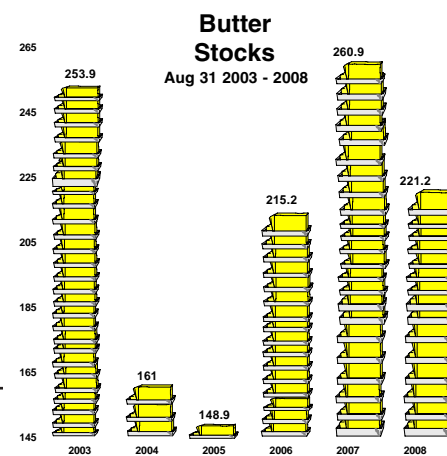


# CHEESE REPORTER

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## Injunction Denied; New Federal Order Make Allowances Take Effect

**Washington**—US District Judge Emmet G. Sullivan last Friday denied a request from several dairy cooperatives and dairy farmers for a preliminary injunction against new federal milk marketing order make allowances.

Sullivan's ruling was quickly appealed, but a three-judge panel of the US Court of Appeals for the District of Columbia denied the emergency motion for an injunction pending appeal.

Thus, the new make allowances, along with a new butterfat yield factor, became effective Tuesday in the US Department of Agriculture's (USDA) announcement of the October Class I base price. USDA had delayed announcement of October's Class I base price, which was originally scheduled for last Friday, at the request of the US District Court.

The September federal order Class III and Class IV prices announced on Friday, October 3, will also now use the new make allowances, which are: 20.03 cents per pound for cheese, up from 16.82 cents per pound; 17.15 cents per pound for butter, up from 12.02 cents per pound; 19.91 cents

per pound for dry whey, up from 19.56 cents per pound; and 16.78 cents per pound for nonfat dry milk, up from 15.70 cents per pound.

The new make allowances were approved by dairy farmers several weeks ago and were originally to have become effective September 1.

However, USDA decided to delay implementation of the new make allowances for one month after a lawsuit was filed last month in the US District Court for the District of Columbia by Dairy Producers of New Mexico, Lone Star Milk Producers, Select Milk Producers, Zia Milk Producers, Continental Dairy Products, United Dairymen of Arizona, Maryland and Virginia Milk Producers Cooperative Association, Arkansas Dairy Cooperative Association, Central Sands Dairy, and Columbia River Dairy.

In their lawsuit, the plaintiffs contended that they would be irreparably harmed by allegedly unlawful changes to the minimum price formulas. They maintained that the interim final rule that increases the make allowances must be set aside because the regulation failed to consider factors mandated by the 2008

farm bill and the Agricultural Marketing Act (AMAA).

Plaintiffs further alleged that USDA's decision was based on speculation, was arbitrary and capricious, and that USDA denied them the right to participate in the hearing process when making its decision.

Several days after the lawsuit was filed, the district court granted International Dairy Foods Association's (IDFA) motion to intervene as defendant. IDFA argued that plaintiffs lack standing in the court because the AMAA is the kind of law that precludes judicial review in either express or implied terms according to the Administrative Procedure Act.

Plaintiffs contended that they have standing to challenge a final rule that reduces payments into the producer settlement fund, but plaintiffs' complaint makes no reference to the producer settlement fund, and the court found their argument "unpersuasive."

Sullivan found that the AMAA does not provide producers the right to bring a lawsuit which challenges

• See **Make Allowances**, p. 6

## US, New Zealand Enter Free Trade Agreement Talks; Fonterra Sees 'Substantial' Opportunities, NMPF Wants Dairy Products Excluded

**New York**—Trade officials from the US, New Zealand and three other countries on Monday announced the launch of negotiations for the US to join the comprehensive Trans-Pacific Strategic Economic Partnership Agreement.

Dairy and farm organizations from New Zealand welcomed the announcement, while the National Milk Producers Federation (NMPF) said it would seek the full exclusion of New Zealand's dairy products under the trade agreement because of what it called the New Zealand dairy industry's unique structure and "excessive manipulation" of dairy markets globally and in the US.

Trade officials who announced the negotiations Monday included US Trade Representative Susan C. Schwab; New Zealand Trade Minister Phil Goff; Singapore Foreign Affairs Minister George Yeo; Chilean Foreign Affairs Minister Alejandro Foxley; and Brunei Darussalam Foreign Affairs and Trade Minister II Lim Jock Seng.

The officials agreed to hold the first round of Trans-Pacific Partnership-US negotiations early next year.

In late 2005, New Zealand, Chile, Singapore and Brunei concluded the Trans-Pacific Strategic Economic Partnership, an agreement intended to serve as a pathway to broader Asia-Pacific wide trade liberalization and integration. The agreement went into effect in late 2006.

In March of this year, Trans-Pacific Partnership countries began work on the outstanding financial services and investment chapters and were joined by the US in these talks. The US already has trade agreements with Chile and Singapore.

While the US is the first additional country to seek to join the four original members of the Trans-Pacific Strategic Economic Partnership, "we are confident that other countries in the region will ulti-

• See **US-NZ Trade Talks**, p. 8

## Milk Producers Council Wants USDA To Investigate Whether Dry Whey, NDM Sales Are Structured To Avoid Reporting To NASS

**Chino, CA**—Milk Producers Council (MPC) this week asked USDA's Agricultural Marketing Service (AMS) to conduct a special audit of all sales of dry whey and nonfat dry milk to determine, among other things, whether they include conditions designed to disqualify them from being reported to USDA's National Agricultural Statistics Service (NASS).

The audit should include a separate look at who is making sales for export purposes and how the sales are made, and whether those sales are associated with rebates or profit sharing arrangements with the providers of the product, MPC said.

The principal objective of the dairy product mandatory reporting rules is to provide "a sense of the current supply and demand conditions in the dairy sector" for all market

• See **Whey, NDM Sales**, p. 5

## China's Tainted Dairy Products Problem Reverberates In Dairy Industries Worldwide

**Beijing, China**—China's problems with tainted milk powder and other dairy products continue to be felt in dairy industries around the world.

Infant formula tainted with melamine has been blamed in the illnesses of 54,000 children and the deaths of four infants in China. Japan and Hong Kong today said they detected the industrial chemical in Chinese-made products.

According to an update provided by the World Health Organization (WHO) this week, following inspections conducted by China's national inspection agency, at least 22 dairy manufacturers across China were found to have melamine in some of their products.

Two companies, Guangdong Yashili and Qingdao Suokang, exported their products to Bangladesh, Burundi, Myanmar, Gabon and Yemen. While contamination in those exported products remains unconfirmed, a recall has been ordered, WHO noted.

Other countries, however, have also reported finding melamine in dairy products in China.

So far, according to WHO, contamination has also been found in liquid milk, frozen yogurt and in coffee drink. All these products were most probably manufactured using ingredients made from melamine contaminated milk.

China's Foreign Ministry spokesman Liu Jianchao said China wants to work with food safety authorities in other countries over concerns about its dairy products, and China's state broadcaster CCTV said there have been no positive tests of melamine on major brands of milk, yogurt and other liquid dairy products after Sept. 14.

The Chinese Ministry of Agriculture said that 29 provincial areas nationwide had set up working groups to regulate the dairy product market.

• See **Melamine Problems**, p. 11

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## US-NZ Trade Talks

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mately embrace the benefits of participation," Schwab said. Goff indicated that interest in the agreement has been shown by countries such as Australia, Peru and Vietnam, and he hopes the agreement "will prove attractive to other large economies in the region such as Japan."

### NMPF Wants Dairy Excluded

In both a news release issued Monday and in an early-August letter to members of the US Congress, National Milk Producers Federation (NMPF) expressed concern over a possible US-New Zealand free trade agreement.

"American dairy producers vehemently oppose this agreement," NMPF said in its letter to members of Congress. "Those who support the US dairy industry simply cannot also support giving New Zealand increased access to our market while the current level of distortions in global dairy trade exist."

The proposed trade agreement "would unilaterally grant more access to our market to the world's largest dairy exporter while other countries' attractive dairy markets remain closed off, thereby swamping our market with new imports. New Zealand would be able to export to the US more dairy products includ-

ing cheese, milk proteins, butterfat and dairy food preparations," NMPF said in its letter to Congress.

"New Zealand may argue that it deserves a free trade agreement with the United States because its dairy sector is a free market industry. This is not true," the NMPF letter continued. One company, Fonterra (the former New Zealand Dairy Board) "has a firm grip on export markets," and New Zealand's dairy industry "is a virtual monopoly," with 90 percent of the milk controlled by Fonterra.

In its September 22 news release, NMPF said it would seek the full exclusion of New Zealand dairy products from the Trans-Pacific free trade agreement.

"New Zealand's government must be salivating at the prospect of getting unfettered access to our consumer markets, even while the US remains constrained by where it can export our dairy products around the world, including to our neighbors, such as Canada," said Jerry Kozak, NMPF's president and CEO, noting that there would be no new opportunities for US dairy exports under a Trans-Pacific agreement, given existing relations with the other significant economic participants.

"The heightened prospect of greater manipulation by New Zealand of not only global markets, but also our domestic industry and policy, would make an already

uneven playing field in the global markets even worse," Kozak said.

NMPF supports balanced trade and the multilateral trading system, but Kozak said the Trans-Pacific agreement doesn't offer any reform, but "only the opportunity for a one-way flow of trade directly into our market from an industry that is known for its manipulative dairy trading policies."

By embarking on the Trans-Pacific agreement, "the US is unilaterally opening up the floodgates to a monopolistic dairy industry almost exclusively focused on growing its exports and power over world dairy markets, while doing nothing to address the tremendous distortions in other markets that so negatively impact global dairy trade and prospects for more balanced trading opportunities for our producers," Kozak said.

NMPF doesn't believe that full exclusions of entire sectors are a good solution for most free trade agreements, but no other country has a dairy industry with the characteristics of that in New Zealand, where one company controls over 90 percent of the milk produced, owns the rights to the vast majority of the market access granted to New Zealand under the Uruguay Round Agreement, and handles 95 percent of that country's exports.

The only way to deal with such a unique and monopolistic situation, Kozak said, "is through an equally unique response: full exclusion of all dairy products."

For its part, Fonterra welcomed

the US government's decision to enter negotiations to join the Trans-Pacific trade group.

"This development could open up substantial new global trade opportunities for Fonterra and help build on New Zealand's signing in April this year of a free trade agreement with China and the recent conclusion of the ASEAN-Australia-New Zealand free trade agreement," said Andrew Ferrier, Fonterra's CEO.

Fonterra expects the successful integration of the US into the "P4" trade group "to offer opportunities for New Zealand to expand the trade of dairy products within the P4 countries," Ferrier added.

Don Nicolson, president of Federated Farmers of New Zealand, also welcomed the US into the negotiations.

"The potential for New Zealand in this is immense," Nicolson said. "The United States is our second largest export market at around \$4.1 billion. In terms of agricultural products, it is our largest export market for both meat and dairy products."

"Establishing free trade links between our two economies will put New Zealand on a level playing field with competitors in the American market and lead to improved market access and higher returns," commented James Bolger, New Zealand's former prime minister and chairman of the New Zealand US Council, which in recent years has focused its attention on strengthening New Zealand's overall relationship with the US. •



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For more information, circle #9 on the Reader Response Card on p. 14