Milk Protein Imports: Impact on U.S. Dairy Producers

April 2001
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EXECUTIVE SUMMARY

Few issues have galvanized the U.S. dairy producer community as strongly in recent years as Milk Protein Concentrate (MPC), and, in particular, the impact of imports of MPC on the economic health of the domestic dairy sector. The importation of the product, the nature and identity of the product, and the possible inappropriate use of the product have made MPC a controversial and confusing issue for farmers, dairy processors, legislators, and regulators.

Milk protein concentrate is usually considered to be the product of a technology known as ultrafiltration. During the ultrafiltration process, skim milk is passed through a membrane designed to separate out most of the water, lactose and other solids, leaving behind a product consisting of mostly protein and known as “retentate.” In most cases, the retentate is subsequently dried for further distribution and/or storage.

When the U.S. established its tariff-rate schedules for imported dairy products, first during the creation of the Harmonized Tariff Schedule in 1989, and later during negotiations of the General Agreement on Tariffs and Trade in 1994, the technology to both produce and use concentrated milk proteins was in its infancy and not widely used on a commercial basis. The U.S. established Tariff Rate Quotas (TRQs) for other forms of dairy products, such as cheese, butter and nonfat dry milk, but created no significant tariffs or quotas for MPC. As a result, six years after the implementation of the GATT agreement, U.S. imports of MPC have risen more than 600 percent, while other nations are jealously guarding their markets against any milk protein products coming in.

The circumvention of our TRQs and consequent erosion of our dairy price support program has retarded the recovery of U.S. milk prices, while increasing the cost of our only dairy safety net program. Stringent restrictions on milk protein imports would provide large savings to the government as well as increased income to U.S. dairy farmers. As an example, limiting imports of MPC and casein to their current levels would provide the following positive results:

• reduced government costs by $905 million over a period from 2002 to 2008.

• increased dairy producer income by $694 million over the same period.

• combined benefits in the form of lower government costs and increased producer income add up to $1.6 billion over this seven-year period.

Although the functional characteristics of these milk protein products may differ from those of nonfat dry milk, it is feasible to utilize nonfat dry milk for virtually all food processing applications requiring milk protein. It is reasonable to assert that these products are simply minor variations of nonfat dry milk and, that in their absence, U.S. food processors would use U.S. nonfat dry milk to manufacture similar end products.
While ultrafiltration is usually used to produce MPC, other methods have been applied to create products marketed as MPC, including the blending of previously processed dairy proteins. The possibility that other countries could blend subsidized products, which include ingredients that are subject to U.S. over-quota tariffs, is extremely disturbing. The scope of products that appear to be entering the U.S. labeled as milk protein concentrate is, to say the least, confusing and controversial.

While the subject matter surrounding the issue of MPC can be complex, the implications are very simple: the U.S. dairy production sector is being economically harmed in a demonstrable fashion by the interweaving of our own trade policies and those of competing nations. Dairy industry leaders and federal lawmakers will need to work closely together in the future to help develop solutions to the MPC issue that offer the best possible outcome for U.S. dairy farmers.

The United States should not reward circumvention, nor can the United States permit misclassification of a product to also circumvent our dairy tariff rate quotas. Dairy farmers get their income from the market. High tariffs that protect unsubsidized U.S. dairy farmers were negotiated in good faith and must be respected. Accordingly, NMPF has identified the following short-term course of actions:

- **Work with Congress and the U.S. government to stop milk protein products from circumventing dairy tariff rate quotas by mandating the U.S. Customs service to reclassify MPC products under the Harmonized Tariff Schedule of the United States**

- **Congress should request that the U.S. International Trade Commission conduct a Section 332 investigation of the MPC import situation.**

- **NMPF will also approach the U.S. Customs service requesting that it begin a review of the nature of the products labeled as “milk protein concentrate” coming into the U.S.**

In parallel to our more immediate steps, we will continue to review the following long-term potential actions:

- **Using section 201 of the Trade Act of 1974 allowing the U.S. dairy industry to protect itself from import surges.**

- **Using Section 301, also a provision of the Trade Act of 1974, which authorizes the U.S. Trade Representative to retaliate against any unjustifiable, unreasonable or discriminatory act or policy of a foreign country.**

- **Using antidumping laws, which impose additional duties on imports that are sold in the United States at a price that is below that producer's sales price in the country of origin, or at a price that is lower than the cost of production;**
Using countervailing measures to investigate whether foreign government subsidies that provide financial assistance to benefit the producers or exporters of milk protein concentrate are injuring the U.S. dairy industry.

It is important that other countries do not undermine trade agreements or our trade laws. Dispute Settlement panels in the WTO and NAFTA have stated that a country is not obligated to provide more access that intended during previous negotiations. Recently, Egypt, India, Philippines, Chile and Brazil have raised their import duties for dairy products --in response to larger imports-- without being challenged by the U.S. government.

This report shows that the United States government needs to recognize the seriousness of this issue. If our market is oversupplied by imports, our farmers will bear the burden of low prices, while the government will continue to bear the cost of circumvention of our dairy tariff rate quotas.
MILK PROTEIN CONCENTRATE FACT SHEET

Our analysis has concluded that milk protein concentrate (MPC) is skim milk that has been concentrated by ultra-filtration to retain most of the protein (casein and other whey proteins) while removing much of the water and some of the lactose, ash (minerals) and other solids. Other compositions of proteins are not technically MPC.

Background:

What is the composition of milk protein concentrate (MPC)?
For some applications, it is used in liquid form and called ultra-filtered milk. For others, the liquid form is dried for use as a powder and called milk protein concentrate. The liquid and dry forms are virtually identical in relative composition.

There remains significant confusion regarding legal and technical definitions of MPC. Again, it is the view of NMPF that milk protein concentrate (MPC) is skim milk that has been concentrated by ultra-filtration to retain most of the protein. Milk protein concentrates are typically available in a range of protein levels, from 42% to 85%. High-protein MPCs have lower lactose levels. For example, MPC-42 (42% protein) typically has a composition including about 46% lactose, while MPC-85 (85% protein) has about 0.5% lactose. For purposes of comparison, skim milk powder (SMP), also known as Non-fat Dry Milk (NFDM) in the U.S., contains about 35% protein and 52% lactose.

How is MPC used?
Milk protein concentrate is used similarly to SMP as an ingredient in prepared food applications such as desserts, baked goods, toppings, lowfat spreads, dairy-based dry mixes, dairy-based beverages, sports-nutrition beverages and foods, weight-loss beverages and foods, and some cheese and processed cheese products.

Like SMP, MPC is used as a source of dairy protein in prepared foods because its bland flavor allows other flavors to develop fully. It adds opacity to reduced-fat food formulations and its other functional properties include improved viscosity, mouthfeel, emulsification, water binding, and a favorable nutritional profile.

Is it legal to use MPC in cheese?
1. MPC is not allowed as an ingredient in cheeses which have a federal standard of identity (e.g., cheddar).
2. However, the FDA has permitted some latitude in the amount of MPC allowed in the development of starter cultures in manufacturing of standardized cheeses. The development of starter cultures is a preliminary step in the cheese making process. Yet, since cheesemakers use 1.0 to 1.5 pounds of starter culture for every one hundred pounds of milk in the vat, usage of MPC is typically limited to less than an ounce per hundredweight of milk.
3. The use of MPC as an ingredient in nonstandardized cheeses, such as ricotta or brie, is not subject to any FDA regulations.
How much MPC is used in the United States?
The absence of an established standard of identity for MPC makes this a difficult question to answer. It is widely acknowledge that the many imported dry dairy blends used by food manufacturers are being labeled "milk protein concentrate". These blends may contain skim milk powder, whey powders, whey protein concentrates, casein and caseinates.

How much MPC is imported and who exports it to the U.S.?
The U.S. imports virtually all the dry MPC it uses. Imports totaled 39,850 tons in 1998; 54,725 tons in 1999 and 64,600 tons in 2000, according to USDA data. There is strong evidence (e.g. GAO Report) that a significant amount of the product labeled "milk protein concentrate" and imported by U.S. food manufacturers is actually a blend of various dairy proteins. Because of the many different blends found in international trade, it is difficult to determine, on a milk equivalent basis, the actual volume of imported “true” milk protein concentrate (i.e., MPC produced via ultrafiltration) as compare to protein blends.

In 2000, primary suppliers of products labeled MPC were the European Union (28,570 tons), New Zealand (22,615 tons), Australia (6,955 tons) and Canada (2,235 tons). Late last year, Congress directed the General Accounting Office to investigate how much casein and milk protein concentrate is being imported into the United States and how these products are being used. In March of this year, the GAO report confirmed that MPC imports have grown in the past decade from 805 tons to 52,677 tons in 2000. This quantity represents about 246 million pounds of nonfat dry milk powder.

Is there a limit to how much MPC can be imported into the United States?
No. Unlike many other dairy products, MPC enters with a very small duty of $0.0037 per kilogram and no quotas are applied. Only the demands of the marketplace limit the quantity imported. When quotas and other trade regulations were developed, milk protein concentrates and dairy blends were not commercially viable products.

Why have MPC imports increased so much in the last five years?
Imports of dry MPC and protein blends have risen due to the product’s price advantages as compared with SMP and the absence of significant tariffs or quotas. In addition, dry true MPC (imported) are more readily available than five years ago due a greater adoption of the process of ultrafiltration by Oceania. But more importantly, suppliers of these products have become more sophisticated in circumventing U.S. TRQs.

Why don’t we make MPC in this country?
Principally, such possibilities have been dampened by subsidized imports and the substitutability of skim milk powder. Also, the U.S. price of SMP and the product yield of SMP per hundredweight of milk, generate a higher economic return than drying ultra-filtered milk to turn it into MPC.
How much does MPC cost?
The cost of MPC is a function of the price of milk used and the protein content of the finished product. An analysis of USDA import data indicates that milk protein concentrates imported during 2000 were priced at between $1.32 and $1.67 per pound. Products on the low end of the price range are most likely blends and those on the high end, true milk protein concentrate made via ultrafiltration. As protein prices have climbed worldwide in the last year, MPC prices have climbed as well. The use of government subsidies to manufacturers and exporters lowers the cost of imported milk protein concentrate.
THE ECONOMIC IMPACT OF IMPORTED MILK PROTEIN PRODUCTS

Our analysis has concluded that the U.S. market is being oversupplied by imports. These imports have prevented and continue to prevent higher domestic milk prices, while eroding our only safety net: the U.S. dairy price support program.

Background:

The degree to which freely imported milk protein products compete with domestically-produced milk proteins, and for that matter milk, is best expressed in terms of the quantity of nonfat dry milk displaced on the domestic market. Nonfat dry milk is the primary U.S.-produced milk protein product and the product to which the imported milk proteins are fundamentally equivalent in terms of protein content.

Although the functional characteristics of these milk protein products may differ from those of nonfat dry milk, it is feasible to utilize nonfat dry milk for virtually all food processing applications requiring milk protein. It is reasonable to assert that these products are simply minor variations of nonfat dry milk and, that in their absence, U.S. food processors would use U.S. nonfat dry milk to manufacture similar end products.

In summary, during calendar year 2000, U.S. imports of milk protein concentrate (HTS 0404.90.10 and HTS 351.10.10) were equivalent to somewhere between 210 and 370 million pounds of U.S.-produced nonfat dry milk in terms of milk protein content.

Also during 2000, U.S. imports of casein and caseinates (HTS 3501.10.50 and HTS 3501.90.60) were equivalent to about 745 million pounds of U.S.-produced nonfat dry milk in terms of milk protein content. In the four basically unrestricted import categories for concentrated milk protein products, total imports during calendar year 2000 were equivalent to somewhere between 955 and 1,115 million pounds of U.S.-produced nonfat dry milk in terms of milk protein content (Figure 1.)

In contrast with the nonfat dry milk equivalent estimates listed above, USDA’s Commodity Credit Corporation has purchased 588 million pounds of nonfat dry milk under the dairy price support program during calendar year 2000. Severe restrictions on imports would have a large impact on producers’ income and savings in government outlays. Table 1 provides an example of the impact of restricting milk protein imports to its current levels on future government outlays. The analysis includes an estimate of the amount of domestically produced non-fat dry milk actually displaced by imports that is forcing domestic products into CCC warehouses.
The key results of this analysis are the following:

1. Limiting MPC and casein imports to their calendar year 2001 levels would reduce government costs by $905 million over a period from 2002 to 2008.

2. Limiting MPC and casein imports to their calendar year 2001 levels would increase dairy producer income by $694 million over the same period.

3. The combined benefits in the form of lower government costs and increased producer income add up to $1.6 billion over this seven-year period.

A closer review of each of the four import categories on reveals the following:

1. **HTS 0404.90.10**: A total of 52,677 metric tons, or 116 million pounds of MPC were imported into the U.S. under this category during calendar year 2000. Since the category is defined as containing from 40 percent to 90 percent complete milk protein, then from 46.5 million to 104.5 million pounds of milk protein were imported under this category in 2000. Nonfat dry milk contains about 36.2 percent complete milk protein. *Therefore, imports of this product were equivalent to somewhere between 128 million and 289 million pounds of U.S.-produced nonfat dry milk in terms of milk protein content.*

2. **HTS 3501.10.10**: A total of 11,921 metric tons, or 26.3 million pounds of MPC were imported into the U.S. under this category during calendar year 2000. Since the category is defined as containing approximately 90 percent casein, then about 23.6 million pounds of casein were imported under this category in 2000. Nonfat dry milk contains about 29 percent casein. *Therefore imports of this product were equivalent to about 82 million pounds of U.S.-produced nonfat dry milk in terms of milk protein content.*

3. **HTS 3501.10.50**: A total of 74,230 metric tons, or 163.6 million pounds of casein were imported into the U.S. under this category during calendar year 2000. Since products in this category contain approximately 90 percent casein protein, then about 147.3 million pounds of casein protein were imported under this category in 2000. Nonfat dry milk contains about 29 percent casein. *Therefore, imports of this product were equivalent to about 510 million pounds of U.S.-produced nonfat dry milk in terms of milk protein content.*

4. **HTS 3501.90.60**: A total of 34,200 metric tons, or 75.4 million pounds of caseinates were imported into the U.S. under this category during calendar year 2000. Since products in this category contain approximately 90 percent casein protein, then about 67.9 million pounds of casein protein were imported under this category in 2000. Nonfat dry milk contains about 29 percent casein. *Therefore, imports of this product were equivalent to about 235 million pounds of U.S.-produced nonfat dry milk in terms of milk protein content.*
Figure 1

Displacement of NFDM by MPC, Calendar Year 2000

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<th>HTS Import Category</th>
<th>NFDM Displaced (Million lbs.)</th>
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<tr>
<td>Casein 3501.10.50</td>
<td>500</td>
</tr>
<tr>
<td>MPC 0404.90.10</td>
<td>290</td>
</tr>
<tr>
<td>Caseinates 3501.90.60</td>
<td>230</td>
</tr>
<tr>
<td>Casein, MPC 3501.10.10</td>
<td>70</td>
</tr>
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</table>

Source: National Milk Producers Federation
### Table 1

**POTENTIAL SAVINGS ON U.S. GOVERNMENT OUTLAYS**
**FROM LIMITING MPC AND CASEIN IMPORTS TO CURRENT LEVELS**
**PERIOD 2002 to 2008**

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</thead>
<tbody>
<tr>
<td>Total CCC Purchases</td>
<td>mil. $</td>
<td>$0</td>
<td>-$49</td>
<td>-$89</td>
<td>-$121</td>
<td>-$146</td>
<td>-$162</td>
<td>-$170</td>
<td>-$170</td>
</tr>
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*Source: NMPF Staff Analysis*
SOURCES AND TRENDS OF U.S. IMPORTS OF MILK PROTEIN PRODUCTS

The analysis of the data shows vast increases in milk protein products coming into the U.S. as milk protein concentrates (MPC), primarily from the EU, New Zealand and Australia. In addition, casein imports have also experienced growth. The analysis also demonstrates that most of the milk protein imports is exported with some form of subsidization.

Background:

According to data from the U.S. Departments of Agriculture, Commerce, Treasury and the U.S. International Trade Commission, imports of milk protein concentrates (MPC) into the United States have increased approximately 623 percent since 1995. In fact, total U.S. imports of MPC between 1990 and 1995 accounted for less than twice the amount imported in 2000. The European Union and New Zealand have been the principal suppliers of MPC with a collective market share of about 75 percent. Recently, Australia has boosted its shipments of MPC and now accounts for about 15 percent of total U.S. imports. Another important supplier is Canada with about 10 percent market share.

Over the years, the EU has had a dominant role in replacing U.S. milk with MPC, with Ireland and Germany being the most consistent suppliers. Recently, the Netherlands has increased its exports of MPC to the United States, and in the process, has replaced Sweden as the other important EU exporter. Despite the EU’s prevailing status as an exporter of MPC, the greatest growth has come primarily from New Zealand and Australia. MPC exports from Oceania to the U.S. have been rising rapidly during the last 5 years (Figure 2.)

Similarly, Table 2 shows individual and total imports of various products containing milk proteins, all of which are made from skim milk. Although the largest volume corresponds to casein imports, growth in this category has fluctuated with an overall increase of about 12 percent since 1995. On the other hand, MPC imports account for the second largest volume, but with a spectacular growth of more than 600 percent since 1995. In the last 10 years, the lowest annual percentage growth in this category was 17 percent (1999-2000). With similar growth, MPC imports could expand twofold in the next 4 to 5 years. Imports of casein with small quantities of MPC have risen over 296 percent since 1995. Europe has been the main source of casein products entering the United States.
Figure 2

U.S. Imports of Milk Protein Concentrates

Year

Tons


Other
East Europe
Canada
Australia
New Zealand
EU
**Table 2**

**Milk Proteins: U.S. Imports**

**From all Sources**

**Annual + Year-To-Date Data from Jan - Oct**

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<tr>
<td>kilograms</td>
<td>04049010</td>
<td>5,820</td>
<td>12,009</td>
<td>7,287</td>
<td>14,317</td>
<td>16,998</td>
<td>28,929</td>
<td>44,877</td>
<td>52,677</td>
<td>623%</td>
</tr>
<tr>
<td></td>
<td>Casein, milk protein concentrate</td>
<td>3,395</td>
<td>6,787</td>
<td>3,010</td>
<td>3,867</td>
<td>11,394</td>
<td>10,919</td>
<td>9,849</td>
<td>11,921</td>
<td>296%</td>
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<td>35011010</td>
<td>60,466</td>
<td>68,339</td>
<td>65,806</td>
<td>69,166</td>
<td>65,025</td>
<td>70,394</td>
<td>65,960</td>
<td>74,230</td>
<td>12.8%</td>
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<tr>
<td></td>
<td>Casein, other than milk protein concentrate</td>
<td>16,946</td>
<td>20,846</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>35019050</td>
<td>0</td>
<td>0</td>
<td>24,585</td>
<td>25,481</td>
<td>25,971</td>
<td>29,929</td>
<td>32,460</td>
<td>34,200</td>
<td>39.1%</td>
</tr>
<tr>
<td></td>
<td>Caseinates and other casein derivatives</td>
<td>86,627</td>
<td>107,981</td>
<td>100,688</td>
<td>112,831</td>
<td>119,378</td>
<td>140,171</td>
<td>153,146</td>
<td>173,028</td>
<td>71.8%</td>
</tr>
</tbody>
</table>

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce, the U.S. Treasury, and the U.S. International Trade Commission.
TARIFF CLASSIFICATION OF MILK PROTEIN CONCENTRATES

Based on technical analysis and U.S. Customs rules, NMPF believes that a fundamental question remains concerning whether certain imported dairy protein products are properly classified as milk protein concentrate (MPC) under subheading 0404.90.10.

Background:

The following describes the treatment of imports of dried milk proteins under the current Harmonized Tariff Schedule of the U.S. (HTS).

There are four major HTS items that include these products. Three of them are various forms of casein and are classified in HTS Chapter 35 under the general category of “Albuminoidal Substances.” The fourth is milk protein concentrates (MPC), which is classified in HTS chapter 4, “Dairy Produce.” There has been some confusion over MPC because it is also classified in Chapter 35. The four products are:

1. **HTS NUMBER 3501.10.10 “Casein, milk protein concentrates”**
   Since pure casein is classified under HTS number 3501.10.50, these products are essentially MPC. The HTS specifies that MPC under this HTS number means any complete milk protein (casein plus lactalbumin) concentrate. In 2000, 11,921 metric tons of these products, valued at $44 million, was imported into the U.S. The U.S. has a final WTO bound tariff rate for this HTS number of $.0037 per kilogram. There is no tariff-rate quota for these products.

2. **HTS Number 3501.10.50 “Casein, other than milk protein concentrate”**
   This is the primary HTS number under which pure casein is classified. In 2000, 74,230 metric tons of this product, with a value of $303 million, was imported into the U.S. The U.S. has bound its tariff rate for this HTS number at zero in the WTO, and there is no tariff-rate quota.

3. **HTS Number 3501.90.60 “Caseinates and other casein derivatives”**
   In 2000, 34,200 metric tons of these products, worth $154 million, was imported into the U.S. The U.S. has a final WTO bound tariff rate for this HTS number at zero in the WTO, and there is no tariff-rate quota.

4. **HTS NUMBER 0404.90.10 “Milk protein concentrates”**
   MPC is also classified under HTS Chapter 4. The HTS specifies that MPC under this HTS number means any complete milk protein (casein plus lactalbumin) concentrate that is more than 40 percent protein by weight. In 2000, 52,677 metric tons, valued at $153 million, was imported into the U.S. The U.S. has a final WTO bound tariff rate for this HTS number of $.0037 per kilogram. There is no tariff-rate quota for these products.
Underlying Classification Question
In regard to the classification of MPC under subheading 0404.90.10 of the HTS, the applicable “article description” includes “…products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included…” (emphasis added)

In addition, Note 13 to Chapter 4 of the HTS, defines the term “milk protein concentrate” as “any complete milk protein (casein plus lactalbumin) concentrate that is 40 percent or more protein by weight.” The reference to Note 13 is relevant since the General Rules of Interpretation (GRIs), taken in order, provide the framework for all classification of goods under the HTS. GRI 1 provides in pertinent part that “for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes.” (emphasis added)

Accordingly, U.S. trade regulators need to adequately address the following questions:

- Are the products in question “products consisting of natural milk constituents”?
- Are the products in question “elsewhere specified or included”?
- Are the products in question “complete milk proteins (casein plus lactalbumin)”?

If the answer to any of these questions is “no”, then the same trade regulators need to take the necessary steps to rectify the misclassification problem.
OPTIONS TO ADDRESS IMPORTS OF MILK PROTEIN PRODUCTS

Our analysis identifies several options that can be exercised in the coming months, and would demonstrate to dairy producers that the Bush Administration and Congress recognize the seriousness of this issue.

Dairy product import quotas initially imposed under the authority of Section 22 of the Agricultural Adjustment Acts of 1933 and 1935 were designed to prevent imports from undermining the dairy price support program. Absent import restrictions, U.S. purchases of dairy products would have the effect of supporting international product prices and become impossibly costly. Although all quotas have been converted to tariff-rate quotas, for which the tariffs have been reduced over time, preventing circumvention of these TRQs remains critical to maintaining a manageable domestic policy.

We have identified three concrete approaches that need to be taken in the short term to help us rectify the problems we see in the current system of MPC import regulation. In addition, we continue to review other possible long-term actions:

**ACTION: Congress Modifies Tariff Rates**

Congress has the authority to mandate Customs to reclassify products under the Harmonized Tariff Schedule of the United States. Legislation directing Customs to reclassify milk protein products under a tariff rate quota will solve the problem of circumvention. The rate of duty in effect under a new subheading 0404.90.20 of the HTS should be $1.56/Kg, while the products included into this category should consist of all dairy proteins, except pure casein and caseinates.

Congress could amend the “additional U.S. notes” to ensure that all milk protein products for human consumption or otherwise used in any manner that circumvents any dairy quota be reclassified to be included in either a new subheading 0404.90.20 or another category that has a tariff rate quota component. Under various provisions within its authority, Customs could reclassify milk protein products under the categories of milk powder, which are subject to a tariff rate quota.

In addition, Congress could also mandate Customs to reclassify casein and casein products that are destined for food or animal feed use under several new subheadings with a TRQ rate of duty of $2.16/Kg.

**ACTION: Congress Mandates ITC Study on MPC Imports**

Congress has the authority to request under Section 332 that the U.S. International Trade Commission conduct an investigation of the MPC import situation. A member of either the House Ways and Means Committee, or the Senate Finance Committee (both of which have jurisdiction over trade law), can make such a request of the ITC. The results of an
ITC report would help U.S. dairy producers generate information needed for other possible trade actions.

**ACTION: Customs Interpretation of MPC Imports**

MPC’s enter the U.S. under tariff item 0404.90.10 upon payment of duty of 0.37¢/kg, and Note 13. of the Tariff defines an MPC as, “any complete milk protein (casein plus lactalbumin) concentrate that is 40% or more protein by weight.” A certain amount of milk protein concentrate also enters the U.S. under tariff item 3501.10.10.

Customs references indicated that the words "complete" and "concentrate" are required to be met in determining the proper classification of a milk protein concentrate that can be entered under tariff code 0404.90.10. In order to seek clarification on the issue of classification the following question would need to be posed: do the references suggest that the MPC manufacturing process must start with fluid milk, which is subsequently concentrated (not evaporated or dried) during the manufacturing process until the required protein level is achieved? In other words, do the references imply that only those milk products produced by ultrafiltration and associated technologies qualify for classification under the MPC heading? As part of the interpretation assessment, blends of SMP, caseinates and whey powders should be investigated as to whether or not they are properly classified with respect to Note 13 or other Customs definition rules.

Other possible long-term approaches include:

**ACTION: Section 201 Case**

U.S. law provides that if imports of an article are occurring “in such increased quantities as to be a substantial cause of serious injury, or threat, thereof to the domestic industry producing an article like or directly competitive,” then relief may be provided at the President’s discretion in the form of additional duties, quotas, tariff-rate quotas or orderly marketing arrangements.

The affected industry can file a petition for investigation by the U.S. International Trade Commission. The petitioner does not have to show that the import surge is the result of an unfair practice, only that it causes serious injury. Petitioners must demonstrate actual material injury or that the threat of material injury is real. In terms of relief, under U.S. law, the President can decide to raise tariffs, impose quotas or tariff rate quotas, or approve voluntary restraint agreements. *Generally, the length of relief is 3 years with possible extension to five years.*

**ACTION: Section 301 / Article XXVIII GATT**

U.S. law provides that the United States Trade Representative (USTR) shall take any action which he/she deems appropriate to deal with a foreign government practice that “violates, or is otherwise inconsistent with…or otherwise denies benefits to the United States under a trade agreement;” and that he/she may take appropriate action to deal with
a foreign government practice that is “unreasonable” or “discriminatory” and which “burdens or restricts U.S. Commerce.”

The case can be brought by citizen’s petition or be self-initiated by USTR. As a practical matter, political support for the interested domestic industry is a necessity if the case is to be accepted for investigation. Subsection (b) of Section 301, permits, but does not mandate, USTR action to deal with a foreign government action that is “unreasonable” or “discriminatory.” This second part of the statute has not been invoked on many occasions because most petitioners want “mandatory” action. USTR has total discretion to determine what is “unreasonable” or “discriminatory.”

**ACTION: Antidumping**

U.S. law provides that if imports occur at “less than fair value” and are causing or threatening “material injury” to a domestic industry, then relief will be provided in the form of additional duties assessed in an amount by which the “normal value” of the goods exceeds the “export price.” Substantive economic and legal issues include *Definition of Domestic Industry, Less than Fair Value Sales, Material Injury or Threat Amount of Antidumping Duties.*

**ACTION: Countervailing Duty**

U.S. law permits the assessment of an additional customs duty where it has been determined that the government of another country (or a public entity within that country) is providing, directly or indirectly, a subsidy with respect to the manufacture, production of merchandise being imported; and that imports of such merchandise are causing or threatening material injury to a U.S. industry (or that the establishment of the industry is being materially retarded). Substantive Issues include *Definition of Domestic Industry, What Measures are Countervailing, Material Injury or Threat, Downstream Benefits from Upstream Subsidies, Amount of the Benefit Actually Conferred.*
FOR IMMEDIATE RELEASE
Tuesday, March 6, 2001

GOVERNMENT REPORT ON IMPORTED MILK PROTEIN CONCENTRATE ILLUSTRATES HARM TO U.S. DAIRY PRODUCER SECTOR
GAO Report Demonstrates Problems With Current Dairy Trade Standards

ARLINGTON, VA – A new report by the Government Accounting Office (GAO), the investigative arm of Congress, illustrates the harm that imported milk protein concentrate (MPC) is causing U.S. dairy farmers, the National Milk Producers Federation said today.

The GAO report, requested last year by several members of Congress, was intended to answer questions about the volume and applications of MPC in the U.S., and how the U.S. dairy sector is impacted by the products. The report specifically examines ultrafiltered milk products, which are classified as a type of MPC, although ultrafiltered milk is not the only form that milk protein concentrate can take. Ultrafiltered milk is made by passing milk through a series of membranes, separating out some of the lactose and water, leaving behind a highly-concentrated form of dairy proteins and fat. Products labeled as MPC are also being made by blending other dairy proteins, such as whey and casein, with nonfat dry milk.

According to NMPF, the GAO report offers four disturbing conclusions:

1. A significant portion of domestically-produced U.S. skim milk powder is being displaced by imported MPC;
2. There is currently no way to halt the increasing flow of MPC into the country;
3. Federal and state inspections to ensure that the MPC imports are not being improperly used are inadequate, and;
4. U.S. harmonized tariff schedules need to be changed to account for the surge of MPC into the country.

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“This report confirms our fears that imports of dry, ultrafiltered milk are damaging the economic health of dairy farmers across the country,” said Jerry Kozak, Chief Executive Officer of NMPF. “To make matters worse, however, the GAO report illustrates that there are no easy fixes to this problem other than tackling the issue of how milk protein concentrate is classified under U.S. trade law.”

The report found that ultrafiltered milk blends, ranging from concentrations of 40% to 90% protein, are coming into the country in increasing volumes. Milk protein concentrate imports grew from 805 metric tons in 1990, to 44,878 tons in 1999. NMPF estimates that on a skim milk equivalent basis, the 1999 figure of 44,878 tons represents the displacement of 246 million pounds of nonfat dry milk powder. That import volume represents approximately 0.8% to 1.8% of total U.S. milk production in 1999. An additional 260 million pounds of nonfat dry milk were displaced by MPC imports in 2000. The 1999 and 2000 MPC imports are approximate to the sum of domestically-produced, surplus skim milk powder that the U.S. government now has in storage.

The report noted that U.S. Customs Service regulations assess a tariff-rate quota on dairy ingredients with a protein concentration of less than 40%, because these products are usually classified as nonfat dry milk – a product subject to U.S. quotas. But current Customs regulations have no tariff-rate quotas on MPC, meaning that ultrafiltered milk, with its higher concentrations of protein, can come into the country with virtually no tariffs and be subject to no volume quotas.

“Our Customs regulations regarding MPC are so porous that you could drive a milk truck through the loophole that allows for the importation of MPC,” Kozak said. “And that’s exactly what has happened in recent years: we’ve witnessed a blizzard of dried MPC blowing into the U.S., all because our current trade policies don’t impose any restrictions on the product.” The U.S. does maintain quotas on related dairy imports, including cheese, nonfat dry milk and whey.
The GAO report also highlighted the lack of adequate enforcement of standards governing how dried forms of ultrafiltered milk are used. Food and Drug Administration standards of identity do not allow dry MPC to be used in standardized cheeses such as cheddar and mozzarella, although small amounts of MPC can be used in the starter culture for those cheese varieties. There are no standards restricting MPC use in non-standardized cheeses such as brie, ricotta and a product known as “pizza cheese.” The GAO also reported that MPC imports are being used legally in nutritional supplements, frozen desserts, and sports beverages.

Because the FDA does not consider MPC imports to pose any health risk to U.S. consumers, it does not place a high priority on enforcing the regulations governing the end use of the products, Kozak said.

“We agree that MPC use is not a health issue for consumers, but it is a real threat to the economic health of U.S. dairy farmers,” he said. “The GAO found that the FDA only conducted nine inspections of food processing plants in 1999 to specifically check to see if those facilities are making cheese in accordance with what the standards of identity allow. Both federal and state agencies lack the resources to adequately address this concern.”

Based on the findings of the GAO report, Kozak said that NMPF will continue working with members of Congress, and the Bush Administration, to address the inadequacies in the regulation of imported MPC. NMPF will unveil later this month a detailed series of short- and long-term actions designed to stem the flow of MPC imports.

The National Milk Producers Federation, headquartered in Arlington, VA, develops and carries out policies that advance the well-being of U.S. dairy producers and the cooperatives they collectively own. The members of NMPF’s 28 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of 50,000 dairy producers on Capitol Hill and with government agencies.

For more on NMPF’s activities, visit our Website at www.nmpf.org

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NMPF TO PURSUE TRADE POLICY OPTIONS
TO COUNTER IMPORTS OF MILK PROTEIN CONCENTRATE
Economic Disruption Of Dairy Industry Cause For Concern Among U.S. Farmers

ARLINGTON, VA -- Heightened concerns about the economic problems caused by imported dairy proteins are prompting the National Milk Producers Federation to weigh its options for invoking U.S. trade laws to stem the flow of milk protein concentrate (MPC) into the country, NMPF announced today.

Milk protein concentrate, as the term implies, is a filtered, highly-concentrated form of dairy protein, usually with most or all of the fat, and some of the lactose, removed from the milk. The proteins that remain after the filtration process can and are being used in a variety of food and beverage products in the U.S. -- including in the production of cheese, where federal standards limit the use of MPC to those cheeses which do not have an official standard of identity. Imported milk proteins consist primarily of ultrafiltered concentrates, and also casein.

Imports of the dried form of MPC into the U.S. have increased greatly in recent years, from 10,297 metric tons in 1995, to 54,725 tons in 1999, to 52,118 tons during the first three quarters of 2000, according to USDA data. The primary exporters of MPC to the U.S. are the European Union, New Zealand, Australia and Canada.

"When the existing trade agreements regulating market access for dairy imports were reached in 1994, milk protein concentrate wasn't technologically a concern to the U.S. dairy sector, and weren't part of the negotiations that established tariff rate quotas on dairy imports," said Jerry Kozak, Chief Executive Officer of NMPF.

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"What has happened since then is an unabated surge of MPC imports into this country, which we fear is displacing domestically-produced dairy protein ingredients, and hurting the bottom line of U.S. dairy farmers. So we're going to examine all of our options for better controlling the movement of these ingredients into our country."

Wholesale cheese prices are at near-record lows, and have been for more than 12 months. NMPF is concerned that the use of imported MPCs in dairy manufacturing may be contributing to those low prices by their displacement of domestic cheesemilk, which would also include U.S.-produced skim milk powder. U.S. skim powder is also at extremely low prices, likely due to competition from imported dairy proteins.

"While dried, imported forms of MPC are allowed to be used for some food processing purposes, our concern is that current U.S. trade laws are not able to account for the fact that some MPC is displacing domestic dairy ingredients in ways that were not considered during the Uruguay Round of the World Trade Organization seven years ago. So, in addition to seeking trade remedies under the U.S. Trade Act, we also may need to rethink our approach to how these products ought to be classified under U.S. Customs Code," Kozak said.

Kozak added that the milk protein concentrate issue was raised repeatedly during NMPF's Dairy Producer Conclave discussions last year, and that farmers across the country asked NMPF and other national farm groups to further pursue the question of whether MPC and casein imports were causing economic harm to the domestic dairy sector.

He said NMPF would examine at least four trade policy options:
1. Using section 201 of the Trade Act of 1974 – the so-called Escape Clause – to permit the President to provide relief to a U.S. industry where an International Trade Commission (ITC) investigation has found that imports of an article are "a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article";

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2. Using Section 301, also a provision of the Trade Act of 1974, which authorizes the U.S. Trade Representative to retaliate against any unjustifiable, unreasonable or discriminatory act or policy of a foreign country. This includes situations involving predatory pricing or discriminatory pricing;

3. Using antidumping laws, which impose additional duties on imports that are sold in the United States at a price that is below that producer's sales price in the country of origin, or at a price that is lower than the cost of production, or;

4. Using countervailing measures to investigate whether foreign government subsidies that provide financial assistance to benefit the producers or exporters of milk protein concentrate are injuring the U.S. dairy industry.

NMPF staff will consider the ramifications of using any and all of the preceding four options to deal with the current situation. Part of the decision about which avenue to pursue will be based on the findings of a General Accounting Office investigation into how much MPC is being imported in the U.S., and how the products are being used. That report is due later this year.

The National Milk Producers Federation, headquartered in Arlington, VA, develops and carries out policies that advance the well-being of U.S. dairy producers and the cooperatives they collectively own. The members of NMPF’s 28 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of 50,000 dairy producers on Capitol Hill and with government agencies.

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