

**Joint Comments by the  
National Milk Producers Federation and the  
U.S. Dairy Export Council  
On China's Compliance with WTO Commitments  
September 22, 2009**

The National Milk Producers Federation and the U.S. Dairy Export Council appreciate the opportunity to provide comments in response to the request by the Office of the U.S. Trade Representative for private sector input related to China's compliance with its WTO Commitments.

The dairy industry is the second largest agricultural commodity sector in the United States, measured by farm cash receipts. There are approximately 60,000 dairy producers in the U.S. farming in every state. In addition, there are several hundred dairy processors located throughout the country producing quality dairy products. Dairy is one of the top three agricultural sectors in fully half of the states, and internationally, the U.S. is the world's largest single-country producer of cow's milk.

Exports have become an increasingly important outlet for our dairy production, in large part due to trade agreements. In 2008, we achieved a record export value of \$3.8 billion and a record volume of exporting the equivalent of approximately 11% of the milk produced in the U.S. Although U.S. dairy exports have been negatively impacted by factors related to the global recession and global dairy market supply/demand balance dynamics this year, exports remain an integral part of the U.S. dairy industry.

I. SPS Issues - Treatment of Whey Products

U.S. whey exports to China are a large market, totaling over 75,000 MT last year. It is also a swift growing market, making any trade challenges of particular concern to our industry. The first issue cited below – improper categorization of whey permeate – has only recently arisen and we remain in the process of trying to work closely with FAS to resolve it. Given the sound scientific basis of our argument, we are optimistic that this issue will be able to be positively resolved without considerable further delay. Such a resolution is critical to securing the future health and growth of the U.S. whey export business to China.

Secondly, as is detailed below, China's Ministry of Health is in the process of developing new standards for whey permeate, whey protein concentrate, and whey protein isolate. These products are important U.S. dairy exports to China. This work is ongoing and the U.S. dairy industry has only recently begun to share information with the Chinese regarding some of our concerns related to three of the potential areas of further testing. It is our hope that after reviewing the sound science on each issue and taking into account international testing norms, China will take these fully into account in developing its new whey permeate and whey protein concentrate standards so that the new standards are in compliance with China's WTO

obligations. However, we wanted to take this opportunity to raise points of interest to the dairy industry related to this review process.

*Improper categorization of whey permeate:*

In March 2008, the China Entry-Exit Inspection and Quarantine Bureau (CIQ) administrated by the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) tightened controls on imported whey powder. The Chinese Hygienic Standard for Whey Powders (GB 11674-2005) divides whey products into two categories: demineralized-whey and non-demineralized whey. This standard requires a minimum protein content of 12g/100g for demineralized whey powder and 10g/100g for non-demineralized whey powder. CIQ offices strictly forbid any whey powder that does not comply with China's national standard to enter China. U.S. whey permeate exports for food-use has been improperly categorized as a non-demineralized whey powder. Whey permeate has a protein content range lower than 10g/100g, typically ranging from 3-8g/100g. Therefore, imports from the U.S. have been blocked.

China has maintained that it has taken these steps because whey can be incorporated into infant formula. The U.S. dairy industry concurs that whey permeate is not appropriate for use in infant formula and has communicated this information to the Chinese. However, the fact that whey permeate is not appropriate for all potential dairy applications does not mean it should not be permitted entry as a food ingredient. There are many other appropriate uses for whey permeate as a dairy ingredient – its unsuitability in one area (i.e. infant formula) should not serve as a market barrier to the product's entry.

Since this is a relatively recent development, it is still in the earlier stages of being resolved. We cite it here given the clear-cut issue at play in this case. However, the U.S. dairy industry has been pleased with the productive reception it has received from FAS in working to try to resolve this challenge. We are hopeful that as this issue is further addressed at the bilateral level, a positive resolution can be reached.

*Development of New Standards for Whey Permeate, Whey Protein Concentrate and Whey Protein Isolates:*

In March 2009, China's Ministry of Health agreed to develop new standards for whey permeate, whey protein concentrate and whey protein isolate to address the problem cited above. This work is ongoing at the moment and the U.S. dairy industry is in the midst of working with the Chinese to communicate the science behind key areas of potential new testing requirements. We cite the three issues below solely because if they are not properly addressed, the new standards may also restrict trade, as they will require testing for benzoic acid (BA), arsenic and nitrite.

Chinese levels for these three substances have not yet been determined. We will be attempting to share as much data and information with the Chinese as possible throughout their process of developing these new standards. Our goal in doing so is to ensure that the testing requirements or standards developed will be justified on health grounds and in compliance with international norms. It is vital that this fast-growing market for dairy products bases its standards and testing requirements on sound science that are wedded to well-established international norms for dairy products. Much work by many countries and organizations around the world exists in these areas that can be useful to China in this process. Detailed below are the three areas of interest to the U.S. dairy industry:

- *Possible testing requirements for benzoic acid:*

Benzoic acid (BA) is a “Generally Recognized As Safe” (GRAS) substance by the Food and Drug Administration, but China has only approved its use for condiments. The contribution of BA from whey to the total dietary intake is considered “minor” or negligible and therefore does not need to be monitored.

Benzoic acid is a by-product of the treatment of whey with benzoyl peroxide. The Food Agriculture Organization/World Health Organization/Joint Expert Committee on Food Additives (JECFA) has ruled that “treatment of whey with benzoyl peroxide at a maximum concentration of 100 mg/kg does not pose a safety concern.” Hence a large percentage of U.S. whey is bleached with this processing aid. After bleaching, 91% of the benzoyl peroxide is converted to benzoic acid (BA). Typical usage level of benzoyl peroxide in whey processing is much less than the 100 mg/kg JECFA maximum.

Given JECFA’s clear ruling on this issue and our understanding of the science on the use of BA, there do not appear to be justified human health concerns to merit blanket rejections of all whey products containing any level of BA.

- *Possible testing requirements for nitrites in whey:*

The current nitrite level cited in China’s milk powder standards is 2 ppm. Presently, there is no mention of a nitrite level under its standards for whey powder. Upon review of published standards of 70 trading countries, we found that none of them regulates nitrite levels in dairy products. Given this, it would be in keeping with international norms for the dairy industry (while not posing a threat to consumers) for China to eliminate its current nitrite standard for imported milk powder and refrain from creating one for whey products.

We recognize the sovereign right countries have to establish human health standards that are based on scientific risk assessment; however to-date China has not been forthcoming in providing this WTO recognized document. It is critical for China to demonstrate the WTO-compliance of its regulations and their scientific grounding.

- *Possible testing requirements for arsenic in whey;*

Arsenic is a heavy metal and can be present in drinking water and is normally present in most foods at minute levels. Milk contains very little arsenic – typically much less than 0.01ppm. The current level cited in the Chinese whey standards is 0.5 ppm. After preliminary testing by a USDA laboratory of various U.S. dry dairy ingredients, we are quite confident that the U.S. arsenic level is extremely low – much below the 0.5 ppm level. In the U.S., arsenic testing is not routinely conducted on foods in which its presence is not typically found, such as dairy products.

Since arsenic is very rarely present in milk at levels approaching any degree of risk to consumers, testing for it in dairy products would be an unnecessary burden on imports, imposing additional costs while not adding to the safety of Chinese consumers. Should China proceed to require testing as a result of the work by its whey standard revision committee, it is firm belief that the U.S.'s historical data indicating arsenic levels far below China's threshold should give the Chinese government satisfaction that arsenic is not a problem in whey products and eliminate the need for testing.

## II. Dairy Import Licenses

Another area of potential trade concern to the U.S. dairy industry is China's recent decision to impose import license requirements on several types of dairy products. They include HTS lines: 0401.1000, 0401.2000, and 0401.3000 (fluid milk products); 0402.1000, 0402.2100, 0402.2900, 1901.1000 (milk powders); and 0404.1000 (whey products).

In August, China's Commerce Ministry began requiring importers of fresh milk, milk powder and whey to apply for import permits. Additionally Chinese buyers of dairy products are also required to report their cargoes to the ministry's Chamber of Commerce twice a month. USDEC and NMPF recognize that there are ways to carry out these measures in compliance with WTO regulations. However, given that the timing of the introduction of this new requirement came swiftly after an import surge of dairy products brought on by heightened consumer demand for foreign dairy products in the wake of the Chinese melamine scandal of last fall, we remain carefully watchful of how the programs will actually be carried out, particularly with a view to the continued timely issuance of import permits, in order to ensure that those high benchmarks of trade compliance are indeed met. Ongoing monitoring of this import license requirement must ensure that the application process is clear, orderly and swiftly processed.

## Summary

We appreciate the opportunity to submit comments on China's WTO compliance. We particularly appreciate the work that FAS has done to date in working with our industry to try to resolve some of the previously mentioned SPS issues the dairy industry is currently tackling with respect to China. FAS has also been attentive to the serious concerns raised with ensuring that China implements its new import licensing requirements for dairy products in a timely and fully

WTO-consistent manner. We remain optimistic that these issues can be properly addressed with China.