

Industry Big Boys Want MPC in Fluid Milk

by John Bunting

Milk and flavoured milks have received wide acceptance among consumers for centuries. Much of this acceptance has related to recognition of the valuable nutrient content of the drinks.

— U.S. Patent Application #20040197440

On Monday, June 20, 2005, USDA Agricultural Marketing Service (AMS) dairy division convened a public hearing in Pittsburgh. “to consider proposals seeking to amend the Class I fluid milk product definition of all Federal milk marketing orders.

The hearing was presided over by Administrative Law Judge Peter Davenport. This meeting was held at the Sheraton Station Square Hotel on the banks of the Monongahela River. The Monongahela River is one of the largest rivers in the U.S. to flow in a generally northerly direction. If one were to guess about the outcome of the meeting, it seemed to flow in the opposite direction of the expectations of those proposing to change the definition of milk. Most likely, the definition of milk will not change.

A look at the process, however, provides some insight into how dairy policy, especially matters concerning pricing, is formulated. Those providing information at the hearing were primarily, industry executives, lobbyists, lawyers and dairy economists.

The alleged purpose of the hearing was the definition of milk. Milk is composed of certain components. When Ben Yale, attorney for Select Milk Producers Inc. and Continental Dairy Producers, asked Roger Cryan, economist from National Milk Producers Federation (NMPF) about the casein micelle, Cryan was not familiar with the term. Dr. Cryan confessed, “I am not a dairy scientist.”

Reason would hold that a dairy scientist would by training and experience, be most qualified to speak about milk, the components of milk and ultimately, the definition of milk. None was in attendance.

Instead, the legal phrase “form and use” was repeatedly brought up to justify and define milk. However, when E. Linwood Tipton asked Dr. Cryan to define liquid, he could not. Cryan did say the definition of milk is very basic. It is the “lacteal secretion of the bovine,” he told “Tip” Tipton. Most of the first day’s testimony and cross examination at the hearing was focused on Cryan.

The MPC issue

On Tuesday morning, Gerald and Tina Carlin testified. The Carlins are dairy farmers from Meshoppen, Pa. Their testimony centered upon the MPC issue. Gerald said, “I think it is quite clear that processors will benefit by these proposals while the dairy farmer’s pay price will be eroded by diluting the Class I market.”

Tina Carlin stated, “As the wife of a dairy farmer and mother of four, please do not change the current regulations on fluid milk. Keep milk wholesome in the United States. To do otherwise, would put our consumers at risk and devastate our dairy farmers by displacing superior products with inferior products.”

Simon Tucker, Vice President of Fonterra USA read a statement mentioning the partnership of DFA and Fonterra in the Portales, New Mexico MPC plant. He said, “Such is the success of this plant that this year we will commence exporting U.S. MPC to Mexico.” This would imply a large production of domestic MPC which Mr. Tucker claimed was Grade “A”. However, when I asked for a general idea as to how much MPC was being produced at Portales, Fonterra claimed this was proprietary. It was the same case with market share information.

(Editor’s note: The Milkweed reported earlier this year that the Portales MPC plant lost about \$10 million in 2004.)

Later on Tuesday, Patricia Lovera, Deputy Director of the Energy and Environment Program at Public Citizen testified in opposition to including MPCs in the definition of milk. Public Citizen is a national, non-profit consumer advocacy organization.

This position could not be broken down under cross examination by Marvin Beshore, the attorney for DFA. Ms. Lovera said quite simply, “MPCs are not milk.” And that was the last word in that exchange.

Joe Logan of Ohio Farmers Union drove to the hearing and testified on Wednesday in opposition to including MPCs. No one cross-examined him.

I also testified on Wednesday morning. After explaining that U.S. Customs had tried and failed to define or develop a standard for MPCs, I stated, “Clearly then, we are not talking about “amending” any definition of milk. This hearing is, in reality, about **eliminating** any definition of milk in the interest of processor profit.”

In spite of expecting to be cross-examined by those who hold MPCs dear, no one rose to challenge any statement I made. Only the AMS requested clarification of two points. Mostly, I had to explain that since MPCs had no definition, the addition of MPCs to milk would eliminate any definition of milk.

Proposals fall – maybe not

Elvin Hollon, Director of Fluid Marketing and Economic Analysis for DFA, originally requested this hearing in a letter dated June 30, 2003. He wrote, “The original intent of the Order program was to allow dairy farmers to share in the market returns of higher valued fluid consumable products. We support the position that any product formulated from milk solids for beverage consumption should be regulated as Class I product and would propose that Federal Order provisions be modified to reflect that reality.”

Subsequently, several time extensions were granted and quite naturally, the number of proposals multiplied in the intervening period. In all a total of 12 proposals were in the Federal Register announcing the hearing.

By Tuesday morning the cards began to fall. Craig Alexander, testifying for O-AT-KA, withdrew the organization’s proposal and threw its support behind the NMPF proposal. Before it was all over DFA had also withdrawn its proposal, and added their support to the NMPF proposal.

The hearing had all the appearance of the Roger Cryan show. Cryan spent more time on the stand than anyone else. Some of what he said was confusing, particularly his understanding of whey. He also seemed to ask more questions of those testifying than anyone else.

Cryan’s questioning came to the point on Wednesday afternoon where Judge Davenport brought to a halt a line of questioning that seemed to be going nowhere. However, it seemed that Dr. Cryan maintained that no product now classified as Class II would be moved to Class I. Therefore, it is difficult to see DFA’s original request of “should be regulated as Class I” would be met.

Realistically, it would seem that DFA forfeiting their original request was not much of a loss. Testimony given by Dr. Mark Stephenson of Cornell University states, “Over a broad range of market and product characteristics, the impact of reclassification of new products from class II to class I is likely to be small – less than $\pm 0.1\%$ of discounted revenues ($\pm \$0.01/\text{cwt}$).”

So DFA gave up putting any money in dairy farmers’ pockets and supported NMPF Proposal 7, which state, “This proposal seeks to amend the fluid milk product definition by removing the reference to the 6.5 percent nonfat milk solids standard and whey, and adopting a milk protein standard.”

By “adopting a milk protein standard” NMPF means any and all dairy derived proteins including MPCs. Despite all the dressing up in sheep’s clothing DFA has done on this hearing, it

would appear to any reasonable person their primary purpose was to add MPCs to the definition of milk. DFA is, after all, partners with Fonterra, which imports the lion’s share of MPCs into this country.

It is entirely feasible that farms and plants in New Zealand could be inspected by U.S. officials, and that would make NZ farmers eligible to receive Federal Milk Market Order blend price for at least some of their milk. Of course, the money would first go to Fonterra and then “trickle down” to NZ farmers from there.

DFA’s behavior often seems to be a clear violation of the Capper-Volstead Act, as well as a violation of most state co-operative law.

NMPF on the other hand has a mission statement on its web site that says in part, “The policies of the NMPF are determined by its members from across the nation. Therefore, the policy positions expressed by NMPF are the only nationwide expression of dairy farmers and their cooperatives on national public policy.” Egad.

One certainty is that NMPF never polled dairy farmers about MPC, and that makes their statement about the “only nationwide expression of dairy farmers” a bold faced lie.

The soy threat: real or false?

There seemed to be the boogiemans of soy in every corner. Mark Stephenson said, “however, if there is substitution of non-dairy ingredients for dairy ingredients (product reformulation) in response to reclassification, the negative impacts on dairy producer revenues are much larger, about -1.8% of discounted revenues ($-\$0.23/\text{cwt}$).”

Robert Waldron, Yoplait Division President of General Mills, testified, “As I noted, if USDA were to include added whey in the calculation of a milk protein standard, it will directly lead to the increased use of alternative proteins.” He continued, “Market innovation will continue, and new products will be developed that do not use milk or milk proteins.”

On this subject Waldron concluded, “Facing increased commodity prices when cheaper, comparable alternatives are available, manufacturers will simply move to lower cost options.”

Simon Tucker of Fonterra included a table in his testimony which shows that “between 1999 and 2003 the use of soy protein in nutritional applications has enjoyed an average annual growth rate of 16.5%, while milk protein has increased by only 10.15. Soy is clearly eroding the dominant market position in these products once enjoyed by milk protein.”

Robert Yonkers, Chief Economist and Director of Policy Analysis with the international Dairy Foods Association testified that “One would also need to assess the impact of the higher regulated price on the ingredient formulation of the product. This requires empirical analysis of the input substitution between dairy and non-dairy ingredients in those beverages.”

In a room dominated by lawyers and economists the soy threat popped up regularly. Various speakers mentioned the fact that soy protein was about half the cost of whey protein. Anyone might wonder just how cheap soy has to be to totally take over the dairy market? Ask Dean Foods.

The big picture

In her testimony, Patricia Lovera of Public Citizen said, “Our opposition is based on concerns with the specific details of the proposal, as well as the process by which this change is being considered.” Public Citizen said “it is worrisome that an action as significant as changing the definition of milk could happen through the milk market order system, a process most consumers have never heard of.”

Consumers certainly should be a part of the process. However, what was equally missing were those within the dairy industry who have the knowl-

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edge and understanding of the big picture. Witnesses constantly tripped over concepts of whey. Craig Alexander honestly stated, "I am not a dairy scientist." Unfortunately there was not a dairy scientist to be found. Had there been the threat of soy would not have been raised repeatedly. Soy cannot substitute for milk in most occasions. Consumers might also have explained their concern for imitation ingredients in what used to be "Real" products.

The fragmentation of understanding was evident when Robert Waldron, President of Yoplait confessed he did not know what the term handler meant. Most people in the room have never milked a cow, or for that matter shoveled manure, on any regular basis. It might also be said without fear of contradiction that most people in the room had never seen cheese or other dairy products being made in their own home.

What is sorely lacking in the dairy industry is a grasp of the whole. We have become dominated and bullied by those whose only standard is the bottom line. While profit is essential and important, if we forget the importance of genuine quality and flavor we have already moved over to the losing side.

This hearing was, in the final analysis, about the phony and the fake. It was about trying to fool people that the farmer might benefit from MPCs as part of the definition of milk. It contained an underlying belief common among con artists, that in spite of the record of history, no one can fool all of the people all the time.

At the end of the day, we have a crisis of leadership. Nothing illustrates that more than NMPF's proposal to amend the definition of milk to include MPCs. NMPF has risen to a new level of phoniness concerning what the federation is about, and whose interests it represents.