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MEMORANDUM D10-18-4

In Brief

IMPORTATION OF CERTAIN AGRICULTURAL PRODUCTS AND THE IMPORT CONTROL LIST (ICL)

One sentence in Paragraph 33 on Page 4 of Memorandum D10-18-4 has been revised for clarification purposes. Please insert the new page 4 into the existing memorandum.



Ottawa, February 17, 2005

MEMORANDUM D10-18-4

IMPORTATION OF CERTAIN AGRICULTURAL PRODUCTS AND THE IMPORT CONTROL LIST (ICL)

This Memorandum explains the legislative and administrative provisions relating to margarine and butter substitutes, eggs, egg preparations, live poultry and poultry products, cheese, butter, dairy products, beef, and veal.

Legislation

Customs Tariff

10. (1) Subject to subsection (2), the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System and the Canadian Rules set out in the schedule.

(2) Goods shall not be classified under a tariff item that contains the phrase “within access commitment” unless the goods are imported under the authority of a permit issued under section 8.3 of the *Export and Import Permits Act* and in compliance with the conditions of the permit.

GUIDELINES AND GENERAL INFORMATION

1. For the agricultural products included on the Import Control List (ICL), import permits are not required to be submitted to the Canada Border Services Agency (CBSA) to obtain release. Goods on ICL are provided for under one of two categories of tariff items: within access commitment tariff items or over access commitment tariff items.

2. Depending on their tariff classification, these goods will be eligible for the low rate of duty associated with a within access commitment tariff item or the higher rate of duty associated with an over access commitment tariff item.

3. The term within access commitment refers to allowing access under the lower rate of duty up to a specified quantity or tariff rate quota (TRQ). The Minister of International Trade is responsible for establishing the import access levels.

4. The following Memoranda provide specific information on the following topics:

General overview of tariff rate quotas, D10-18-1:

<http://www.cbsa-asfc.gc.ca/E/pub/cm/d10-18-1/d10-18-1-e.pdf>

Tariff rate quota for barley, wheat, and their products, D10-18-6:

<http://www.cbsa-asfc.gc.ca/E/pub/cm/d10-18-6/d10-18-6-e.html>

Interpretation

5. Section 10 of the *Customs Tariff* establishes the two criteria for the classification of goods into a within access commitment tariff item, which is the tariff item subject to lower rates of duty. These criteria are as follows:

(a) the classification of the goods is determined by the application of the General Rules for the Interpretation of the Harmonized System and the Canadian Rules;

(b) the importer has been issued a specific import permit for the goods and has complied with the terms and conditions of the permit.

6. Section 8.3 of the *Export and Import Permits Act* is the provision that governs the issuance of import permits referred to in section 10 of the *Customs Tariff*. Importers are advised to consult with the Export and Import Controls Bureau, International Trade Canada (ITCan) and to refer to the Notice to Importers series from that Department. Questions concerning issuance of import permits or import allocation of quotas should be directed to ITCan. For additional information on import permits, refer to Memorandum D19-10-2, *Export and Import Permits Act (Importations)*.

Classification Information

7. Agricultural products (except wheat, barley, wheat products and barley products) enumerated on the ICL will be classified under either a within access commitment tariff item or an over access commitment tariff item which provides for these goods. If a specific import permit for the goods is obtained from the Export and Import Controls Bureau (ITCan) and all its terms and conditions are complied with, then the goods will be classified in a within access commitment tariff item at a lower rate of duty. Without a specific import permit, goods will be entered under a General Import Permit (GIP) No. 100 – Eligible Agricultural Products, and will be classified in an over access commitment tariff item and subject to higher rates of duty.

Dairy – Definitions and Guidelines

8. (a) “Butterfat” is the natural fat of milk and the main component in butter. It is mainly composed of triglycerides of fatty acids with very small amounts of other materials (including free fatty acids and natural volatile flavouring substances). This term can also be

used interchangeably with the term “milk fat” (see tariff items 1901.20.11, 1901.20.12, 1901.20.21, 1901.20.22, 2309.90.35, and 2309.90.36).

(b) “Dairy content” is the total of all dairy ingredients in a product. Dairy ingredients include milk, cream, cheese, butter, yogurt, whey, and other dairy products, including dairy products which have been treated with enzymes (such as enzyme-modified cheese or lipolyzed butteroil). The calculation for “dairy content” includes casein, caseinates, and lactose whether or not separately added, and the water that is added as part of the dairy ingredients (see tariff items 2106.90.31, 2106.90.32, 2106.90.33, 2106.90.34, 2106.90.35, 2106.90.93, 2106.90.94, and 2106.90.95).

(c) “milk fat” is the same as “butterfat” (see tariff items 2106.90.33, 2106.90.34, and 2106.90.35).

(d) “Milk solids” means any component of milk, singly or in combination and other than water or casein, that has not been altered in its chemical composition. The *Canada Agricultural Products Act (Dairy Product Regulations)* was used as a reference for this definition. The main solid materials in milk are lactose, milk proteins, and milk fat (butterfat). Yogurt is chemically altered. Therefore, no account is taken of yogurt in calculating the percentage of milk solids of a product that is made with yogurt. Also, if casein is added to a product, that casein is not included for the purpose of calculating the percentage of milk solids. See Appendix A for list of products included in calculating the percentage of milk solids (see tariff items 1901.90.31, 1901.90.32, 1901.90.33, 1901.90.34, 1901.90.39, 1901.90.40, 2106.90.35, 2106.90.95, 2309.90.35, and 2309.90.36).

(e) “nonfat milk solids” is the total of the solids derived from nonfat milk (or a nonfat milk product); “nonfat milk solids” are usually added in the form of skim milk powder or dry whey solids (see tariff items 2309.90.31, 2309.90.32, 2309.90.33, and 2309.90.34).

(f) “on a dry weight basis” or “in the dry state,” are used as qualifiers of the term “milk solids” in tariff items under headings 19.01, 21.06, and 23.09. It means that no account should be taken of any water in the product when calculating the percentage of milk solids.

9. With regards to milk and sugar mixtures, heading 04.02 allows for the addition of sugar. For example, a mixture of 49% skim milk powder and 51% sugar would be classified under subheading 0402.10. Likewise, a sweetened condensed milk containing 60% sucrose, calculated on a dry weight basis, would be classified under subheading 0402.99.

10. Products are classified under heading 21.06 provided that they are not covered by any other heading of the

nomenclature. Therefore, when classifying products with regards to the term “milk solids” or “dairy content,” other headings that may provide for these products must be considered first. Specifically, headings 04.01 to 04.06 which provide for milk, cream, yogurt, whey, butter, cheese, etc., and heading 19.01 which provides for food preparations of goods of headings 04.01 to 04.04 must be ruled out before products can be classified under heading 21.06.

11. For all products falling under any of the headings that provide for tariff items containing the terms “butterfat,” “milk fat,” “dairy content,” “milk solids,” and “nonfat milk solids,” a product specification sheet detailing the product formulation and/or a lab analysis may be required to determine the correct classification.

Eggs

12. Dried whole eggs containing a small amount of colorant which are not suitable for human consumption but are destined for animal consumption, are provided for under heading 04.08. The Explanatory Notes to this heading indicate that this heading provides for eggs whether for use as food or industrial purposes (e.g., in tanning).

Hatching Eggs

13. Means fertile eggs placed into incubators with the intention of producing live birds. Hatching eggs are more expensive than eggs for consumption, i.e., table eggs. For example, hatching eggs for broilers would be approximately twice the value of table eggs while hatching eggs for breeders would be approximately five times the value of table eggs. Importations of hatching eggs would be accompanied by a U.S. Department of Agriculture *Certificate for Poultry or Hatching Eggs for Export* while importations for consumption would be accompanied by a U.S. Department of Agriculture Certificate namely, *Poultry Products Grading Certificate*.

Margarine and Butter Substitutes

14. For the purposes of tariff items 1517.90.21, 1517.90.22, 2106.90.31, 2106.90.32, 2106.90.33, 2106.90.34, and 2106.90.35, the terms “substitutes for butter,” and “butter substitutes” refer to products which may be used as a substitute or alternative for butter. These products generally have a soft, plastic consistency, and may be used in three general applications: as a spread, as a cooking fat, or as a cooking ingredient. For example, products having a limited use, such as liquid products used for cooking or flavouring, are not considered to be substitutes for butter or butter substitutes for the purposes of those tariff items.

15. Tariff items 2106.90.31, 2106.90.32, 2106.90.33, 2106.90.34, and 2106.90.35 provide for butter substitutes which are excluded from all other headings.

16. The term “dairy spreads” means a spreadable emulsion of the water-in-oil type, containing milk fat as the only fat in the product, with a milk fat content of 39% or more but less than 80% by weight (see subheading 0405.20).

Ice Cream Mixes and Ice Milk Mixes

17. These dairy product mixtures (cream, milk) are pasteurized but not frozen. They can contain, among other things, eggs, food colouring agents, salt, etc.

18. Ice cream mixes should contain at least 36% of solids and 10% of milk fat. If chocolate syrup, cocoa, and fruits are added, the percentage of fat can be 8%.

19. Ice milk mixes should contain at least 33% solids and at least 3% and not more than 5% milk fat.

Ice Cream and Other Edible Ice

20. Flavoured ice of tariff item 2105.00.10 is a frozen food containing water, sugar or other sweetening agents, fruit juice or other flavouring but not containing milk, cream, or other milk-derived ingredients.

21. Sherbet of tariff item 2105.00.10 is a frozen food, other than ice cream or ice milk but made from a milk product. Sherbets generally contain the same ingredients used in flavoured ices and, in addition, contain milk or milk-derived ingredients. The finished product will contain not less than 2% nor more than 5% milk solids (including milk fat). Item B.08.063 of the *Food and Drugs Act* and regulations was used as reference for this definition.

22. Ice cream is the frozen food product made from ice cream mix by freezing. Ice cream contains cream or butterfat, flavouring, sweetening, and usually eggs; it contains a minimum of 36% total solids and 10% milk fat, or, where cocoa or chocolate syrup, fruit, nuts or confections have been added, 8% milk fat. Item B.08.062 of the *Food and Drugs Act* and regulations was used as reference for this definition (see tariff items 2105.00.91 and 2105.00.92).

23. Ice milk is the frozen food made from ice milk mix by freezing. Ice milk contains cream, milk or other milk products, and sweetening agents and may contain flavouring, eggs, and other ingredients; it contains a minimum of 33% total solids and contains not less than 3% and not more than 5% milk fat. Item B.08.072 of the *Food and Drugs Act* and regulations was used as reference for this definition (see tariff items 2105.00.91 and 2105.00.92).

24. Tariff items 2105.00.91 and 2105.00.92 provides for ice cream, ice milk, and all other edible ice other than flavoured ice and sherbet.

Live Poultry and Poultry Products – Definitions and Guidelines

25. (a) “Canner pack” generally refers to a turkey, without its neck and giblets, that is destined for the further processing market and not for the consumer market (see tariff items 0207.24.11, 0207.24.12, 0207.25.11, and 0207.25.12).

(b) “for breeding purposes” refers to poultry that is identified as such on the U.S. Department of Agriculture's Certificate for Poultry or Hatching Eggs for Export (see tariff items 0105.11.10, 0105.12.10, 0105.19.10, 0105.92.10, and 0105.93.10).

(c) “broilers for domestic production” of tariff items 0105.11.21 and 0105.11.22 refers to live fowls of the species *Gallus Domesticus* weighing not more than 185 grams. These fowls are commonly referred to as “broiler chicks” and are just hatched.

(d) “prepared meals” consist of at least one serving of milk products, meat (includes fish and poultry), or meat alternatives (legumes, seeds, nuts, etc.), and at least one serving of grain products (bread and cereals) or vegetables or fruit. A prepared meal may contain a meal for more than one person and may be presented on a tray such as a TV dinner. A prepared meal may be ready for immediate consumption, such as a sandwich, may require heating, such as a meat stew containing vegetables, or may require some cooking and/or assembly such as stir-fried or fajita chicken and vegetable kits. The *Canada Food Guide for Healthy Eating*, published in 1992, and the *Food and Drug Regulations* were used as references in preparing this guideline for tariff classification of “prepared meals” (see tariff items 1602.31.11, 1602.31.12, 1602.31.13, 1602.31.14, 1602.32.11, 1602.32.12, 1602.32.13, 1602.32.14, and 1602.39.10.)

(e) “spent fowl” means a mature bird of the species *Gallus Domesticus* that does not have a flexible cartilage at the posterior end of the sternum and does not have tender meat or soft skin of smooth texture. Only the older birds develop a bony sternum, also referred to as a breast or keel bone, as opposed to the young birds that have a youthful cartilaginous sternum. The primary purpose of these fowls is not for meat production but for other purposes, for example, hens for laying. Once these fowls are no longer productive, they are considered “spent” and, at that point, are destined for slaughter. “Spent fowl” are also referred to as stewing hens, boiling fowls, pot roasting hens, mature chickens, or old roosters (see tariff items 0105.92.10, 0105.93.10, 0207.11.10, 0207.12.10, 0207.13.10, 0207.14.10, 1601.00.23, 1602.32.11, and 1602.32.92).

(f) “started pullets” refers to young hens ranging from 10 to 20 weeks of age that are intended for laying in

egg production or for hatchery supply flocks (see tariff items 0105.92.10 and 0105.93.10).

26. Flours of meat or meat offal and edible flours made from cooked meat such as chicken, turkey, or beef etc., or from edible meat offal are classified under tariff item 0210.99.90. Flours of meat or meat offal unfit for human consumption (e.g., for feeding animals) are excluded (heading 23.01). The Explanatory Notes to heading 02.10 of Chapter 2 and the General Explanatory Notes to Chapter 16 may be referenced on these issues.

“Specially Defined Mixtures” – Definition and Guidelines

27. “Specially defined mixtures” are defined in Supplementary Note 1 to Chapter 16 of the schedule to the *Customs Tariff* as follows:

“Specially defined mixtures” of tariff items 1602.31.11, 1602.31.92, 1602.32.11, and 1602.32.92 means chicken or turkey or a product containing chicken or turkey, wherein 13% or more of the total weight of the product is comprised of goods other than the following: chicken, turkey, bread or breading, batter, oil, glazing, other coatings and bastes, and any added water (including that used in marination, glazing, other coatings, bastes, breading, and batter). For the purposes of this definition, the weight of all ingredients shall be taken from the product specification sheets for that product required under the *Meat Inspection Act* for product labelling purposes.

28. To classify turkey or chicken products as “specially defined mixtures” under tariff items 1602.31.11, 1602.31.92, 1602.32.11, and 1602.32.92, the following should be noted.

(a) These food preparations must first qualify as products of Chapter 16 according to the General Interpretative Rules and any relevant Section and Chapter Notes, particularly Note 2 to Chapter 16. In reference to Note 2, the General Explanatory Notes to Chapter 16 indicate, “in all cases the weight to be considered is the weight of meat, fish, etc., in the preparation at the time it is presented and not the weight of the same products before preparation.” A laboratory analysis may be necessary to determine the 20% factor outlined in Note 2.

(b) The supplementary note outlines two requirements for determining whether a product meets the definition of “specially defined mixtures.” They are:

- (1) that 13% or more of the total weight of the product must be made up of goods other than what is considered the “meat” portion of the product,
- (2) what is to be included as making up the “meat” portion. Included in the “meat” portion are the chicken or turkey, the bread or breading, batter, oil, glazing, other coatings and bastes, and any

added water, including water that is used in marination, glazing, other coatings, bastes, breading, and batter of the total product.

29. The determination of “specially defined mixtures” is based on the information contained in the product specification sheet required for product labelling under the *Meat Inspection Act*. It is **not** determined by laboratory analysis.

30. For examples relating to specially defined mixtures, see Appendix B.

Other Classification Information

31. As directed by the Explanatory Notes to the Harmonized System, gift baskets or boxes containing a selection of products such as cheese (heading 04.06), a can of shrimp (heading 16.05), and a can of sliced bacon (heading 16.02) are not to be classified under one heading as “goods put up in sets for retail sale” by application of General Interpretative Rule 3(b). Rather, each item in the selection must be classified separately in its own heading. If any of the items in the gift basket or box are on the ICL, then the importer must have a specific import permit for the goods from ITCan to be classified in a within access commitment tariff item (i.e., to obtain a lower rate of duty).

32. For further guidelines on tariff classification, consult Memorandum D10-13-1, *Classification of Goods*.

Advance Rulings

33. The CBSA is responsible for administering the customs aspect of TRQs; for that reason, importers or their agents can ask for an Advance Ruling (AR) for any products that could possibly be covered by the ICL. For example, a good that does not meet the definition contained in Supplementary Note 1 to Chapter 16 for “specially defined mixtures” could possibly be classified under an over access commitment tariff item at a substantially higher rate of duty. For further information on Advance Rulings, see Memorandum D11-11-3, *Advance Rulings for Tariff Classification*.

34. The issuance of an allocation or a permit by ITCan does not constitute a tariff classification ruling.

Documentation Requirements

35. A copy of the specific import permit must be submitted at time of accounting or the goods will be subject to the higher rate of duty associated with the over access commitment tariff item.

36. For document requirements for other departments, consult Memorandum D19-1-1, *Food, Agricultural Commodities, Aquatic Commodities, and Agricultural Input*.

37. For goods accounted for under a tariff item containing the phrase “specially defined mixtures,” a copy of the product specification sheets, required for labelling purposes under the *Meat Inspection Act*, is required by the CBSA for

both the issuance of an Advanced Ruling and for purposes of classification review.

38. For goods accounted for under a tariff item containing the phrase "spent fowl," a copy of the U.S. Department of Agriculture's *Certificate for Export of Meat and Poultry Products* may be requested by the CBSA in the classification review process. The certificate should indicate clearly that this product is made with spent fowl or old roosters.

Additional Information

39. To obtain an application for an import permit or additional information on import permits, please contact:

Export and Import Controls Bureau
International Trade Canada
125 Sussex Drive
Tower C, 4th Floor
Ottawa ON K1A 0G2
Telephone: (613) 995-8108
Facsimile: (613) 996-0612

APPENDIX A**LIST OF PRODUCTS IN THE CALCULATION OF THE PERCENTAGE OF “MILK SOLIDS”**

Description	Milk Solids
Skim milk or skim milk powder	yes
Buttermilk or buttermilk powder	yes
Butter	yes
Butteroil	yes
Whole milk or whole milk powder	yes
Cream or cream powder	yes
Cheese or dried cheese	no
Casein or caseinates	no
Milk protein concentrates	yes
Whey protein concentrates	yes
Whey	yes
Modified whey	yes
Lactose	yes
Yogurt	no

Note: Milk solids are calculated on a dry weight basis.

APPENDIX B**EXAMPLES RELATING TO SUPPLEMENTARY NOTE 1 TO CHAPTER 16
FOR SPECIALLY DEFINED MIXTURES**

The following four fictitious examples show two chicken and turkey preparations that qualify as “specially defined mixtures” and two preparations that do not. Note 2 to Chapter 16 is assumed to have been met for the purposes of these examples.

Example No. 1 “specially defined mixtures”

Barbecue chicken with vegetable rice and carrots

Chicken	50%
Rice	20%
Vegetables	24%
Barbecue sauce	4%
Oil	1%
Salt	0.5%
Seasonings	0.5%
Total	100%

According to the definition of specially defined mixtures, the barbecue sauce and oil are considered to be part of the chicken portion. Since the non-chicken portion is greater than 13%, this product qualifies as a “specially defined mixture.”

Example No. 2 “specially defined mixtures”

Chicken in a mushroom sauce

Chicken	70%
Mushroom sauce	30%
Total	100%

According to the definition of “specially defined mixtures,” the non-chicken portion (mushroom sauce) is greater than 13%; therefore, this product qualifies as a “specially defined mixture.”

Note: Although example Nos. 1 and 2 both used sauces in their formula, the barbecue sauce, used as a baste, is considered to be part of the chicken portion according to the definition of a specially defined mixture whereas the mushroom sauce is not. Had the formula for example No. 1 been chicken 87% basted with 13% barbecue sauce, this product would have been excluded from being a specially defined mixture. Similarly, any garlic or other types of marinated sauces are part of the chicken or turkey meat.

Example No. 3 This product does not meet the requirements for “specially defined mixtures.”

Flavoured turkey breast

Turkey breast	95%
Water	4%
Garlic pepper	0.5%
Salt	0.5%
Total	100%

This product is not a “specially defined mixture” and is on the Import Control List since the non-turkey portion, i.e., the garlic pepper and salt, is only 1%. The water is considered to be part of the turkey portion according to the definition.

Example No. 4 This product is not a “specially defined mixture.”

Chicken in a bun (a chicken sandwich)

Chicken	59.9%
Bun	40.0%
Spices	0.1%
Total	100%

This product is on the Import Control List since the bun is considered to be part of the chicken portion according to the definition of “specially defined mixtures.”

REFERENCES

<p>ISSUING OFFICE –</p> <p>Tariff Classification and International Nomenclature Division Admissibility Branch</p>	<p>HEADQUARTERS FILE –</p> <p>N/A</p>
<p>LEGISLATIVE REFERENCES –</p> <p><i>Customs Tariff</i> <i>Export and Import Permits Act</i> <i>Canada Agricultural Products Act</i></p>	<p>OTHER REFERENCES –</p> <p>D10-13-1, D10-18-1, D10-18-6, D19-1-1, D19-10-2</p>
<p>SUPERSEDED MEMORANDA “D” –</p> <p>D10-18-4, May 3, 1996; D10-18-4 March 18, 1998</p>	

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