



Memorandum D10-18-7

Ottawa, June 30, 2020

Importation of certain dairy products and the *Import Control List (ICL)*

In brief

1. This new D-Memorandum is a revision the information pertaining to dairy product found in D10-18-4 on the Importation of Certain Agricultural products and the *Import Control List (ICL)*, dated August 14, 2009, which is cancelled by the publication of this new D-memorandum.
2. Information on the classification of poultry and eggs as they relate to the *Import Control List*, can now be found in the new D-Memorandum D10-18-8, Importation of Certain Poultry and Egg Products and the *Import Control List (ICL)*.
3. The amendments to this D-Memo reflect updates to the legislation of the *Import Control List* and the *Safe Foods For Canadians Act*. These additions do not change the current policy.

Legislation

[Customs Tariff](#)

[Customs Tariff Act](#)

[Export and Import Permits Act](#)

[Canada Agricultural Products Act](#)

[Food and Drugs Act](#)

[Food and Drug Regulations](#)

[Import Control List](#)

[Safe Foods For Canadians Act](#)

Guidelines and General Information

1. Agricultural goods on the Import Control List (ICL) are provided for under one of two types of tariff items: “within access commitment” or “over access commitment.” Each item enumerated on the ICL has a dual tariff item reflecting this.
2. Pursuant to section 10(2) of the *Customs Tariff Act*, agricultural products included on the ICL, “...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”.
3. Global Affairs Canada (GAC) is the Department responsible for establishing the import access levels, allocating quota and issuing import permits.
4. Dairy products enumerated on the ICL may only be classified under a “within access commitment” tariff item when a specific import permit for the goods is obtained from GAC, and all its terms and conditions are fulfilled. Without a specific import permit, goods will be entered under a General Import Permit (GIP) number 100: Eligible Agricultural Products, and will be classified under an “over access commitment” tariff item.
5. Sections 7(1) to 11 of the *Export and Import Permits Act* is the legislation that governs the issuance of import permits referred to in section 10(2) of the *Customs Tariff Act*. For information on permits and quota applications, importers are advised to consult GAC’s Export and import Controls webpage and to refer to the Notice to importers series.
6. Import permits are not required to be submitted to the Canada Border Services Agency (CBSA) to obtain the release of the goods. However, they are required at the time of accounting and must be available during any CBSA compliance verification activity.
7. The issuance of an allocation or a permit by GAC does not constitute a tariff classification ruling.

8. D10-18-1, Tariff Rate Quotas provides a general overview of the Tariff Rate Quota (TRQ) system.

Classification Information

Dairy – Definitions and Guidelines

9. (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”.
- (b) “Constituents of Milk” consist of water, milk fat, proteins (casein and whey), lactose, minerals, acids, enzymes, and vitamins.
- (c). “Dairy products” and “Dairy ingredients” mean any of the following; full fat milk, partly skimmed milk, skim milk, cream, buttermilk, curdled milk, curdled cream, yogurt and other fermented or acidified milk, cheese or curd, whey, whey cream, concentrated milk (in liquid, dried, frozen or reconstituted form), butter, butteroil and other fats derived from milk, whey butter, milk solids and whey protein concentrates. It includes dairy products which have been treated with enzymes (such as enzyme-modified cheese or lipolyzed butteroil). Dairy ingredients that will be further manufactured can also be considered as a dairy product in its own right.
- (d) “Dairy content” is the total of all dairy ingredients in a product (see paragraph (c) for definition of dairy products/dairy ingredients). The calculation for “dairy content” also includes casein, caseinates, and lactose whether or not separately added, and any added water as part of the dairy ingredients.
- (e) “Milk fat” is the same as “butterfat”.
- (f). “Milk solids” means:
- (i) in respect of a dairy product, other than cheese for which a grade or standard is established, cultured or fermented milk or cream, any constituent of milk – other than water or casein – singly or in combination with other constituents of milk, that has not been altered in its chemical composition, and
 - (ii) in respect of cheese and cultured or fermented milk or cream, any constituent of milk – other than water – singly or in combination with other constituents of milk.
- See Appendix A for a list of products included in calculating the percentage of milk solids.
- (g) “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.
- (h) “On a dry weight basis” or “in the dry state,” are used as qualifiers of the term “milk solids” in the Tariff. It means that no account should be taken of any water in the product when calculating the percentage of milk solids when classifying goods under tariff items which include the phrase “dry weight basis” or “in the dry state”.

10. When classifying dairy products, certain factors must be taken into account, including but not limited to, the constituents of milk, dairy ingredients, dairy content and milk solid content.

11. For tariff classification purposes, as well as the administration of the *Export and Import Permits Act* and the ICL, all milk constituents are included in the calculation of “milk solids”, whether or not they are altered in their chemical composition, including casein and caseinates, yogurt, enzyme-modified cheese, and similar products.

12. 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.

Milk and Cream

13. Milk and Cream are classified in heading 04.01 (not concentrated, without sweetening matter) or 04.02 (concentrated or containing sweetening matter), according to their milk fat percentage.

14. The expression “milk” means full cream milk (more than 2% but less than 6% milk fat) or partially skimmed milk (more than 0.5% but less than 2% milk fat) or completely skimmed milk (no more than 0.5% milk fat).

15. 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 and 40% milk, calculated on a dry weight basis, would be classified under subheading 0402.99.

Other Fats and Oils Derived from Milk

16. Products of subheading 0405.90 are obtained by using the milk fat portion of milk other than the products meeting the terms of butter (as defined in the *Customs Tariff*) and dairy spreads (as defined below). This subheading also covers products obtained by extracting the water and non-fat content from butter or cream. Examples include, anhydrous milk fat, anhydrous butteroil and butteroil, which contain at least 99.6% milk fat. This group further includes dehydrated butter and ghee (butter which has been heated and any solids have been removed leaving a clarified style of butter).

17. The products of this subheading may contain a mixture of butter (as provided for in subheading 0405.10 and herbs, spices, flavourings, garlic, etc. (provided they retain the character of the products falling in this heading).

Margarine and Substitutes for Butter

18. "Margarine", classified in Subheading 1517.10, is an emulsification of the water-in-oil type, obtained from fats or oils of animal or vegetable origin or from a mixture of these fats and oils. It will have a "plastic" consistency, and will generally be yellowish. It includes only margarine, which at a temperature of 10°C, is not visually liquid.

19. Liquid Margarine classified in Subheading 1517.90, is liquid at a temperature of 10°C.

20. Substitutes for Butter classified in heading 15.17 are mixtures or preparations of various animal or vegetable fats or oils, with not more than 15% by weight of butter or other milk fat. These products will have the texture, taste and colour that can be used as a substitute for "natural table butter". They may be used in three general applications: as a spread, as a cooking fat, or as a cooking ingredient.

21. 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)

22. Subheading 2106.90 provides for butter substitutes that do not qualify under any other headings. They differ from the substitute for butter of heading 15.17.

23. Other Butter Substitutes are made of mixtures of other animal and/or vegetable fats or oils, which contain less than 50% by weight of dairy content, less than 10% by weight of milk solids, and more than 15% but less than 39% milk fat.

Cheese

24. Cheese is the ripened or unripened soft, semi-hard, hard, or extra-hard product, which may be coated, and in which the whey protein/casein ratio does not exceed that of milk, obtained by:

- (a) coagulating wholly or partly the protein of milk, skimmed milk, partly skimmed milk, cream, whey cream or buttermilk, or any combination of these materials, through the action of rennet or other suitable coagulating agents, and by partially draining the whey resulting from the coagulation, while respecting the principle that cheese-making results in a concentration of milk protein (in particular, the casein portion), and that consequently, the protein content of the cheese will be distinctly higher than the protein level of the blend of the above milk materials from which the cheese was made; and/or
- (b) processing techniques involving coagulation of the protein of milk and/or products obtained from milk which give an end-product with similar physical, chemical and organoleptic characteristics as the product defined under (a) (Codex Alimentarius Standard 283-1978).

25. Cheese products come in different varieties, forms and consistencies including fresh, curded, creamed, grated, powdered, veined, soft, medium hard and hard, and processed cheese.

26. Cheese of heading 04.06 also includes processed cheeses, as defined in the Explanatory Notes to Heading 04.06 (3)

Processed cheese, also known as process cheese. It is manufactured by comminuting, mixing, melting and emulsifying, with the aid of heat and emulsifying or acidifying agents (including melting salts), one or more varieties of cheese and one or more of the following: cream or other dairy products, salt, spices, flavouring, colouring and water.

27. The Explanatory Notes to 04.06 provide that cheese products may have added ingredients but not in amounts that change the basic nature of the product.

"The presence of meat, fish, crustaceans, herbs, spices, vegetables, fruit, nuts, vitamins, skimmed milk powder, etc., does not affect classification provided that the goods retain the character of cheese."

"Cheeses which have been coated with batter or bread crumbs remain classified in this heading whether or not they have been pre-cooked, provided that the goods retain the character of cheese."

Heading 19.01 Food Preparations of good of heading 04.01 to 04.04

28. Products classified under subheading 1901.90 “**food preparations of goods of heading 04.01 to 04.04, not containing cocoa or containing less than 5% by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included**” are considered goods which have been manufactured from milk, cream, sweetened condensed milk or cream, powdered milk or cream, yogurt, fermented milk products, whey and natural milk constituents. They have been manufactured with ingredients that are not permitted in the headings of 04.01, 04.02, 04.03, and 04.04. They can be finished products, intermediate products or ingredients in the further manufacturing of other products.

Ice Cream Mixes and Ice Milk Mixes

29. Mixes and bases for ice cream and ice milk are classified in headings 19.01 or 18.06 (if containing 5% or more by weight of cocoa calculated on a totally defatted basis).

30. Ice cream and ice milk mixes are unfrozen, pasteurized combinations of cream, milk or other milk products, sweetened and may contain, among other things, egg, flavouring, food colouring, salts etc.

31. Ice cream mixes must contain at least 36% solids and 10% milk fat. Where cocoa, chocolate syrup, and fruits are added, the percentage of fat can be 8%, according to Sub-section B.08.061 (c) (ii) of the *Food and Drug Regulations*.

32. Ice milk mixes must contain no less than 33% solids and at least 3% but not more than 5% milk fat according to Section B.08.071 of the *Food and Drug Regulations*.

Ice Cream and Other Edible Ice

33. 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.

34. Sherbet of tariff item 2105.00.10 is a frozen food, other than ice cream or ice milk, 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 may contain no more than 5% milk solids (including milk fat). Section B.08.063 of the *Food and Drug Regulations* was used as reference for this definition.

35. 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. Section B.08.062 of the *Food and Drug Regulations* was used as reference for this definition (see tariff items 2105.00.91 and 2105.00.92).

36. 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. Section B.08.072 of the *Food and Drug Regulations* was used as reference for this definition (see tariff items 2105.00.91 and 2105.00.92).

37. Tariff items 2105.00.91 and 2105.00.92 provide for ice cream, ice milk, and all other edible ice other than flavoured ice and sherbet of 2105.00.10 containing in the dry state more than 5% total milk solids regardless of fat content.

Heading 21.06 Food Preparations not elsewhere specified or included

38. Butteroil blends comprising of less than 50% butteroil and more than 50% sugar are classified under 2106.90.95 as butter oil and sugar blends. Blends comprising less than 50% butteroil and more than 50% glucose are also classified under tariff item 2106.90.95.

39. Other dairy products classified in tariff item 2106.90.95, other than butter oil and sugar blends are only classified when not provided for in other areas of the Tariff. Generally, goods are classified under this tariff item when manufactured from goods of headings 04.05 and 04.06 which are not provided for in heading 19.01.

Milk Protein Substances

40. Milk protein substances with a milk protein content of 85% or less by weight, calculated based on the dry matter, are classified under subheading 0404.90. Those with a milk protein content of 85% or more by weight, calculated based on the dry matter, are classified under subheading 3504.00. These products can be in powdered or liquid form.

41. Only those milk protein concentrates with a protein content of 85% or more by weight, calculated on a dry matter basis, subject to the conditions outlined in Item 125.2 of the ICL are eligible for the benefits of tariff item 3504.00.11.

Other Classification Information

42. In accordance with the General Interpretive Rule 3(b) of the Harmonized Commodity Description and Coding System, gift baskets or gift boxes made up of a selection of food stuffs are classified individually. Products within the gift baskets or box that are included on the ICL must have a specific import permit for the goods from GAC to be classified in a “within access commitment” tariff item (i.e., to obtain a lower rate of duty).

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

Documentation Requirements

44. In order to classify under a tariff item that contains the phrase “within access”, a copy of the specific import permit must be submitted at time of accounting or the goods may be subject to the higher rate of duty associated with the over access commitment tariff item.

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

Additional Information

46. To obtain an application for an import permit or additional information on import permits, please contact the Export and import Controls, GAC.

47. For certainty regarding the tariff classification of a product, importers may request an advance ruling. Details on how to make such a request are found in CBSA Memorandum D11-11-3, Advance Rulings for Tariff Classification.

48. For more information, within Canada call the Border Information Service at **1-800-461-9999**. From outside Canada call 204-983-3500 or 506-636-5064. Long distance charges will apply. Agents are available Monday to Friday (08:00 – 16:00 local time / except holidays). TTY is also available within Canada: **1-866-335-3237**.

APPENDIX A**LIST OF DAIRY PRODUCTS INCLUDED 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	yes
Casein or caseinates	yes
Milk protein concentrates	yes
Whey protein concentrates	yes
Whey	yes
Modified whey	yes
Lactose	yes
Yogurt	yes

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

References	
Issuing Office	Trade Policy Division Trade and Anti-dumping Programs Directorate Commercial and Trade Branch
Headquarters File	
Legislative References	<i>Customs Tariff</i> <i>Customs Tariff Act</i> <i>Export and Import Permits Act</i> <i>Canada Agricultural Products Act</i> <i>Food and Drugs Act</i> <i>Food and Drug Regulations</i> <i>Import Control List</i> <i>Safe Foods For Canadians Act</i>
Other References	D10-13-1 , D10-18-1 , D11-11-3 , D19-1-1 , D19-10-2 Export and import controls Notice to importers
Superseded Memorandum D	D10-18-4 dated August 14, 2009