

IMPORTED DAIRY PRODUCTS SUBJECT TO ASSESSMENT—Continued

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HTS No.	Unit of measure	Default rate per unit of product (in dollars)	HTS No.	Unit of measure	Default rate per unit of product (in dollars)	HTS No.	Unit of measure	Default rate per unit of product (in dollars)
0406.30.4800 ..	kg	0.008	1806.20.3400 ..	kg	0.004	2106.90.8200 ..	kg	0.003
0406.30.5100 ..	kg	0.009	1806.20.3600 ..	kg	0.003	2202.90.1000 ..	liter	0.001
0406.30.5300 ..	kg	0.009	1806.20.3800 ..	kg	0.004	2202.90.2400 ..	liter	0.001
0406.30.6100 ..	kg	0.008	1806.20.8100 ..	kg	0.013	2202.90.2800 ..	liter	0.001
0406.30.6300 ..	kg	0.008	1806.20.8200 ..	kg	0.003	3501.10.1000 ..	kg	0.013
0406.30.6500 ..	kg	0.011	1806.20.8300 ..	kg	0.013	3501.10.5000 ..	kg	0.012
0406.30.6700 ..	kg	0.011	1806.20.8500 ..	kg	0.004	3501.90.6000 ..	kg	0.013
0406.30.6900 ..	kg	0.008	1806.20.8700 ..	kg	0.003	3502.20.0000 ..	kg	0.013
0406.30.7100 ..	kg	0.008	1806.20.8900 ..	kg	0.004			
0406.30.7300 ..	kg	0.011	1806.32.0400 ..	kg	0.004			
0406.30.7500 ..	kg	0.011	1806.32.0600 ..	kg	0.003			
0406.30.7700 ..	kg	0.010	1806.32.0800 ..	kg	0.004			
0406.30.7900 ..	kg	0.010	1806.32.1400 ..	kg	0.004			
0406.30.8100 ..	kg	0.009	1806.32.1600 ..	kg	0.003			
0406.30.8300 ..	kg	0.009	1806.32.1800 ..	kg	0.004			
0406.30.8500 ..	kg	0.005	1806.32.6000 ..	kg	0.003			
0406.30.8700 ..	kg	0.005	1806.32.7000 ..	kg	0.003			
0406.30.8900 ..	kg	0.011	1806.32.8000 ..	kg	0.003			
0406.30.9100 ..	kg	0.011	1806.90.0500 ..	kg	0.005			
0406.40.4400 ..	kg	0.008	1806.90.0800 ..	kg	0.003			
0406.40.4800 ..	kg	0.008	1806.90.1000 ..	kg	0.005			
0406.40.5400 ..	kg	0.008	1806.90.1500 ..	kg	0.003			
0406.40.5800 ..	kg	0.008	1806.90.1800 ..	kg	0.003			
0406.40.7000 ..	kg	0.008	1806.90.2000 ..	kg	0.003			
0406.90.0810 ..	kg	0.009	1806.90.2500 ..	kg	0.003			
0406.90.0890 ..	kg	0.009	1806.90.2800 ..	kg	0.003			
0406.90.1200 ..	kg	0.009	1806.90.3000 ..	kg	0.003			
0406.90.1600 ..	kg	0.008	1901.10.1500 ..	kg	0.009			
0406.90.1800 ..	kg	0.008	1901.10.3000 ..	kg	0.009			
0406.90.3100 ..	kg	0.009	1901.10.3500 ..	kg	0.009			
0406.90.3200 ..	kg	0.009	1901.10.4000 ..	kg	0.009			
0406.90.3300 ..	kg	0.009	1901.10.4500 ..	kg	0.001			
0406.90.3600 ..	kg	0.008	1901.20.0500 ..	kg	0.003			
0406.90.3700 ..	kg	0.008	1901.20.1500 ..	kg	0.003			
0406.90.4100 ..	kg	0.010	1901.20.2000 ..	kg	0.003			
0406.90.4200 ..	kg	0.010	1901.20.2500 ..	kg	0.003			
0406.90.4600 ..	kg	0.009	1901.20.3000 ..	kg	0.003			
0406.90.4800 ..	kg	0.009	1901.20.3500 ..	kg	0.003			
0406.90.4900 ..	kg	0.007	1901.20.4000 ..	kg	0.003			
0406.90.5200 ..	kg	0.008	1901.20.4500 ..	kg	0.003			
0406.90.5400 ..	kg	0.008	1901.20.5000 ..	kg	0.003			
0406.90.6600 ..	kg	0.010	1901.90.2800 ..	kg	0.013			
0406.90.6800 ..	kg	0.010	1901.90.3400 ..	kg	0.005			
0406.90.7200 ..	kg	0.008	1901.90.3600 ..	kg	0.005			
0406.90.7400 ..	kg	0.008	1901.90.4200 ..	kg	0.007			
0406.90.7600 ..	kg	0.009	1901.90.4300 ..	kg	0.007			
0406.90.7800 ..	kg	0.009	1901.90.7000 ..	kg	0.003			
0406.90.8200 ..	kg	0.008	1901.90.9082 ..	kg	0.001			
0406.90.8400 ..	kg	0.008	2105.00.1000 ..	kg	0.005			
0406.90.8600 ..	kg	0.008	2105.00.2000 ..	kg	0.005			
0406.90.8800 ..	kg	0.008	2105.00.3000 ..	kg	0.003			
0406.90.9000 ..	kg	0.009	2105.00.4000 ..	kg	0.003			
0406.90.9200 ..	kg	0.009	2106.90.0600 ..	kg	0.002			
0406.90.9300 ..	kg	0.005	2106.90.0900 ..	kg	0.002			
0406.90.9400 ..	kg	0.005	2106.90.2400 ..	kg	0.010			
0406.90.9500 ..	kg	0.011	2106.90.2600 ..	kg	0.010			
0406.90.9700 ..	kg	0.011	2106.90.2800 ..	kg	0.007			
0406.90.9900 ..	kg	0.007	2106.90.3400 ..	kg	0.006			
1517.90.5000 ..	kg	0.002	2106.90.3600 ..	kg	0.006			
1517.90.6000 ..	kg	0.002	2106.90.3800 ..	kg	0.002			
1702.11.0000 ..	kg	0.013	2106.90.6400 ..	kg	0.013			
1702.19.0000 ..	kg	0.013	2106.90.6600 ..	kg	0.013			
1704.90.5400 ..	kg	0.006	2106.90.6800 ..	kg	0.001			
1704.90.5800 ..	kg	0.006	2106.90.7200 ..	kg	0.001			
1806.20.2090 ..	kg	0.004	2106.90.7400 ..	kg	0.001			
1806.20.2400 ..	kg	0.004	2106.90.7600 ..	kg	0.001			
1806.20.2600 ..	kg	0.003	2106.90.7800 ..	kg	0.002			
1806.20.2800 ..	kg	0.004	2106.90.8000 ..	kg	0.002			

(2) The assessment on imported dairy products shall be paid by the importer to CBP at the time of entry summary for any products identified in § 1150.152(b)(1).

(3) The assessments collected by CBP pursuant to § 1150.152(b)(2) of this section shall be transferred to the Board in compliance with an agreement between CBP and the Agricultural Marketing Service.

(4) The Board, at its discretion, shall verify the information reported by importers to CBP to determine if additional money is due the Board or an amount is due to an importer based on the quantity imported and the milk solids content per unit or the default assessment rate for the imported dairy product. In the case of money due to an importer from the Board, the Board will issue payment promptly to the importer. In the case of money due from the importer to the Board, the Board will send an invoice for payment directly to the importer. The invoice will be due upon receipt.

(5) At the designation of an importer, the Board shall remit to a qualified promotion program(s) assessments paid by the importer pursuant to 5.0 § 1150.152(b)(2) not to exceed 2.5 cents per hundredweight of milk, or equivalent thereof, of the 7.5 cents per hundredweight of milk, or equivalent thereof, paid by the importer.

(6) Assessments collected on imported dairy products shall not be used for foreign market promotion of United States dairy products.

(c) The collection of assessments pursuant to § 1150.152(a) and (b) shall begin with respect to milk marketed or dairy products imported on and after the effective date of this section and shall continue until terminated by the Secretary.

(d) Each person responsible for the remittance of the assessment pursuant to § 1150.152(a) shall remit the assessment to the Board not later than the last day of the month following the month in which the milk was marketed.



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Proposed Rule should be revised to allow importers to designate up to 2/3rds of their assessment to a qualified program. The Alliance has provided below a suggested revision to the Proposed Rule to effect this change.

The Alliance believes that additional changes to this section are needed. The Proposed Rule currently allows the import assessments collected by Customs to be given directly to the Board. However, the USDA has the ultimate oversight responsibility for the collection and distribution of the import assessments. As the rule stands now, USDA's oversight function can be exercised only after funds are collected and disbursed. The Alliance believes that having the USDA control disbursements will allow the USDA to better monitor the use of import assessments in accordance with this Proposed Rule, including limiting the use of imported funds on domestic program costs and other expenses, as discussed above.

Because the Board will be dominated by domestic producers, as discussed above, the Alliance further believes that the Proposed Rule should restrict the Board's discretion to direct import assessments to Qualified Programs. As noted above, importers may designate a proportion of their assessment to a qualified program (hereinafter the "qualified proportion"). However, the rule does not specify how the USDA or Board is to direct that qualified proportion if no program is designated. The Alliance believes the purposes of the rule would best be met if the qualified proportion were held until it could be disbursed *pro rata* to all qualified programs relating to imported products developed under new section 1152(g), discussed above. The remaining portion of the import assessment would be allocated to the Board, under a funds control process that ensures that the Board utilizes the import assessment funding in compliance with USDA rules. In addition, the Proposed Rule should require that the Board certify compliance with all applicable requirements of the Proposed Rule prior to the receiving any import assessment funds.

Accordingly, section 1150.152 should be revised to read as follows:

(b)

(3) The assessments collected by CBP pursuant to § 1150.152(b)(2) of this section shall be transferred to the USDA in compliance with an agreement between CBP and the Agricultural Marketing Service. The USDA shall hold the assessments transferred under this section in an Import Assessment Fund. Amounts from the Import Assessment Fund will be disbursed by the USDA in its discretion and upon request by the Board, provided that:

(i) Any request for disbursements from the Import Assessment Fund must be accompanied by a description of the planned use for the funds and

(ii) Such description provides enough detail to allow AMS to determine whether the Board's planned use comports with the requirements, limitations, and purposes of this section.

(5) At the designation of an importer, the USDA shall remit to a qualified promotion program(s) assessments paid by the importer pursuant to § 1150.152(b)(2) not to exceed 5

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cents per hundredweight of milk, or equivalent thereof, of the 7.5 cents per hundredweight of milk, or equivalent thereof, paid by the importer. If no qualified promotion program is designated, then the USDA shall retain 5 cents per hundredweight of milk, or equivalent thereof, of the 7.5 cents per hundredweight of milk, or equivalent thereof, paid by the importer, in the Import Assessment Fund. Such funds shall be held in the fund until they may be disbursed to qualified program(s) identified by the Secretary pursuant to § 1150.152(g).

e. Export Promotion and Domestic Promotion

Section 1150.151 Expenses

The Alliance recommends that Section 1150.151 be changed to ensure that importers, through import assessments, do not pay a disproportionate share of domestic dairy promotion. Specifically, the Alliance recommends that the expenditure of import assessments on domestic promotion be linked to market share. Such linking of expenditures to market share will alleviate some of the disproportionate national treatment concerns identified in Part II, above.

Dairy producers benefit from domestic promotion, as evaluated by Cornell University and reported to Congress in July 2008, page 30 and page 48 “each dollar invested in generic dairy marketing by farmers would return between \$5.52 and \$5.94, on average, in net revenue to farmers.” While it is arguable whether dairy importers would benefit from national promotion through increased demand, the Cornell University analysis demonstrates that domestic dairy producers will get increased revenue from the import assessments that are used for domestic promotion.

The Proposed Rule would prohibit import assessments from being used for export promotion, and it allows up to 100% of domestic assessments for export promotion. The Proposed Rule does not establish any requirements on how much of the domestic assessment must go into domestic promotion. Allowing up to 100% of domestic producer assessments to go into export promotion could result in allowing import assessments to pay more than their “share” of domestic promotion thereby subsidizing the export promotion activities. If uncapped levels of domestic assessments are allowed to go into export promotion, import assessments could fund a disproportionate share, up to 100%, of the domestic program and therefore underwrite the domestic gains to producers.

For instance, NDB, as reported to Congress in July 2008, spent \$64.5 million on domestic marketing, research, and communications. Hypothetically, if \$10 million in import assessments is added to expand these domestic promotion activities, they would be funding over 13% of domestic promotion. However, if the Board decides to increase funding for export promotion and reduce the domestic promotion program to \$54.5 million, the share of import assessment funding domestic promotion would be over 18%. Currently, based on USDA estimates, imported dairy products fill about 5% of domestic dairy demand. In this example, while dairy imports could benefit from the domestic promotion program on their 5% market share, the Proposed Rule would allow import assessment on dairy products to fund up to 100% of the domestic promotion program. Thus, the Proposed Rule should