ALLIANCE FOR FAIR DAIRY PROMOTION

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Cheese Importers Association of America

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Nestlé USA

RetireSafe

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Snack Foods Association

Saputo USA

Unilever United States

June 18, 2009
Whitney A. Rick
Chief, Promotion and Research Branch, Dairy Programs
Agricultural Marketing Service
United States Department of Agriculture

Re: National Dairy Promotion and Research Program
Docket Nos. DA-08-07: AMS-DA-08-0050

The Alliance for Fair Dairy Promotion ("the Alliance") appreciates the opportunity to comment on the Proposed Rule regarding the National Dairy Promotion and Research Program. The Alliance is made up of food companies and trade associations as well as consumer and taxpayer organizations. The Alliance members represent the vast majority of jobs in the U.S. dairy and food manufacturing sector that will be impacted by this Proposed Rule.

The Alliance has opposed the Dairy Import Assessment since its inception because of fundamental fairness considerations, the potential for trading partners to undertake retaliatory measures that increase the costs involved in international trade, and the increased costs (with no corresponding benefit) that U.S. consumers will bear as a result of the new assessment on imports. In the past, important trading partners have indicated significant concerns with the dairy import assessment, and we are concerned that the Proposed Rule does not go far enough to address those concerns, in addition to our other concerns set forth herein. In short, the Alliance believes that the Proposed Rule contains major flaws that must be addressed in order to fairly balance the interests of domestic and foreign stakeholders and to comply with U.S. law and international trade obligations.

Accordingly, the Alliance provides the following comments, which are organized into three parts: (I) Referendum, (II) Unresolved International Trade Compliance Issues; and (III) Suggested Changes to the Proposed Rule. The last section includes suggested changes calculated to address the problems identified in Parts I and II, as well as changes directed toward clarifying certain process and technical elements of the Proposed Rule that will more fairly balance the costs and benefits of the rule among producers.

I. Referendum

The Dairy Act requires the Secretary to conduct a referendum whenever ten percent of milk producers/importers request one, or at the Secretary's own initiative at any time. *See* 7 U.S.C. § 4507(b). It is clear that the Proposed Rule will cause fundamental changes to the existing dairy check-off program – a program that was previously ratified by a referendum. For example, and as discussed in more detail below, Domestic Dairy producers will no longer be the exclusive beneficiaries of the National Dairy Board generic promotional campaigns. Disturbing such a settled expectation, one previously established by vote, could raise serious constitutional issues, and subject the Proposed Rule to years of litigation. Accordingly, the Alliance believes that a referendum is the only way to mitigate the potential disruption in the domestic dairy producer community the Proposed Rule may cause if it is adopted.

a. Prohibition on Exclusive U.S. Dairy Promotion:

For 25 years, the U.S. Dairy Check off-program has exclusively promoted U.S. dairy products. As noted by USDA in the Proposed Rule, assessing imported dairy products under the Dairy Production and Stabilization Act of 1983 (Dairy Act) requires a fundamental change in how the dairy check off programs currently operate. In order to allow implementation of the import assessment, the 2002 Farm Bill revoked the authority for programs funded under the Act to promote U.S. dairy products exclusively. In the Proposed Rule, USDA stipulates that the current role of the National Dairy Board (NDB) is to expand

markets for milk and dairy products, and the words **"produced in the United States" would be stricken**. This means that fundamental programs such as: the U.S. dairy "Real Seal", website links to U.S. dairy product suppliers, and "3ADay" partners and promotional offers must become available to international imported dairy brands and importers. USDA implements the generic promotion requirements in the Proposed Rule by **dropping "United States"** from the definition of "milk" and milk used to make "dairy products."

b. Constitutional Issues and Referendum

If the Proposed Rule is adopted without a referendum, it will unconstitutionally subject dairy producers in Alaska, Hawaii, and Puerto Rico, and importers in all states, to an assessment on which they have not been allowed to vote. By bringing importers and a new class of producers within the ambit of the Dairy Promotion Order without a referendum, the Department of Agriculture would violate the Equal Protection guarantees of the Fifth Amendment, which incorporates the same rights secured by the Fourteenth Amendment, and limits the extent to which the federal government can discriminate between different persons and infringe fundamental rights guaranteed to people within the borders of the United States. *See San Francisco Arts & Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522, 542 n.21 (1987).

Dairy producers in the forty-eight states approved the dairy check off program via referendum in 1985, and passed another referendum in 1993. The inclusion of Alaska, Hawaii, Washington, D.C., and Puerto Rico in the Proposed Rule brings in four new parties that should be provided due process and have a say on the proposed changes to the rule they are now party to. The Proposed Rule would also subject importers of dairy products to the assessment while they, too, were excluded as a class from prior referenda on the continuation of the assessment. In addition, producers in the forty-eight states currently under the program should have the opportunity to register their views in a referendum, not only with respect to the check-off's expansion to the producers of Alaska, Hawaii, Washington, D.C., and Puerto Rico, and importers, but to the wholesale restructuring of the program from one promoting U.S. dairy to a generic promotion program.

Further discussion of the constitutional issues is contained in Appendix A.

In order to avoid lengthy court challenges that could jeopardize the entire Dairy Promotion Program, the Proposed Rule should be subject to a referendum. If enacted without a referendum, whether the Proposed Rule passes constitutional muster will ultimately be tested in the courts. At the very least, it raises serious constitutional concerns. Rational rule making would suggest that the time to address those concerns – the time when doing so will cause the least uncertainty and disruption – is now, and not months from now after the Rule has been adopted.

The Proposed Rule does not currently address the need for a Referendum. Accordingly, in Part III(a), the Alliance provides suggested amendments to the Proposed Rule to require such a referendum along with a reference to procedures for carrying out the referendum. This referendum should include all affected domestic dairy producers, including the newly included dairy producers in Alaska, Hawaii, and Puerto Rico, and importers.

II. Unresolved Trade Agreement Compliance Issues

The Proposed Rule fails to meet U.S. trade agreement obligations and provides trading partners ample cause for concern about its implications for U.S. trade policymaking as it pertains to the dairy sector. Specifically, the rule fails in its attempt to create a promotion program that is truly neutral when it comes to dairy product market promotion as between domestic and imported products. Fundamentally, the Proposed Rule is biased towards domestic product promotion. The budget and promotion program's priorities will still be determined under the Proposed Rule by domestic dairy product considerations. And, as detailed below, the proposed rule remains inconsistent with a number of trade agreement obligations of the United States.

While the 2002 farm bill extended the dairy promotion assessment to imported dairy products, the provisions relating to the assessment on imports were never implemented due to the inability to adopt them in a manner consistent with the trade obligations of the United States. The 2008 Act addressed one of the trade obligation considerations through the inclusion of a provision that applies the fee to fund the Program to all 50 states, the District of Colombia and Puerto Rico. This addressed one "national treatment" concern, but the Act did not cure other elements within the Program that remain inconsistent with the trade obligations of the United States.

In this context it is important to note the following passage from the Manager's Report on the 2008 Act:

> The Farm Security and Rural Investment Act of 2002 amended Section 112 of the Dairy Promotion Stabilization Act of 1983 (7 U.S.C. 4503(d)) to require that, "The Secretary, in consultation with the United States Trade Representative, shall ensure that the order is implemented in a manner consistent with the international trade obligations of the Federal Government." **The Managers expect the Secretary to consult with the United States Trade Representative to ensure that any action taken pursuant to this section is consistent with the bilateral, regional and multilateral trade obligations of the Federal Government."** (emphasis added).

Despite the Managers' Report, the Proposed Rule poses numerous problems under applicable trade agreements. While we note that the Department has made an effort in the Proposed Rule to level the playing field, it may not be possible to establish a program that treats importers on an equal basis with domestic producers: first because of the inherent difference between a levy on milk and a levy on dairy products, and second because of the structural nature of a program designed and operated for twenty five years to promote domestic dairy.

The basic structural inequity of the proposed program is rooted in the fact that US fluid milk producers are assessed per hundredweight of fluid milk sold, while imported dairy

products would be assessed on a milk solids basis. This fundamental difference between the assessment of domestic fluid milk and that of imported dairy products leads to serious national treatment concerns.

Specifically, all U.S. fluid milk producers benefit from the promotion of dairy products, even though a particular producer's milk may go to products that are not the subject of a specific Dairy Board promotion, because virtually all fluid milk revenues generated by the sale of fluid milk are "pooled." The producer is paid for his milk from the pooled revenues, and the dairy assessment is used to promote products made with pooled milk. Because the producer's revenue is not derived from a specific sale of milk to a specific end user, all fluid milk producers share equally the benefits of the Dairy promotion programs.

On the other hand, all imported dairy products are assessed regardless of whether they benefit from any particular promotional program. Indeed, in many cases the assessment paid by the importer is on a dairy-derived ingredient that will not even be used in the production of a "dairy" product. Unlike the U.S. producer who, through pooling, benefits from the levy he pays on every hundredweight of milk assessed, the importer of an ingredient like casein is paying an assessment on a product that cannot possibly benefit from the promotion program.

Moreover, a review of the relevant obligations of the United States under GATT III:2, III:4, and XXIII:1(b), and the implications of implementing the dairy import assessment provisions on those obligations, exposes several other national treatment concerns, as follows:

1) The Proposed Rule's reliance on an assessment default rate based on maximum milk solids content denies to imports treatment at least as favorable as the most favored domestic product, in violation of GATT Article III:4. In Part III(b), the Alliance suggests that the USDA recalculate the default rates using the minimum milk solids content or typical milk solids content of a product, where appropriate.

2) Historically, the promotion program has focused on fluid milk and generic cheese products, which are produced mostly by U.S. producers. The rhetoric of the preamble notwithstanding, should this focus continue, the effect on conditions of competition for imports would be adversely affected, in violation of GATT Article III:4. The Proposed Rule appears to suggest the development of new promotional programs adequate to address this issue. However, in Part III(c) below, the Alliance has provided suggested language to clarify the need for such programs and to add restrictions on the expenditure of import assessment funds until such qualifying programs are established.

3) The import assessment calculation would be set at an "equivalent" of 7.5 cents per hundredweight of milk, with the potential to divert 2.5 cents to a qualified program, or 1/3 of the total assessment. By contrast, domestic producers have the option of paying 2/3rds of the total assessment to qualified programs. This different treatment violates GATT Article III:4. The proposed rule does not address this concern. Accordingly, in Part III(d) below, the Alliance provides suggested revisions to the Proposed Rule to allow importers to designate up to 2/3s of the total

assessment to qualified programs.

4) The promotion program supports the "Real Seal" and other programs that are only available to domestic products. Again, notwithstanding the rhetoric, unless these programs are eliminated, or completely revised, the effect on conditions of competition for imports would be adversely affected, in violation of GATT Article III:4.. The Proposed Rule does not adequately address access to these programs by importers and imported products. In Part III(f), the Alliance provides suggested language to clarify that importers may utilize, and be supported by, the "Real Seal" and other generic promotion programs that were previously open only to domestic producers and products.

5) A number of the assessed imported dairy products are covered by tariff-rate quotas (TRQs), so the extent to which they can benefit from the promotion programs is limited. Therefore, the effect on conditions of competition for imports are adversely affected, in violation of GATT Article III:4. The Proposed Rule does not balance the costs of participation in the promotion programs for importers subject to TRQs with the limited benefits they may derive from such participation.

The Proposed Rule causes additional problems under other applicable trade agreements, and these problems are unaddressed by the Proposed Rule. The overly broad inclusion of HTS line items that do not fit within international accepted standards defining milk and dairy products violates the United States obligations under the Agreement on Technical Barriers to Trade, Articles 2.1, 2.2, and 2.4. In Part III(g), the Alliance proposes the removal of specific products from the Proposed Rule. Likewise, certain verification procedures required of imported products could violate confidentiality provisions of international trade agreements, including the North American Free Trade Agreement. Such confidentiality breaches could raise serious competitive concerns in both domestic and foreign markets. In Part III(h), the Alliance recommends the addition of a proposed confidentiality provision to the Proposed Rule.

III. Specific Recommendations to Sections

a. Referendum

As noted in Part I, the Alliance recommends that a referendum is needed for the Proposed Rule to comport with existing legal requirements under the Dairy Act, and the United States Constitution. According, the Alliance provides a suggested revision to the Proposed Rule to add a new section as follows:

Section 1150.180 Referendum

(a) The Secretary shall conduct a referendum in accordance with the procedures contained in Section 1160.501 of this Chapter within 30 days of the publication of the final rule referred to in Docket Nos. DA-08-07: AMS-DA-08-0050.

(b) For purposes of this referendum only, the term "fluid milk processors" used in Section 1160.501 of this Chapter will be deemed to include fluid milk producers

in Alaska, the District of Columbia, Hawaii, and Puerto Rico, and any interested importer as defined in section 1150.121.

(c) The final rule will not become effective unless ratified by a majority of domestic fluid milk producers and importers affected thereby.

b. Assessment Rates and Default Maximum Assumption

Section 1150.152 Assessments

As noted in Part II(1), the Alliance recommends that the default milk solids content for a given product be set at the typical milk solids content for that product, instead of the "maximum" milk solids content as currently specified in the Proposed Rule.

AMS has established a standard rate of assessment per unit of milk solids in an imported product of $0.01327 per kg of milk solids (which equals $0.00602 per pound), based on the average milk solids content per hundredweight of U.S. raw milk during 2006-2007 (12.45 pounds). For default rates, the Proposed Rule states that "[f]or most products, the default assessment rate for each HTS code would be based upon maximum milk solids content…In cases where maximum milk solids content is not stated in the HTS and cannot be estimated, a typical milk solids content is used, if available."[1] In cases where no information is available, other than a minimum requirement stated in the HTS, the minimum milk solids content stated in the HTS is used.

Thus, by its terms, the Proposed Rule uses the "maximum" milk solids to calculate the assessment for "most" imported products. It is contrary to U.S. national treatment obligations that in most instances the default rate calculation is based on the maximum milk solids content. Imported dairy products are required to be treated in a manner as favorable as the most favored U.S. product. Thus, when conversions are used for the purpose of calculating an assessment, national treatment dictates that the most favorable conversion be used. While in theory this requires the use of a minimum milk solids multiplier, the Alliance recognizes that for some tariff items such a calculation may not be feasible. Hence, at the very least the default milk solids content to be used when the actual is not known should be the typical milk solids content for that product.

Accordingly, the default rates contained Section 1150.172(b)(1)(ii) [table, "Imported Dairy Products Subject to Assessment"] should be recalculated using the minimum milk solids content multiplier for a particular product where known, and a typical milk solids content where the minimum milk solids content is not known.

c. Qualified Programs:

Section 1150.109 Qualified national, regional or State program

As noted in Part II(2), the Alliance recommends that USDA hold in escrow any funds earmarked by an importer for contribution to a qualified program until importer

[1] Proposed Rule, 74 Fed. Reg. at 23,363 (emphasis added).

programs are qualified by the Secretary. The Proposed Rule states that importers may direct one-third (2.5 cents) of their contribution to a qualified program, just as producers commonly do to support local or regional promotion, research, or education programs. However, at the present time there is *no qualified program for importers*, but the rule does appear to contemplate the possibility that one or more could be established.

With a national promotion program Board that will be dominated under the Proposed Rule by domestic dairy producers (36 to 2 importers), there is little if any incentive for the majority of the Board to support meaningful promotion program creation that fits the profile of imported dairy products when it is so different from the dairy products they have traditionally promoted and that are consistent with U.S. domestic dairy production. Because of this, the Secretary will have little if any incentive to authorize the creation of qualified programs under federal law that will meaningfully benefit importers, unless importer funds earmarked for qualified programs are held in escrow pending the creation of such programs.

Unless this step is taken, importers will have no real choice but to continue funding existing qualified programs that will not serve their interests, as they would likely be unable to affect the creation of a meaningful new promotion program that represents their interests under Federal or state law. Importers simply lack the political power to secure the creation of such a program through legislation.

Accordingly, section 1150.152 should be revised to add new section (g) to read as follows:

Section 1150.152

(g) *Creation of qualified programs for imported dairy products.* Before any funds held by the USDA in the Import Assessment Fund may be disbursed to the Board, the Secretary must establish at least one qualified promotion program consistent with the nature, kind, and quality of dairy products imported into the United States during the previous 5-years. Funds held in the Import Assessment Fund shall not be disbursed until at least one qualified program is created.

d. Collection and Handling of fees - oversight and distribution

Section 1150.152 Assessments

As noted above in Part II(3), the Alliance recommends that the Proposed Rule should allow importers to designate the same proportion of their assessment as domestic producers currently may do. In addition, the Alliance recommends that the authority to disburse assessments collected from the program should rest in the first instance with USDA and not the Board, and that additional restrictions be placed on the use of undesignated import assessments.

Currently, the Proposed Rule allows an importer to designate 1/3 of the assessment to a qualified program. However, domestic producers may direct 2/3 of their assessment to a qualified program. In order to obviate any suggestion of differing national treatment, the

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 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)

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(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.

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(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

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

establish a fair system to ensure that import assessments do not pay for domestic promotion above their domestic market share.

Specifically, the revised rule should track imported dairy products on a milk equivalent basis as a percentage of domestic commercial disappearance. If imports are 5% of the domestic market, for instance, then the Board must fund 95% of domestic promotion from U.S. dairy producers. At the same time, the Proposed Rule must prohibit "back door" funding of import assessments into export promotion through the Board. The 2008 report to Congress indicates that the U.S. Dairy Export Council is funded from DMI (and USDA and membership dues). DMI's salaries and expenses and marketing costs are funded by the National Dairy Board. Therefore, unless DMI as an entity is prohibited from conducting any export promotion marketing or coordination and management of export promotion, no dairy import assessment funds can be used for core salaries and expenses of DMI programs.

Accordingly, Section 1150.151 should be revised to read as follows:

§ 1150.151 Expenses.

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(c) The Board, in consultation with the Economic Research Service of the USDA, shall determine annually the market share of imported dairy products as a percentage of the total domestic dairy market.

(d) The Board is authorized to expend up to the amount of the assessments collected from United States producers to promote dairy products produced in the United States in foreign markets provided that:

> (i) The percentage of domestic promotion programs funded by import assessments does not exceed the imported dairy market share as determined in section (c) of this section; and
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> (ii) import assessment funds used for domestic promotion programs may only be used to fund the direct expenses related to domestic promotion programs, excluding core expenses such as salary, fringe benefits, other direct costs, indirect costs, and overhead.

(e) The Board shall publish annually a statement containing the market share determination made pursuant to part (c) of this section, and detailing the expenditure of assessments on domestic and export dairy promotion for the prior year. Such statement shall include information specifying the amount of import assessment funds expended on domestic promotion programs.

f. Access to milk promotion programs by international dairy brands and importers

Section 1150.140 Duties of the Board

As discussed in Parts II(4), domestic dairy producers enjoy the benefits of successful generic promotional programs, such as the "Real" seal, and "3 A Day" programs. However,

access to these generic programs and marketing tools have always been limited to domestic producers by rule. In order to avoid national treatment issues under applicable trade agreements, these programs must now be opened to participation by importers, and the international dairy brands such importers intend to import into the United States. The Proposed Rule appears to partially address this concern by removing the requirement that milk be produced in the United States; however, the Alliance believes that the Proposed Rule should clearly state that all domestic promotional programs be available to all assessed parties.

Accordingly, the Alliance recommends that the Section 1150.140 be revised by adding new section (o), as follows:

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(o) To ensure that all programs of promotion, research and nutrition education referred to in section (n) of this section are made available for use by importers for use in connection with any dairy product intended to be imported into the United States.

g. Harmonized Tariff Schedule - List of Products Subject to the Import Assessment
Section 1150.152 Assessments

As noted in Part II, the Alliance believes that the scope of product coverage of the Proposed Rule is too broad and that products that are not generally recognized internationally as dairy products should be excluded from coverage. Collecting an assessment on products that fall outside the realm of what has traditionally been recognized as dairy products for trade agreement or international standards setting purposes is an unjustified impediment to trade that provides trading partners with a basis to challenge the consistency of the assessment with U.S. international trade obligations, invoke measures themselves that impede imports, and thus U.S. exports, or utilize in the context of their broader trade relationship with the U.S.

The term "dairy products" is defined in Article II of the International Dairy Agreement (a successor to the Tokyo Round International Dairy Arrangement), a relevant international agreement for purposes of the application of the Agreement on Technical Barriers to Trade. In addition, the Explanatory Notes for Chapter 4 of the Harmonized System Tariff Nomenclature (HS) -- which are drafted by the World Customs Organization, the body that established the HS - state that it covers "dairy products," and then lists seven subcategories of dairy products: (1) milk; (2) cream; (3) buttermilk, curdled milk and cream, yogurt, kefir and other fermented or acidified milk and cream; (4) whey; (5) products consisting natural milk constituents, not elsewhere specified or included; (6) butter and other fats and oils derived from milk, and dairy spreads; and (7) cheese and curd. The Explanatory Notes also states that the following products do not fall within the umbrella of "dairy products": (1) food preparations based on dairy products (under HS heading 1901); (2) products obtained from milk by replacing one or more of the natural constituents by another substance (under HS heading 1901 of 2106); (3) ice cream and other edible ice (under HS heading 2105); (4) medicaments of HS Chapter 30; and (5) casein (under heading 3501), milk albumin (under HS heading 3502), and hardened casein (under HS heading 3913).

Thus, the Proposed Rule includes assessments on products that clearly fall outside the scope of what are accepted international definitions for dairy products, and even includes some products whose USITC description and USHTS numbers are not even suggestive of the realm of dairy products. Many of these products, such as cocoa and chocolate, fall under the USDA FAS trade import aggregation category "Snack Foods" (for example, HTS Numbers 1806.20.8300, 1806.20.8500, 1806.20.8700). In order to make the rule consistent with the accepted trade definitions, and thus harmonize it with applicable trade agreements and standards setting, the rule should exclude all products having a USITC description and/or a USHTS number that falls outside the scope of the accepted international definition of "dairy products."

Appendix B contains a list of product categories that should be removed from the Proposed Rule .

b. Confidentiality of commercial sensitive data and conflict of interest

Section 1150.152 Assessments

The Alliance recommends that the Proposed Rule be amended to include provisions restricting access to confidential business information provided in connection with import assessments. The Proposed Rule as currently written gives the Board the discretion to verify the milk solids content reported by importers to the CBP to determine if additional money is due the Board or an amount is due to an importer. However, the verification of the milk solids content of some products requires more specific information on product composition than is currently required under applicable labeling and import regulations. Specifically, verifying the calculation of the milk solids content of a particular product requires revealing the exact proportion of constituent components of that product. As such, verification reports are very likely to contain a wealth of confidential, proprietary, and commercially sensitive data. This gives rise to serious concerns, given that 36 members out of the 38 member Board will represent the interests of domestic producers, many of whom will have concerns regarding competition with imported products whose composition they are seeking to verify. Essentially, the Board as a whole has a conflict of interest if allowed to review this information.

In addition, the Proposed Rule as currently written contravenes the confidentiality obligations contained in applicable trade agreements. For instance, Article 10 of the WTO's Customs Valuation Agreement is explicit with respect to the obligations of contracting parties as it pertains to the safeguarding of what is considered to be proprietary information. The Agreement states the following: "All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings." In addition, U.S. free trade agreements have similar provisions. *See, e.g.*, North American Free Trade Agreement, Art. 507, *available at* http://www.cbp.gov/xp/cgov/trade/trade_programs/international_agreements/free_trade/nafta/confidentiality_ifp.xml (requiring that each country protect the confidentiality of confidential business information provided to them in the course of conducting government business and that

disclosure of this business information does not prejudice the competitive positions of the persons providing the information.) *See also, e.g.*, 7 C.F.R. § 996.72 (providing confidentiality for peanut importer records and reports submitted to USDA).

Accordingly, the Board should not be given access to this information; the provision of such commercially sensitive information by the manufacturer must be able to be provided as commercial-in-confidence information to USDA. USDA, at its discretion, should consult with CBP regarding verification matters and not the Board. In the absence of this change in the Proposed Rule, the federal government would be engaged in the same type of behavior that has been of concern to U.S. trade policy authorities in foreign countries. In addition, it should be made clear that verification information is protected from disclosure by the Government under the Freedom of Information Act.

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

(b)
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(4) At the request of the Board, or in its discretion, the USDA shall verify the information reported by importers to CBP to determine if additional money is due the USDA 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 USDA, the USDA will issue payment promptly to the importer. In the case of money due from the importer to the USDA, the USDA will send an invoice for payment directly to the importer. The invoice will be due upon receipt.

(i) All reports and records furnished or submitted by importers in connection with the importation of dairy products USDA, which includes data or information constituting confidential commercial information, a trade secret or disclosing a trade position, financial condition, or business operations of the particular importers or their customers shall be received by, and at all times kept in the custody and control of one or more employees of USDA, and, except as provided in this section or otherwise provided by law, such information shall not be disclosed to any person outside USDA.

(ii) For purposes of this section, reports and records pertaining to the material composition of an imported product generated by the Government for verification purposes shall be considered confidential commercial information, and also shall be considered internal government communications within the meaning of 5 U.S.C. 552(b)(5).

(iii) All reports and records furnished, submitted, or produced by an importer for purposes of verification shall be considered confidential information within the meaning of 5 U.S.C. 552(b)(4).

Appendix A: Constitutional Argument for Referendum

Different types of governmental activity are subject to different levels of scrutiny. The Proposed Rule would have to satisfy the *highest* standard of review – "strict scrutiny." Actions specifically targeting or affecting "discrete and insular minorities," *see U.S. v. Carolene Products*, 304 U.S. 144, 152 n.4; and restrictions that infringe upon a fundamental "personal right[] protected by the Constitution," such as the right to vote, are subject to strict scrutiny, and will be permitted only if they serve a "compelling" governmental interest and are "narrowly tailored" to advance the end sought in the least intrusive manner. *See City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440 (1985); *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964). For good reason, this standard is extraordinarily difficult to satisfy.

Here, it is the right to vote in the two earlier referenda on the assessment that would be trammeled upon if the Proposed Rule takes effect. The Supreme Court has consistently held that the right to cast a vote is a "fundamental matter in a free and democratic society." *Reynolds*, 377 U.S. at 562. This applies not only to elections for executive, legislative, and judicial offices, but also to a host of other special elections, such as those for the trustees of a community college. *See, e.g., Hadley v. Junior College District of Metropolitan Kansas City*, 397 U.S. 50 (1970). This is particularly true where election is for a governmental body that fulfills a traditional governmental function, or reflects an issue in which the government is asserting an active role. It cannot be forgotten that the Supreme Court has recently labeled the kind of promotional activity in which the Dairy Board engages, funded by assessments, to be "governmental speech." *See Johanns v. Livestock Marketing Ass'n*, 544 U.S. 550 (2005) (promotional campaigns funded by mandatory assessments on heads of cattle represented speech by the government itself). Accordingly, to the extent the Proposed Rule would subject the Alaskan, Hawaiian, and Puerto Rican producers, and all importers, to the result of a process in which they played no role, and that is irrevocably tied to governmental speech, it must be subject to strict scrutiny.

Under this rubric, the Proposed Rule would fail to serve a compelling governmental purpose, nor would it be narrowly tailored to achieve the end sought. Even if one concedes that the purpose of including these new classes of producers and importers under the Proposed Rule furthers a *legitimate* governmental purpose – fuller participation in the dairy promotion program and the broader propagation of the Dairy Board's message, a commercial interest almost never constitutes a "compelling" purpose (as may, for example, national security). Furthermore, enacting the Proposed Rule now would not be narrowly tailored to address even a legitimate governmental purpose, as many other options are available to promote the Government's interest that would also better protect and honor the constitutional rights of the dairy producers and importers – including simply holding a new referendum, which the Secretary of Agriculture is empowered to order at any time, under a revised statutory definition of who would be included in that process. *See* 7 U.S.C. § 4507(b).

By contrast, the unfairness the Proposed Rule would affect on the new class of producers and importers is stark. It must not be forgotten that these producers and importers are not in similar position as would be a new market entrant that made the

decision to enter the market with full information regarding the existence of the assessment. Rather, these are importers and producers – many of which were already active in the market when the two referenda of producers were conducted – who have now been subjected *ex post* to an assessment for or against which they were barred from voting, and to which many believed they would never be subject. The very remote possibility that the importers and the new class of producers could compel a new referendum in the future does not salvage the constitutionality of the Proposed Rule whatsoever. It is, at best, extraordinarily unlikely that the importers and newly-included producers could muster the support of ten percent of all producers and importers to launch another referendum. Instead, the reality is that by bringing importers and a new class of producers within the ambit of the Dairy Promotion Order the Department of Agriculture would now be subjecting those persons and entities to a permanent, perpetual state of disenfranchisement.[2]

Regardless, even if participation in a referendum on the continuation of the assessment does not reflect a "fundamental right" that triggers strict scrutiny, the exclusion of the dairy producers in Hawaii, Alaska, and Puerto Rico from the referendum process while still subjecting them to the assessment would *still* be subject to strict scrutiny because those producers were excluded from that process originally only by virtue of the basis of their state of citizenship, and no other factor. Discrimination on the basis of state citizenship is generally subject to strict scrutiny as well, and is almost always impermissible.

[2] It is for these reasons that the Proposed Rule would fail to meet constitutional muster even if analyzed under a lower standard of scrutiny, i.e., intermediate scrutiny or the so-called "rational basis" test.

Appendix B: Product Categories Not Pertaining to Dairy Products

1702.11.0000 LACTOSE AND LACTOSE SYRUP, CONTAINING BY WEIGHT 99 % OR MORE LACTOSE, EXPRESSED AS ANHYDROUS LACTOSE, CALCULATED ON THE DRY MATTER

1702.19.0000 LACTOSE IN SOLID FORM AND LACTOSE SYRUP

1704.90.5400 DAIRY PRODUCTS (SUGAR CONFECTIONERY) DESCRIBED IN ADDTL U S NOTE 1 TO CHAP. 4; SEE ADD ADDTL U S NOTE 10 & ENTERED PURSUANT TO ITS PROVISIONS

1704.90.5800 DAIRY PRODUCTS (SUGAR CONFECTIONERY) DESCRIBED IN ADDITIONAL U S NOTE 1 TO CHAP. 4, NESOI

1806.20.2090 CHOCOLATE IN BLOCKS, SLABS OR BARS WEIGHING 4.5 KG OR MORE EACH, CONTAINING BUTTERFAT OR OTHER MILK SOLIDS

1806.20.2400 CHOCOLATE, BULK FORMS NESOI, CONTAINING OVER 5.5% BY WEIGHT OF BUTTERFAT, DESCRIBED IN ADDITIONAL US NOTE 2 TO THIS CHAPTER AND ENTERED PROVISIONAL

1806.20.2600 CHOCOLATE, BULK FORMS NESOI, CONTAINING OVER 5.5% BY WEIGHT OF BUTTERFAT, NESOI, CONTAINING LESS THAN 21% BY WEIGHT OF MILK SOLIDS

1806.20.2800 CHOCOLATE, BULK FORMS NESOI, CONTAINING OVER 5.5% BY WEIGHT OF BUTTERFAT, NESOI

1806.20.3400 CHOCOLATE, BULK FORMS NESOI, CONTAINING NOT OVER 5.5% BY WEIGHT OF BUTTERFAT OR OTHER MILK SOLIDS, DESCRIBED IN ADDITIONAL US NOTE 3; PROVISIONAL

1806.20.3600 CHOCOLATE, BULK FORMS NESOI, CONTAINING NOT OVER 5.5% BY WEIGHT OF BUTTERFAT, NESOI, CONTAINING LESS THAN 21% BY WEIGHT OF MILK SOLIDS

1806.20.3800 CHOCOLATE, BULK FORMS NESOI, CONTAINING NOT OVER 5.5% BY WEIGHT OF BUTTERFAT, NESOI

1806.20.8100 COCOA PREP (DAIRY) IN BULK FORMS NESOI, CONTAININ 65% OR LESS BY WEIGHT OF SUGAR, DESCRIBED IN ADDITIONAL US NOTE 10 TO CHAPTER 4 ENTERED PROVISIONAL

1806.20.8200 COCOA PREPARATIONS IN BULK FORMS NESOI DAIRY PRODUCTS CONTAINING DESCRIBED IN ADDITIONAL US NOTE 1 TO CHAPTER 4, DAIRY PRODUCTS

1806.20.8300 COCOA PREPARATIONS IN BULK FORMS NESOI CONTAINING 65% OR LESS BY WEIGHT OF SUGAR, DAIRY PRODUCTS DESCRIBEDIN ADDITIONAL US NOTE 1 TO CHAPTER 4, NESOI

1806.20.8500 COCOA PREP(LOW FAT CHOCOLATE CRUMB) BULK NESOI,CONTAINING 65% OR LESS BY WEIGHT OF SUGAR, DESCRIBED IN ADDITIONAL US NOTE 3 TO THIS CHAPTER:PROVISION A

1806.20.8700 COCOA PREP (LOW FAT CHOCOALTE) IN BULK FORM NESOI, CONTAINING LESS THAN 21 % BY WEIGHT OF MILK SOLIDS

1806.20.8900 COCOA PREPARATIONS (LOW FAT CHOCOLATE CRUMB) IN BULK FORMS NESOI CONTAINING 65% OR LESS BY WEIGHT OF SUGAR, NESOI 1806.32.0400 CHOCOLATE, IN BLOCKS, SLABS OR BARS WEIGHING 2 KG OR LESS, NOT FILLED, CONTAINING > 5.5% BUTTERFAT, DESCRIBED IN ADDITIONAL US NOTE 2; PROVISIONAL

1806.32.0600 CHOCOLATE, IN BLOCKS, SLABS OR BARS WEIGHING 2 KG OR LESS, NOT FILLED, CONTAINING < 21% MILK SOLIDS, DESCRIBED IN GENERAL NOTE 15 OF TARIFF SCHEDULE

1806.32.0800 CHOCOLATE, IN BLOCKS, SLABS OR BARS WEIGHING 2 KG OR LESS, NOT FILLED, CONTAINING OVER 5.5% BY WEIGHT OF BUTTERFAT, NESOI

1806.32.1400 CHOCOLATE, IN BLOCKS, SLABS OR BARS WEIGHING 2 KG OR LESS, NOT FILLED, CONTAINING < 5.5% BUTTERFAT, DESCRIBED IN ADDITIONAL NOTE 3: PROVISIONAL

1806.32.1600 CHOCOLATE, IN BLOCKS, SLABS OR BARS WEIGHING 2 KG OR LESS, NOT FILLED, CONTAINING < 21% MILK SOLIDS, NESOI

1806.32.1800 CHOCOLATE, IN BLOCKS, SLABS OR BARS WEIGHING 2 KG OR LESS, NOT FILLED, CONTAINING LESS 5.5% BY WEIGHT OF BUTTERFAT, NESOI

1806.32.6000 COCOA PREPARATIONS (DAIRY PRODUCTS) IN BLOCKS, SLABS OR BARS, NESOI, WEIGHING 2 KG OR LESS, NOT FILLED, DESCRIBED IN ADDITIONAL US NOTE 10 TO CHAPTER4

1806.32.7000 COCOA PREPS(DAIRY) NESOI IN BLOCKS, SLABS OR BARS WEIGHING 2 KG OR LESS, NOT FILLED, CONTAINING < 21% MILK SOLIDS, ADDITIONAL U.S. NOTE 1 TO CHAPTER 4

1806.32.8000 COCOA PREPARATIONS (DAIRY PRODUCTS) IN BLOCKS, SLABS OR BARS, NESOI, WEIGHING 2 KG OR LESS, NOT FILLED, DESCRIBED IN ADDITIONAL NOTE 1 TO CHAPTER 4

1806.90.0500 COCOA PREPARATIONS NESOI NOT IN BULK FORMS, NOT FOR RETAIL SALE, DAIRY PRODUCTS DESCRIBED IN ADDITIONAL US NOTE 10 TO CHAPTER 4 AND PROVISIONAL

1806.90.0800 COCOA PREPARATIONS NESOI NOT IN BULK FORMS, NOT FOR RETAIL SALE, DAIRY PRODUCTS CONTAINING < 21%MILK SOLIDS, IN US NOTE 10 TO CHAPTER 4: PROVISIONAL

1806.90.1000 COCOA PREPARATIONS NESOI NOT IN BULK FORMS, NOT FOR RETAIL SALE,

DESCRIBED IN ADDITIONAL US NOTE 10 TO CHAPTER 4 AND
ENTERED TO ITS PROVISIONS

1806.90.1500 COCOA PREPARATIONS NESOI NOT IN BULK FORMS, NOT FOR RETAIL SALE, CONTAINING > 5.5% BUTTERFAT, DESCRIBED IN ADDITIONAL U.S. NOTE 2 : PROVISIONAL

1806.90.1800 COCOA PREPARATIONS NESOI NOT IN BULK FORMS, NOT FOR RETAIL SALE, CONTAINING LESS THAN 21% BY WEIGHT OF MILK SOLIDS

1806.90.2000 COCOA PREPARATIONS NESOI NOT IN BULK FORMS, NOT FOR RETAIL SALE, CONTAINING OVER 5.5% BY WEIGHT OF BUTTERFAT

1806.90.2500 COCOA PREPARATIONS NESOI NOT IN BULK FORMS, NOT FOR RETAIL SALE, CONTAINING < 5.5% BUTTERFAT, DESCRIBED IN ADDITIONAL U NOTE 3: PROVISIONAL

1806.90.2800 COCOA PREPARATIONS NESOI NOT IN BULK FORMS, NOT FOR RETAIL SALE, CONTAINING LESS THAN < 21% BY WEIGHT OF MILK SOLIDS

1806.90.3000 COCOA PREPARATIONS NESOI NOT IN BULK FORMS, NOT FOR RETAIL SALE, NESOI

1901.10.1500 PREPS FOR INFANT USE, INFANT FORMULA CONTAINING OLIGOSACCHARIDES AND > 10% MILK SOLIDS, DESCRIBED IN ADDITIONAL US NOTE 2: PROVISIONAL

1901.10.3000 PREPARATIONS FOR INFANT USE, PUT UP FOR RETAIL SALE, CONTAINING OVER 10 PERCENT BY WEIGHT OF MILK SOLIDS, CONTAINING OLIGOSACCHARIDES, NESOI

1901.10.3500 PREPARATIONS FOR INFANT USE, PUT UP FOR RETAIL SALE, CONTAINING > 10% MILK SOLIDS, DAIRY PRODUCTS DESCRIBED IN ADDITIONAL NOTE 10 TO CHAP: PROVISIONAL

1901.10.4000 PREPARATIONS FOR INFANT USE, PUT UP FOR RETAIL SALE, CONTAINING > 10% MILK SOLIDS, DAIRY PRODUCTS DESCRIBED IN ADDITIONAL U NOTE 1 TO CHAPTER 4: NESOI

1901.10.4500 PREPARATIONS FOR INFANT USE, PUT UP FOR RETAIL SALE, CONTAINING OVER 10 PERCENT BY WEIGHT OF MILK SOLIDS, NESOI

1901.20.0500 MIXES & DOUGHS FOR THE PREPARATION OF BAKERS WARES OF HEADING 1905, CONTAINING >25% BUTTERFAT, NOT RETAIL, DESCRIBED IN ADDITIONAL US NOTE 10 TO CH 10

1901.20.1500 MIXES & DOUGHS PREPARATION (DAIRY) OF BAKERS WARES OF HEADING 1905, CONTAINING >25% BUTTERFAT, NOT RETAIL, ADDTL US NOTE 1 TO CHAPTER 4: PROVISIONAL

1901.20.2000 MIXES AND DOUGHS FOR THE PREPARATION OF BAKERS WARES OF

HEADING 1905, CONTAINING > 25% BUTTERFAT AND >65% SUGAR DESCRIBED IN ADDTL US NOTE 7 TO CHAP17

1901.20.2500 MIXES AND DOUGHS FOR THE PREPARATION OF BAKERS WARES OF HEADING 1905, CONTAINING OVER 25% BY WEIGHT OF BUTTERFAT, NOT PUT UP FOR RETAIL SALE, NESOI

1901.20.3000 MIXES AND DOUGHS FOR THE PREPARATION OF BAKERS WARES OF HEADING 1905, CONTAINING OVER 25% BUTTERFAT, NOT FOR RETAIL SALE, DESCRIBED IN ADDTL US NOTE 3

1901.20.3500 MIXES AND DOUGHS PREPS OF BAKERS WARES IF HEADING 1905, CONTAINING > 25% BUTTERFAT, NOT PUT UP FOR RETAIL SALE DESCRIBED IN ADDITIONAL US NOTE 1-CH 19

1901.20.4000 MIXES AND DOUGHS FOR THE PREPARATION OF BAKERS' WARES OF HEADING 1905, CONTAINING OVER 25% BUTTERFAT, NOT PUT UP FOR RETAIL SALE, NESOI

1901.20.4500 MIXES AND DOUGHS FOR THE PREPARATION OF BAKERS WARES OF HEADING 1905, NESOI, DAIRY PRODUCTS DESCRIBED IN ADDITIONAL US NOTE 10 TO CHAPTER 4

1901.20.5000 MIXES AND DOUGHS FOR THE PREPARATION OF BAKERS WARES OF HEADING 1905, NESOI, DAIRY PRODUCTS DESCRIBED IN ADDITIONAL US NOTE 1 TO CHAPTER 4, NESOI

1901.90.2800 DRY MIXTURE CNTNG < 31% BUTRFT & > 17.5% SODIUM CASEINATE, BUTRFT, WHEY SLDS CNTNG > 5.5% BUTRFT & DRY WHOLE MILK, NOT CNTNG DRY MILK/WHEY/BUTTERFAT

1901.90.3400 MARGARINE CHEESE: DESCRIBED IN ADDITIONAL U.S. NOTE 23 TO CHAPTER 4 AND ENTERED PURSUANT TO ITS PROVISIONS

1901.90.3600 MARGARINE CHEESE: NESOI

1901.90.4200 DAIRY PREPARATIONS CONTAINING OVER 10 PERCENT BY WEIGHT OF MILK SOLIDS, MALTED MILK, DESCRIBED IN ADDITIONAL US NOTE 10 TO CHAPTER 4: PROVISIONAL

1901.90.4300 DAIRY PREPARATIONS CONTAINING OVER 10 PERCENT BY WEIGHT OF MILK SOLIDS, MALTED MILK, NESOI

1901.90.7000 FOOD PREPARATIONS, NESOI, CONTAINING OVER 5.5% BY WEIGHT OF BUTTERFAT AND NOT PACKAGED FOR RETAIL SALE, NESOI

1901.90.9082 FOR PREPARATIONS OF FLOUR, MEAL, STARCH OR MALT EXTRACT, NESOI, CORN-SOYA MILK BLENDS kg

2105.00.1000 ICE CREAM, WHETHER OR NOT CONTAINING COCOA, DESCRIBED IN

ADDITIONAL U. S. NOTE 5 TO THIS CHAPTER AND ENTERED PURSUANT TO ITS PROVISIONS

2105.00.2000 ICE CREAM, WHETHER OR NOT CONTAINING COCOA, NESOI

2105.00.3000 EDIBLE ICE EXCEPT ICE CREAM, DAIRY PRODUCTS (SEE CHAP. 4-ADDITIONAL U S NOTE 1), DESCRIBED IN ADDITIONAL U S NOTE 10 TO CHAP. 4 & PROVISIONAL

2105.00.4000 EDIBLE ICE EXCEPT ICE CREAM, DAIRY PRODUCTS DESCRIBED IN ADDITIONAL U.S. NOTE 1 TO CHAPTER 4, NESOI

2106.90.0600 FOOD PREPS, 16% MILK SOLIDS CAPABLE OF BEING FURTHER PROCESSED BULK, SEE U S NOTE 10-CHAP. 4

2106.90.0900 FOOD PREPS, CONTAIN < 5.5% BUTTERFAT, MIXED WITH OTHER INGREDIENTS, IF > 16% MILK SOLIDS BY WEIGHT, CAPABLE OF BEING PROCESSED/MIXED WITH OTHERS,BULK,NESOI

2106.90.2400 BUTTER SUBSTITUTES CONTAINING OVER 10% BY WEIGHT OF MILK SOLIDS, CONTAINING OVER 45% BUTTERFAT, SEE ADDITIONAL U. S. NOTE 14 - CHAP. 4 & PROVISIONAL

2106.90.2600 BUTTER SUBSTITUTES CONTAINING OVER 10% BY WEIGHT OF MILK SOLIDS, CONTAINING OVER 45% BUTTERFAT, NESOI

2106.90.2800 BUTTER SUBSTITUTES, IN LIQUID OR SOLID STATE, CONTAINING >15% BY WEIGHT OF BUTTER OR OTHER FATS OR OILS DERIVED FROM MILK, > 10% MILK SOLIDS, NESOI

2106.90.3400 BUTTER SUBSTITUTES WHETHER IN LIQUID OR SOLID STATE, NESOI, CONTAINING OVER 45 PERCENT BUTTERFAT, SEE ADDTL U.S. NOTE 14 - CHAP. 4 & PROVISIONAL

2106.90.3600 BUTTER SUBSTITUTES WHETHER IN LIQUID OR SOLID STATE, NESOI, CONTAINING OVER 45 PERCENT BUTTERFAT, NESOI

2106.90.3800 BUTTER SUBSTITUTES, WHETHER IN LIQUID OR SOLID STATE, CONTAINING OVER 15% BY WEIGHT OF BUTTER OR OTHER FATS OR OILS DERIVED FROM MILK, NESOI

2106.90.6400 FOOD PREPARATIONS NESOI,CONTNG >10% MILK SOLIDS, DAIRY PRODUCTS, SEE ADDTL U.S. NOTE 1-CHAP. 4, SEE ADDITIONAL U S NOTE 10-CHAP 4 & PROVISIONAL, NESOI

2106.90.6600 FOOD PREPS NESOI, CONTNG >10% MILK SOLIDS, DAIRY PRODUCTS, DESCRIBED IN ADDITIONAL U.S. NOTE 1 TO CHAPTER 4, NESOI

2106.90.6800 FOOD PREPS NESOI, CONTNG >10% MILK SOLIDS, BLENDED SYRUPS IN ADDITIONAL U.S. NOTE 4-CHAP 17, SEE ADDITIONAL U.S. NOTE 9 - CHAP 17 &

PROVISIONAL, NESOI

2106.90.7200 FOOD PREPARATIONS NESOI, CONTNG > 10% MILK SOLIDS, BLENDED SYRUPS DESCRIBED IN ADDITIONAL U.S. NOTE 4 TO CHAPTER 17, NESOI

2106.90.7400 FOOD PREPARATIONS NESOI, CONTNG >10% MILK SOLIDS, CONTNG >65% SUGAR (ADDTL U.S. NOTE 2-CHAP 17), SEE ADDTL U.S. NOTE 7-CHAP 17 & PROVISIONAL, NESOI

2106.90.7600 FOOD PREPARATIONS NESOI, CONTAINING > 10% BY WEIGHT OF MILK SOLIDS, CONTAINING > 65% BY DRY WEIGHT OF SUGAR (ADDTL U.S. NOTE 2-CHAP 17), NESOI

2106.90.7800 FOOD PREPARATIONS NESOI, CONTNG >10% BY WEIGHT OF MILK SOLIDS, CONTNG >10% SUGAR (ADDTL U.S. NOTE 3-CHAP 17), ADDTL U S NOTE 8-CH.17&PROVISIONAL,NESOI

2106.90.8000 FOOD PREPARATIONS NESOI, CONTAINING >10% BY WEIGHT OF MILK SOLIDS, CONTAINING >10% BY DRY WEIGHT OF SUGAR (SEE ADDTL U.S. NOTE 3-CHAP 17), NESOI

2106.90.8200 FOOD PREPARATIONS NESOI, CONTAINING OVER 10% BY WEIGHT OF MILK SOLIDS ,NESOI

2202.90.1000 CHOCOLATE MILK DRINK

2202.90.2400 DESCRIBED IN ADDITIONAL U.S. NOTE 10 TO CHAPTER 4 AND ENTERED PURSUANT TO ITS PROVISIONS: MILK-BASED DRINKS, NONALCOHOLIC, NESOI

2202.90.2800 MILK-BASED DRINKS, NONALCOHOLIC, NESOI

3501.10.1000 MILK PROTEIN CONCENTRATE

3501.10.5000 OTHER CASEIN, EXCEPT OF MILK PROTEIN CONCENTRATE

3501.90.6000 CASEINATES AND OTHER CASEIN DERIVATIVES

3502.20.0000 MILK ALBUMINS, INCLUDING CONCENTRATES OF TWO OR MORE WHEY PROTEINS