Bureau of Customs and Border Protection

CBP Decisions

19 CFR PARTS 12 and 163

CBP Dec. 07–05

USCBP–2006–0020

RIN 1505–AB68

ENTRY OF CERTAIN CEMENT PRODUCTS FROM MEXICO REQUIRING A COMMERCE DEPARTMENT IMPORT LICENSE

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends title 19 of the Code of Federal Regulations (19 CFR) to set forth special requirements for the entry of certain cement products from Mexico requiring a United States Department of Commerce import license. The cement products in question are those listed in the Agreement on Trade in Cement, entered into between the Office of the United States Trade Representative, the United States Department of Commerce, and Mexico's Secretaria de Economia, on March 6, 2006. The changes implemented by this document require an importer to submit to Customs and Border Protection (CBP) an import license number on the entry summary (CBP Form 7501) or on the application for foreign trade zone (FTZ) admission and/or status designation (CBP Form 214), for any cement product for which the United States Department of Commerce requires an import license under its cement licensing and import monitoring program. Additionally, an importer must submit a hard copy of the original valid Mexican export license with the entry documentation or provide such document to the FTZ operator, unless directed otherwise by CBP.

EFFECTIVE DATE: April 5, 2007.

FOR FURTHER INFORMATION CONTACT: Alice Buchanan, Office of International Trade, Tel: (202) 344–2697.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2006, the Office of the United States Trade Representative (USTR), the United States Department of Commerce (Commerce), and the Ministry of Economy of the United Mexican States (Secretaria de Economia) signed a bilateral Trade in Cement Agreement (Agreement) concerning trade in cement between the United States and Mexico. The Agreement applies only to cement from Mexico as defined in Section I.L. of the Agreement. A copy of the Agreement is available on the Commerce website: http://www.ia.ita.doc.gov/download/mexico-cement/cement-final-agreement.pdf. The Agreement requires the creation of an Export Licensing Program by Mexico and an Import Licensing Program by Commerce to enforce certain quantitative restrictions contained in the Agreement.

On May 31, 2006, the International Trade Administration of the Department of Commerce published a document in the **Federal Register** (71 FR 30836) proposing a rule, set forth at §§ 360.201–205 of the Code of Federal Regulations (19 CFR 360.201–205), that would establish a cement licensing and import monitoring program as directed under the terms of the Agreement. Although Commerce was vested with primary responsibility for the Mexican Cement import licensing and monitoring procedures, the Secretary of the Treasury, through the Bureau of Customs and Border Protection (CBP), is primarily responsible for the promulgation and administration of regulations regarding the importation and entry of merchandise into the United States. Accordingly, in conjunction with the Department of Commerce, on June 1, 2006, CBP published in the **Federal Register** (71 FR 31125) a proposal to add a new § 12.155 to title 19 of the CFR (19 CFR 12.155) which requires the inclusion of a cement import license number on the entry summary (CBP Form 7501) or the application for admission to a FTZ (CBP Form 214), and the submission of a valid Mexican export license with the entry summary documentation, in any case in which a cement import license is required to be obtained under the Commerce regulations. It was proposed that the entry (unless otherwise directed by CBP) must be a paper filing, and the license number must be included: on the entry summary (CBP Form 7501), at the time of filing, in the case of merchandise entered or withdrawn from warehouse for consumption in the customs territory of the United States; or, on CBP Form 214, at the time of filing under part 146 of this chapter, in the case of merchandise admitted into a foreign trade zone.

Comments were solicited on the proposal.

Discussion of Comments

Two comments were received in response to the solicitation of public comment in 71 FR 31125. A description of the comments received, together with CBP's analyses, is set forth below.

Comment:

Two commenters inquired as to where on the CBP Form 7501 the import license number should be identified.

CBP Response:

The import license number must be reported in column 33 of the newly reformatted CBP Form 7501 (or column 34 of the previous version of the CBP Form 7501, which remains valid). If the entry summary requires more than one cement import license, each license number must be reported within the column on the line item covering the subject cement. On the CBP Form 214, the import license number must be reported in box 16. If the CBP Form 214 is submitted in an electronic format (CBP Form e-214), the import license number must be reported as per instructions provided to the trade and made available for public viewing at http://www.cbp.gov/.

Comment:

One commenter inquired as to how long an importer must maintain copies of the import license, and in what format the records must be maintained (i.e., hard copy or electronic), in order to comply with CBP regulations.

CBP Response:

Copies of Mexican Cement Import Licenses must be retained pursuant to the provisions set forth in part 163 of title 19 of the CFR. Section 163.4 (19 CFR 163.4) prescribes a record retention period of 5 years from the date of entry. Section 163.5 (19 CFR 163.5) prescribes methods for the storage of records. Specifically, § 163.5(a) states that persons required to maintain records (as per § 163.2) must retain the original, whether paper or electronic, for the prescribed retention period. The term "original," when used in the context of the maintenance of records, is defined in § 163.1(h) (19 CFR 163.1(h)) as pertaining to records that are "in the condition in which they were made or received." The import license numbers at issue are to be generated via an automated Mexican Cement Import Licensing System (for a complete description, see 71 FR 30837, dated May 31, 2006), which provides a single opportunity to print the electronically generated import license number. For security reasons, the system does not allow users to retrieve previously issued licenses from the license system. Accordingly, the original hard copy print-out

of the Mexican Cement Import License must be retained for the 5 year retention period.

Department of Commerce Final Regulations

In another document published in today's edition of the **Federal Register**, the Department of Commerce has finalized its proposal of May 31, 2006.

Conclusion

In conjunction with the final regulations adopted by the Department of Commerce, CBP, after analysis of the comments received in response to CBP's proposed rule and upon further consideration, has determined to adopt as a final rule the amendments proposed in the Notice of Proposed Rulemaking published in the **Federal Register** (71 FR 31125) on June 1, 2006 with modifications as set forth below.

In the final rule, CBP will permit importers to report the import license number on either a paper or electronic version of the application for admission to a FTZ (CBP Form 214/e-214). This change from the proposal is being made to reflect that certain CBP ports are currently accepting electronic versions of the application for FTZ admission and/or status designation (CBP Form e-214) in lieu of paper copies. Paper copies of the CBP Form 214 will still be accepted; however, CBP is urging all members of the trade community to file electronic versions of the CBP Form e-214 where possible. Existing operational ports are listed at the CBP web site located at http://www.cbp.gov/. The site will be updated to reflect new CBP Form e-214 operational ports. Any questions regarding the CBP Form e-214 admission should be directed to the local CBP Port Director.

Section 12.55 is restructured in this final rule to present a more logical organization. The recordkeeping provision in paragraph (c) is retitled as "Import license information" in the final rule. Paragraph (d), entitled, "Export license information," now includes a reference to recordkeeping requirements relevant to export licenses.

The language of § 12.155(d) in the proposed rule is changed in the final rule to clarify that importers of Mexican cement must submit an original, physical copy of a valid Mexican export license to CBP with the entry summary documentation, unless otherwise directed by CBP. This language is added in the event CBP is able to process these types of entries electronically in the future. This provision is also changed in the final rule to clarify that the original physical copy of a valid Mexican export license must be provided to the FTZ operator with the CBP Form 214 in the case of a FTZ admission (unless otherwise directed by CBP) and, in such case, upon withdrawal from the FTZ no paper export license will be required to be submitted to CBP with the merchandise's subsequent entry summary documentation. Similarly, the language in proposed § 12.155(b)(1) is

changed in the final rule to clarify that no import license will be required on the CBP Form 7501 for Mexican cement that was previously admitted to a FTZ and for which an import license number was already provided to CBP on the CBP Form 214.

The "List of Records Required for the Entry of Merchandise" set forth in the Appendix to part 163 of title 19 of the CFR (19 CFR part 163) is also amended by this document to reflect the entry document requirements mandated by the Agreement. This document amends section IV of the Appendix by adding a new § 12.155 that lists the Mexican Cement export license and import license as new entry records.

THE REGULATORY FLEXIBILITY ACT

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. The amendment, which involves the addition of one data element, at the time of entry, to either one of two existing required CBP forms and a submission of a Mexican export license, as required by the Agreement and the Department of Commerce regulations, will have a negligible impact on importer operations. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

EXECUTIVE ORDER 12866

This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

SIGNING AUTHORITY

This document is being issued in accordance with 19 CFR 0.1(a)(1).

LIST OF SUBJECTS

19 CFR Part 12

Bonds, Customs duties and inspection, Entry of merchandise, Imports, prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise.

19 CFR Part 163

Customs duties and inspection, Reporting and recordkeeping requirements.

AMENDMENT TO CBP REGULATIONS

For the reasons stated above, parts 12 and 163 of title 19 of the Code of Federal Regulations (19 CFR part 12) are amended as follows:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

2. A new center heading and new § 12.155 are added to read as follows:

Mexican Cement Products

§ 12.155 Entry or admission of Mexican cement products.

(a) In general. On March 6, 2006, the United States Trade Representative, United States Department of Commerce and Mexico's Secretaria de Economia entered into an "Agreement on Trade in Cement" (Agreement). Pursuant to the Agreement, the United States Department of Commerce will administer an import licensing system that covers imports of Mexican cement as defined in section I.L. of the Agreement. The Secretary of the Treasury, through the Bureau of Customs and Border Protection (CBP), is responsible for the promulgation and administration of regulations regarding the entry of the subject merchandise into the United States. The Agreement will terminate on March 31, 2009, unless it has been terminated prior to that date.

(b) Reporting the import license number. For every entry of merchandise for which a Mexican cement import license is required to be obtained under regulations promulgated by the U.S. Department of Commerce, set forth at 19 CFR 360.201–205, the entry (unless otherwise directed by CBP) must be a paper filing and the license number must be included:

(1) On the entry summary, at the time of filing, in the case of merchandise entered or withdrawn from warehouse for consumption in the customs territory of the United States, except for Mexican cement that was previously admitted to a FTZ and for which an import license number was already provided to CBP on the CBP Form 214. If the entry summary requires more than one cement import license, each license number must be reported within the column on the line item covering the subject cement; or

(2) On CBP Form 214 or on an electronic version of CBP Form 214 (CBP Form e-214), as required by CBP, at the time of filing under part 146 of this chapter, in the case of an application for foreign trade zone (FTZ) admission and/or status designation.

(c) Import license information. There is no requirement to present physical copies of the import license to CBP at the time of filing either the CBP Form 7501 or CBP Form 214; however, importers must maintain copies in accordance with the applicable recordkeeping provisions set forth in the chapter.

(d) Export license information. Under regulations promulgated by the U.S. Department of Commerce, set forth at 19 CFR 360.201(d), importers of Mexican cement must submit an original, physical copy of a valid Mexican export license to CBP with the entry summary documentation (unless otherwise directed by CBP). In the case of an application for FTZ admission and/or status designation, the original physical copy of a valid Mexican export license must be provided to the FTZ operator with the CBP Form 214 (unless otherwise directed by CBP) and, in such case, upon withdrawal from the FTZ no paper export license will be required to be submitted to CBP with the merchandise's subsequent entry summary documentation. For multiple shipments at multiple ports, or multiple entries at one port, the original physical copy of the Mexican export license must be submitted to CBP (unless otherwise directed by CBP) with the first entry summary or to the FTZ operator with the CBP Form 214 or CBP Form e-214, as required by CBP, and a copy of the export license must be presented with each subsequent entry summary or CBP Form 214/e-214. Importers must also retain copies of the export license issued by the Mexican Government pursuant to the recordkeeping requirements set forth in part 163 of this title.

(e) Duration of requirements. The provisions set forth in this section are applicable for as long as the Agreement remains in effect.

PART 163 — RECORDKEEPING

3. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

4. The Appendix to part 163 is amended by adding a new listing, in numerical order, for § 12.155 under section IV to read as follows:

Appendix to Part 163 – Interim (a)(1)(A) List

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IV. * * *

§ 12.155 Export license and import license for Mexican Cement.

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DEBORAH J. SPERO,
Acting Commissioner,
Bureau of Customs and Border Protection.

Approved: February 28, 2007

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, March 6, 2007 (72 FR 10004)]

General Notices

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 360

Docket Number: 060316072–5251–02

RIN: 0625-AA70

Mexican Cement Import Licensing System

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final Rule.

SUMMARY: Import Administration (IA) issues this final rule to add new regulations implementing the Mexican Cement Import Licensing System in accordance with the Agreement between the Office of the United States Trade Representative and the Department of Commerce of the United States of America and the Ministry of Economy of the United Mexican States (Secretarıa de Economıa) on Trade in Cement (Agreement), signed March 6, 2006. This final rule requires all importers of cement from Mexico covered by the scope of the Agreement to obtain an import license from the Department of Commerce (Commerce) prior to completing their U.S. Customs and Border Protection (CBP) entry summary documentation. To obtain the import license, the importer, or the importer's broker or agent, must complete a form supplying certain information to Commerce about the Mexican Cement importation. The import license number will be generated immediately upon submitting the information and will be needed to complete the CBP entry documentation. IA will use

the information recorded on the import license form as the basis for monitoring compliance with the Agreement.

In addition, IA informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections.

DATES: This final rule is effective April 5, 2007. Filers will be able to obtain their user identification numbers on or after March 16, 2007 and apply for import licenses on or after April 5, 2007.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon (202) 482-0162; Judith Wey Rudman (202) 482-0192; or Jonathan Herzog (202) 482-4271. Additional information will is available on Commerce's import licensing website http://ia.ita.doc.gov/cement-agreement/index.html.

SUPPLEMENTARY INFORMATION: IA issues this final rule to add new regulations implementing the Mexican Cement Import Licensing System (MCILS) in accordance with the Agreement, signed March 6, 2006. This final rule requires all importers of cement from Mexico covered by the scope of the Agreement to obtain an import license from Commerce prior to completing their CBP entry summary documentation. To obtain an import license, the importer, or the importer's broker or agent, must complete a form providing certain information to Commerce about the Mexican Cement importation. The import license number will be generated immediately upon submitting the information and will be needed to complete the CBP entry summary documentation. IA will use the information recorded in the import license form as the basis for monitoring compliance with the Agreement.

The proposed rule was published on June 1, 2006 (71 FR 30836) ("proposed rule"), inviting parties to submit comments through June 30, 2006. The rationale and authority for the program were provided in the preamble to the proposed rule and are not repeated here.

COMMENTS ON THE PROPOSED RULE: Comments received during the public comment period set forth in the proposed rule are addressed in this final rule. Four parties submitted comments on the proposed rule. Most of the comments supported the licensing program and focused on a particular aspect of the licensing program concerning which the party wanted clarification or an adjustment. The comments are summarized below, with comments raised by more than one party addressed first.

Comment 1: Access to Information.

The Southern Tier Cement Committee (STCC) and Holcim (US), Inc. (Holcim) comment that, due to the limited amount of public,

non-proprietary information expected to be generated by the MCILS, little aggregate information will be available for publication on IA's web site. Therefore, according to the STCC and Holcim, it is important that Commerce provide interested parties timely access to the information derived from the MCILS in accordance with the administrative protective order in effect for this Agreement in order that the parties may review whether the Mexican exporters are complying with the terms of the Agreement. Similarly, GCC Cemento, S.A. de C.V. and GCC Rio Grande, Inc. (collectively GCCC) ask Commerce to clarify the sort of aggregate information that would be made available to the public and to confirm that business proprietary data would not be revealed.

Commerce Response: As noted in the Supplementary Information section of the proposed rule, certain aggregate information collected from the MCILS will be available on the IA web site. No business proprietary information will be posted on the website, i.e., posted information will not be specific to a particular port or company. Instead, publicly available information will consist of the total quantity of Mexican Cement imports for all sub-regions combined. Further, Commerce will provide quarterly reports of information collected on the MCILS to parties that have been approved for access to business proprietary information under the administrative protective order in effect for this Agreement. See Appendix 26 of the Agreement, "Agreement for Disclosure of and Access to Business Proprietary Information."

Commerce has added 19 CFR section 360.201(a)(5) to this final rule to address concerns about access to information and the use of business proprietary information.

Comment 2: Maintaining Up-To-Date Information.

The STCC comments that, unlike 19 CFR section 360.102(b), which governs Commerce's Steel Import Monitoring and Analysis (SIMA) licensing system, 19 CFR section 360.202(a)(2) does not include the language, "It is the responsibility of the applicant to keep the information up-to-date," when discussing the information necessary to obtain a user identification number. The STCC asks that this language be added in order to ensure that the applicants for an import license from the MCILS will be aware of their responsibility to keep their information current.

Commerce Response: Commerce agrees with the STCC in this regard. For the purposes of this final rule, Commerce has added the sentence, "It is the responsibility of the applicant to keep the information up-to-date," to 19 CFR section 360.202(a)(2).

Comment 3: Types of Entries.

GCCC comments that Commerce used the phrase "all imports of Mexican Cement" in 19 CFR section 360.201(a)(3), and the phrase "all entries for consumption of covered Mexican Cement products" in 19 CFR section 360.201(b) when describing what products will require an import license. GCCC comments that Commerce should clarify whether all imports of Mexican Cement or all entries of Mexican Cement for consumption would require an import license. Specifically, GCCC asks whether a sample for testing purposes, which is not an entry for consumption, would require an import license.

Commerce Response: In order to provide Commerce with the ability to monitor this Agreement effectively, all entries of Mexican Cement included within the scope of the Agreement, including samples, whether or not for consumption, will be required to be accompanied by an import license issued through the MCILS. Commerce has added this clarification to 19 CFR section 360.201(a)(3) and (b) of the final rule.

Commerce has also clarified 19 CFR section 360.201(b) to state that all shipments of covered Mexican Cement into FTZs, known as FTZ admissions, will require an import license prior to the filing of FTZ admission documents as stated in 19 CFR section 306.201(c).

Comment 4: Multiple Products.

GCCC comments that, in the proposed rule, both the preamble and 19 CFR section 360.201(a)(4) state that a single import license may cover multiple products as long as certain information on the import license remains the same. However, GCCC notes that the information which must remain the same differs between the two provisions and requests that Commerce clarify what information is required to be the same in order for an import license to cover multiple products.

Commerce Response: In order for an import license to cover multiple products, the following information must remain the same: Company Name, Address, City, State, Zip, Contact Name, Contact Phone, Contact Fax, Contact Email, Importer Name, Exporter Name, Manufacturer Name, Country of Origin, Country of Exportation, Expected Port of Entry, Expected Date of Importation, Expected Date of Export, Customs Entry Number (if known), Date License Valid From, Date License Valid Through, Date of Application, Subregion of Final Destination, Type of Affiliation, U.S. Affiliate's Name, Address, County, City, State, Zip, the Mexican Export License Number, and Disaster Relief Statement. Only the product-specific information (i.e., HTSUS Number, Product Description, Quantity, Unit, Entered Value in US $, and Unit Value) may differ, if a single import license is used to cover multiple products. Commerce has added this clarification to 19 CFR section 360.201(a)(4) of the final rule.

Comment 5: Customs Entry Number Requirement.

GCCC comments that 19 CFR sections 360.203(b) and (c)(xiii) of the proposed rule are ambiguous as to whether the CBP entry number is required to be reported on the application for an import license if known at the time of completing the application. GCCC requests that Commerce clarify whether the CBP entry number is required to be reported on the application for an import license if it is known at the time of application.

Commerce Response: If the CBP entry number is known to the applicant at the time of applying for an import license, the party filing the application is required to report the CBP entry number. Commerce has added this clarification to 19 CFR section 360.203(b) of the final rule.

Comment 6: Final Destination.

GCCC notes that 19 CFR section 360.203(c)(xii) of the proposed rule states that an applicant must indicate the address of the silo/warehouse where the Mexican Cement will be kept until shipment to the first unaffiliated purchaser. According to GCCC, Mexican Cement that is stored in a silo or warehouse may be shipped to either an affiliated purchaser for resale or consumption, or to an unaffiliated purchaser. Therefore, GCCC requests that 19 CFR section 360.203(c)(xii) of the proposed rule be amended to reflect this alternative.

GCCC also comments, with regard to 19 CFR section 360.203(xii) of the proposed rule, that Mexican Cement may be stored in a silo or warehouse in one region and then later shipped to a different region, if the final customer is not known at the time of entry and application for the import license. Therefore, GCCC requests that Commerce confirm that in such a situation, the final destination should be identified as the silo or warehouse where the cement is stored upon importation, even if the cement is ultimately consumed or sold in a different sub-region.

Commerce Response: During the negotiation of this Agreement, Commerce worked with all of the interested parties and their representatives, including GCCC, to develop the type of information needed to be collected by the MCILS in order for the system to be effective. Commerce and Secretarıa de Economıa submitted several rounds of draft agreement text, including the appendices, for comment and review by the interested parties. After extensive deliberation and negotiation, all parties agreed to the Agreement and its related Appendices. Appendix 20 of the Agreement defines "Final Destination" exactly as it appears in 19 CFR section 360.203(c)(xii) of the proposed rule and as intended by the drafters of the Agreement. As such, Commerce cannot modify the language of 19 CFR section 360.203(c)(xii) of the final rule without modifying the terms of

the Agreement. Therefore, for the purposes of the final rule, Commerce will not amend the language of 19 CFR section 360.203(c)(xii) as GCCC has requested.

In its entirety, the Agreement establishes a three-part monitoring system that includes export licenses issued by the Government of Mexico, an import license issued by Commerce, and monthly sales reports provided by the Mexican exporters and related importers. In accordance with Appendix 22 of the Agreement, any Mexican party exporting Mexican Cement to the United States is required to obtain an export license which states the "Sub-Region of Final Destination" to which the Mexican Cement is being exported. The export license number is to be reported on the import license issued by Commerce. Further, in accordance with Appendix 20 of the Agreement, to obtain an import license from Commerce, the importer must provide the "Sub-Region of Final Destination" in addition to the "Final Destination." "Sub-Region of Final Destination" is defined in Appendix 20 as the "Sub-region where either the Mexican Cement will be consumed by an affiliated company to make concrete or concrete products or the Sub-region of the first unaffiliated purchaser of Mexican Cement." The Sub-Region of Final Destination reported on the Mexican export license must match the Sub-Region of Final Destination reported on the import license. Thus, when reporting "Final Destination" as set out in 19 CFR section 360.203(c)(xii) of the final rule, the final destination, including the silo or warehouse in which the Mexican Cement may be stored, may not differ from the Sub-Region of Final Destination reported on both the export and import licenses. In a situation where the end customer is not known at the time of importation and the product is stored in a silo or warehouse, if the Mexican cement is sold into a Sub-region other than that listed on the export and import licenses, the Commerce may commence an investigation pursuant to the terms of the Agreement, including, but not limited to, initiating a changed circumstances review in accordance with Section VII of the Agreement.

Comment 7: Mexican Export License Number.

GCCC comments that when the company ships Mexican Cement, the tonnage in a shipment may be covered by two separate Mexican Export Licenses, if the tonnage limit for one Mexican Export License is reached and a new Mexican Export License is needed to cover the additional quantity. Therefore, GCCC requests that Commerce confirm whether it will require the importer to identify the tonnage and value that correspond to each Export License, or if it will require the importer to list the total quantity and value for the entire shipment and list both Mexican Export License Numbers on its application for an import license.

Cemex, S.A. de C.V. (Cemex) comments that the proposed rule does not explicitly say whether a single import license may be used

for more than one entry if all of the information on the import license is the same and requests that Commerce explicitly state in the final rule if a single import license may be used for more than one entry.

Commerce Response: The MCILS and the Mexican Export License systems are being established to track the quantity and value of Mexican Cement shipments accurately and on a real-time basis. Commerce must be able to trace specific quantities and values from a given Mexican Export License to an import license to ensure proper monitoring of the Agreement's sub-regional quotas. As designed, the application for an import license will only allow for the applicant to enter a single Mexican export license number. Thus, if a shipment of 100 metric tons (MT) is entered into the United States, 60 MT of which applies to one Mexican Export License, and 40 MT of which applies to a second Mexican Export License, the importer must obtain an import license for 60 MT and a second an import license for 40 MT.

Further, a separate import license is also required for each entry made pursuant to separate export licenses. Therefore, a separate import license is required for every entry of Mexican Cement. Commerce has added language clarifying these requirements in 19 CFR section 360.201(a)(4) and (d) of the final rule.

Comment 8: Copies of Licenses.

GCCC comments that because only Commerce will have access to the completed import licenses after the date they are issued, Commerce should state how long it intends to maintain the import licenses. GCCC requests that Commerce maintain copies for the entire period that the Agreement is in effect. Cemex comments that the proposed rule does not provide a time frame in which Commerce will be required to issue a copy of an import license to a requesting party. Cemex suggests that Commerce be required to issue a copy of an import license within 24 hours of when it is requested, and that it would be useful if there were an expedited procedure for obtaining a copy in a shorter period of time where the absence of a copy of the import license is impeding entry of Mexican Cement.

Commerce Response: An importer will be able to access copies of the import licenses it has obtained through the MCILS via the MCILS web site. In the event that the MCILS web site is not accessible, Commerce will normally issue a copy by fax or standard mail within two business days. However, where the absence of an import license impedes entry of Mexican Cement, Commerce will make every effort to work with the importer and CBP to resolve the problem as quickly as possible.

Comment 9: Correcting/Cancelling Import Licenses.

GCCC raises two questions. First, 19 CFR section 360.203(e) of the proposed rule states that applicants may cancel import licenses which contain errors prior to entry and file for a new import license with corrected information. GCCC asks whether there is a way to correct inadvertent errors to the import license after entry. Second, GCCC asks how Commerce will address situations in which an importer obtains an import license, but is notified of a cancelled sale after the entry date.

Commerce Response: It is Commerce's intent that the MCILS monitor imports of Mexican Cement as accurately as possible. Any errors contained in an import license should be corrected prior to entry by correcting the import license or by cancelling the import license and applying for a new import license. In the situation where an inadvertent error is discovered after entry, applicants will be able to correct the import license or cancel the import license and apply for a new import license. Commerce will monitor such actions closely and reserves the right to investigate corrections made after entry. If Commerce determines that an error corrected after entry was not an inadvertent error, Commerce may take appropriate action in accordance with the terms of the Agreement.

Further, all Mexican Cement imported into the United States covered by the scope of the Agreement is required to have an import license. This requirement includes any Mexican Cement imported into the United States pursuant to a sale that is cancelled after entry.

Comment 10: Typographical Error.

The STCC comments that there appears to be a typographical error in 19 CFR section 360.204 of the proposed rule.

Commerce Response: Commerce agrees and has corrected this error by adding the word "or" to the sentence in 19 CFR section 360.204 of the final rule.

Regulatory Flexibility Act

The Chief Counsel for Regulation certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, will not have a significant impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. Sec. 601 et seq. A summary of the factual basis for this certification is below.

Commerce is unable to determine the number of brokerage companies and importers that would be impacted by this rule as Commerce does not collect this information. However, based on historical data, Commerce estimates that there are few brokerage companies and importers that would be considered small entities under Small Business Administration's standard (5 U.S.C. 603(b)(3)). Typically, larger

brokers handle Mexican Cement shipments because of the capital that is needed upfront to handle bonds and other costs. Each importer or broker must fill out the import license form for each entry of the subject merchandise. Based on CBP entry summary information, we estimate that 12,150 import licenses will be issued each year. Of this number, only a small percentage of import licenses would be requested by a small entity as a result of this rule.

Even if this rule impacted a large number of small entities, these entities would not incur significant costs to comply with the proposed regulations. Most brokerage companies that are currently involved in filing required documentation for importing goods into the United States, specifically CBP documentation, are accustomed to CBP's automated systems. Today, more than 99 percent of CBP filings are handled electronically. Therefore, the web-based nature of this simple import license application should not impose a significant cost to any firm in completing this new requirement. However, should a company prefer or need to apply for an ID or import license by other than electronic means, a fax/phone option will be available at Commerce during regular business hours. There is no cost to register for a company-specific user identification number and no cost to apply for an import license.

Each import license form is expected to take at most about 10 minutes to complete using much of the same information the brokers will use to complete their CBP entry summary documentation. The response time should not vary widely because the same information is used to fill out other required CBP documents. **The estimated average cost to private sector respondents is $20.00 per hour.**

Based on the estimated 12,150 import licenses that will be issued each year, the total cost to respondents as a result of this rule is $40,500.00. Based on historic CBP information, there are few small entities that would be affected by this rule. Therefore, of this amount, only a small percentage of the total cost would be incurred by small entities. Based on these figures, this action will not have a significant economic impact on a substantial number of small entities. No comments were received regarding the economic impact of this rule. As a result, no Final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This final rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act. These requirements have been approved by OMB under the Paperwork Reduction Act (OMB No.: 0625–0259; Expiration Date: December 31, 2009). The public reporting burden for these collections of information is estimated at 10 minutes. Parties must maintain copies in accordance with CBP's existing requirements. The import licensing system requests information already required of an

importer, approval is automatic, and the importer will have ample opportunity and time to apply. These estimates of time required to complete an application include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

All responses to this collection of information are mandatory, and will be provided to the extent allowed by law. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act unless that collection displays a valid OMB Control Number. Send comments on the reporting burden estimate or any other aspect of the requirements in this final rule to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: ITA Desk Officer).

Executive Order 12866

It has been determined that this rule is significant for purposes of Executive Order 12866 of September 30, 1993 ("Regulatory Planning and Review") (58 FR 51735 (October 4, 1993)).

Executive Order 13132

This rule does not contain policies with federalism implications as that term is defined in Section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

For the reasons set out in the preamble, 19 CFR part 360 is added as follows:

PART 360 – MEXICAN CEMENT IMPORT LICENSING SYSTEM

Sec.

Authority: 13 U.S.C. §§301(a) and 302

§360.201 Mexican Cement Import Licensing System.

(a) *In general.* (1) On March 6, 2006, the Agreement between the Office of the United States Trade Representative and the Department of Commerce of the United States of America and the Ministry of Economy of the United Mexican States (Secretarīa de Economıa) on Trade in Cement (Agreement) was signed. Pursuant to the Agreement, the United States has agreed to implement an import licensing system for imports of merchandise covered by the scope of the

antidumping duty order on Cement from Mexico. Some of the data to be collected is in addition to data currently collected by U.S. Customs and Border Protection (USCBP). The data collected by the Mexican Cement Import Licensing System will be used by the Department of Commerce (Commerce) to monitor imports of Mexican Cement, as the imports occur.

(2) Mexican Cement is defined as **gray portland cement and clinker from Mexico. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no use other than being ground into finished cement. Specifically included within the scope of this definition are pozzolanic blended cements and oil well cements. Specifically excluded are white cement and Type "S" masonry cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item number 2523.29 and cement clinker is currently classifiable under HTSUS item number 2523.10. Gray portland cement has also been entered under HTSUS item number 2523.90 as "other hydraulic cements." These HTSUS subheadings are provided for convenience and USCBP purposes; the written definition is controlling for purposes of this Agreement.**

(3) The Mexican Cement Import Licensing System includes an online registration system. All imports of Mexican Cement covered by the scope of the Agreement, including samples, whether or not for consumption, are subject to the Mexican Cement Import Licensing requirements. Information gathered from these import licenses will be used to ensure that the terms of the Agreement are complied with and enforced.

(4) A single import license may cover multiple products if the following information reported on the import license remains the same: Company Name, Address, City, State, Zip, Contact Name, Contact Phone, Contact Fax, Contact Email, Importer Name, Exporter Name, Manufacturer Name, Country of Origin, Country of Exportation, Expected Port of Entry, Expected Date of Importation, Expected Date of Export, Customs Entry Number (if known), Date License Valid From, Date License Valid Through, Date of Application, Subregion of Final Destination, Type of Affiliation, U.S. Affiliate's Name, Address, County, City, State, Zip, Mexican Export License Number, and Disaster Relief Statement. Separate import licenses will be required for each type of Mexican Cement entry if the above information differs. As a result, a single USCBP entry summary may require more than one Mexican Cement import license. The applicable import license(s) must cover the total quantity of Mexican Cement entered and should cover the same information provided on USCBP Form 7501.

(5) Access to Information. (i) Information gathered by the Mexican Cement Import Licensing System will be treated as business proprietary information and will be subject to the administrative protective order in place for this Agreement. Commerce may elect to publish certain aggregate information collected by the Mexican Cement Import License System on the Import Administration web site. Any information Commerce elects to publish will not include business proprietary information nor information from specific ports of entry or companies.

(ii) In accordance with 19 C.F.R. Sec. 351.305, interested parties who have been approved for access to business proprietary information under the administrative protective order in effect for this Agreement will receive a quarterly report of all information gathered by the Mexican Cement Import License System.

(b) *Covered Entries*. All entries of Mexican Cement subject to the Agreement, including samples, whether or not for consumption, will require an import license prior to the filing of USCBP Form 7501, except as provided in section 360.201(c). The import license number(s) must be reported on USCBP Form 7501 at the time of filing. There is no requirement to present physical copies of the import license forms at the time of filing USCBP Form 7501; however, copies must be maintained in accordance with USCBP's existing requirements. Submission of a USCBP Form 7501 without the required import license number(s) will be considered circumvention of the Agreement.

(c) *Foreign Trade Zone entries*. All shipments of covered Mexican Cement into FTZs, known as FTZ admissions, will require an import license prior to the filing of FTZ admission documents. The import license number(s) must be reported on the application for FTZ admission and/or status designation (USCBP Form 214) at the time of filing. There is no requirement to present physical copies of the import license forms at the time of FTZ admission; however, copies must be maintained in accordance with USCBP's existing requirements. Submission of FTZ admission documents without the required import license number(s) will be considered circumvention of the Agreement. A further Mexican Cement import license will not be required for shipments from FTZs into the commerce of the United States.

(d) Mexican Export License Requirement. Each importer is required to submit a valid Mexican Export License to USCBP with its 7501 entry summary. For multiple shipments at multiple ports, or multiple entries at one port, the original Mexican Export License shall be presented with the first 7501 entry summary and a copy of the Export License shall be presented with each subsequent 7501 entry summary. In the case where an entry is covered by two Mexican export licenses, the importer must obtain two separate import licenses (e.g., if a shipment of 100 metric tons (MT) is entered into the

United States, 60 MT of which applies to one Mexican Export License, and 40 MT of which applies to a second Mexican Export License, the importer must obtain an import license for 60 MT and a second import license for 40 MT).

§360.202 Online registration.

(a) *In General*. (1) Any importer, importing company, customs broker or importer's agent with a U.S. street address may register and obtain the user identification number necessary to log on to the automatic Mexican Cement import license issuance system. Foreign companies may obtain a user identification number if they have a U.S. address through which they may be reached; P.O. Boxes will not be accepted. A user identification number normally will be issued within two business days. Companies will be able to register online through the import licensing website. However, should a company prefer to apply for a user identification number non-electronically, a phone/fax option will be available at Commerce during regular business hours.

(2) This user identification number will be required in order to log on to the Mexican Cement import license issuance system. A single user identification number will be issued to an importing company, brokerage house or importer's agent. Operating units within the company (e.g., individual branches, divisions, or employees) will all use the same company user identification number. The Mexican Cement import license issuance system will be designed to allow multiple users of a single identification number from different locations within the company to enter information simultaneously.

(b) *Information required to obtain a user identification number*. In order to obtain a user identification number, the importer, importing company, customs broker or importer's agent will be required to provide certain general information. This information will include: the filer's company name, employer identification number (EIN) or USCBP ID number (where no EIN is available), U.S. street address, telephone number, e-mail address, and contact information for both the company headquarters and any branch offices that will be applying for Mexican Cement import licenses. It is the responsibility of the applicant to keep this information up-to-date. This information will not be released by Commerce, except as required by U.S. law.

§360.203 Automatic issuance of import licenses.

(a) *In general.* Mexican Cement import licenses will be issued to registered importers, customs brokers or their agents through the automatic Mexican Cement Import Licensing System. The import licenses will be issued automatically after the completion of the form.

(b) *USCBP entry number.* Filers are required to report a USCBP entry number to obtain an import license if the USCBP entry number is known at the time of filing for the import license.

(c) *Information required to obtain an import license.* (1) The following information is required to be reported in order to obtain an import license (if using the automatic licensing system, some of this information will be provided automatically from information submitted as part of the registration process):

(1) Applicant company name and address;

(2) Applicant contact name, phone number, fax number and email address;

(3) Importer name;

(4) Exporter name;

(5) Manufacturer name;

(6) Country of origin;

(7) Country of exportation;

(8) Expected date of export;

(9) Expected date of import;

(10) Expected port of entry;

(11) Sub-Region of Final Destination: Indicate the Sub-region where either the Mexican Cement will be consumed by an affiliated company to make concrete or concrete products or the Sub-region of the first unaffiliated purchaser of the Mexican Cement.

(12) Final Destination: Indicate the complete name and address (including county) of either the affiliated company that will consume the Mexican Cement or the first unaffiliated purchaser of the Mexican Cement. If either is not known when the Import License is issued, indicate the address (including county) where the Mexican Cement will be siloed/warehoused until the time of shipment to the first unaffiliated purchaser.

(13) USCBP entry number, if known;

(14) Current Harmonized Tariff System of the United States (HTSUS) number (from Chapter 25 of the HTSUS);

(15) Quantity (in metric tons);

(16) Customs value (U.S. $);

(17) Whether the entry is made pursuant to the disaster relief provisions of the Agreement; and

(18) Mexican Export License Number.

(2) Certain fields will be automatically completed by the automatic import license system based on information submitted by the filer (*e.g.*, product category, unit value). Filers should review these fields to help confirm the accuracy of the submitted data.

(3) Upon completion of the form, the importer, customs broker or the importer's agent will certify as to the accuracy and completeness of the information and submit the form electronically. After submitting the completed form, the system will automatically issue a Mexican Cement import license number. The refreshed form containing the submitted information and the newly issued import license number will appear on the screen (the "import license form"). If needed,

copies of completed import license forms can be requested from Commerce during normal business hours.

(d) *Duration of the Mexican Cement import license.* The Mexican Cement import license can be applied for up to 30 days prior to the expected date of importation and until the date of filing of USCBP Form 7501, or in the case of FTZ entries, the filing of USCBP Form 214. The Mexican Cement import license is valid for 60 days; however, import licenses that were valid on the date of importation but expired prior to the filing of USCBP Form 7501 will be accepted.

(e) *Correcting submitted license information.* If an error is discovered in the import license after the entry date listed on USCBP Form 7501, filers will be able to correct the import license or cancel the import license and obtain a new import license. Commerce reserves the right to verify any changes made to an import license after entry and may take appropriate action under the terms of the Agreement if it determines that a violation of the Agreement has occurred.

§360.204 Fees.

No fees will be charged for obtaining a user identification number or issuing a Mexican Cement import license.

§360.205 Hours of operation.

The automatic licensing system will generally be accessible 24 hours a day, 7 days a week but may be down at selected times for server maintenance. If the system is down for an extended period of time, parties will be able to obtain import licenses from Commerce directly via fax during regular business hours.

DAVID M. SPOONER,
Assistant Secretary
for Import Administration.

[Published in the Federal Register, March 6, 2007 (72 FR 10006)]

Notice of Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security

ACTION: General Notice

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

Name	License #	Port Name
Ernest W. Fowble	03272	Seattle
Solveij C. Owen	5440	San Francisco
Bernardo Quan Ng	10052	Los Angeles

DATED: February 26, 2007

DANIEL BALDWIN,
Assistant Commissioner,
Office of International Trade.

[Published in the Federal Register, March 7, 2007 (72 FR 10237)]

Notice of Cancellation of Customs Broker Permit

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 11 1.51), the following Customs broker permits are cancelled without prejudice.

Name	Permit #	Issuing Port
HYC Logistics, Inc.	28–05–E69	San Francisco
Braverman Enterprises, Inc.	200113	Los Angeles
Martin, Kassatly & Company	13056–P	San Francisco
Cornerstone Logistics, Inc.	17392–P	San Francisco
Alfredo Mesa	52–04–B IC	Miami
BLG, Inc.	081	New York
Gallagher Transport International, Inc.	0158	St. Louis
Exel Global Logistics, Inc.	3501–01–0063	Minneapolis
Exel Global Logistics, Inc.	5398–001	Houston
Exel Global Logistics, Inc.	26–01–006	Nogales
Exel Global Logistics, Inc.	4979–P	San Francisco
David II Kim dba ACE American Express	94014	Los Angles

Name	Permit #	Issuing Port
Charter Brokerage Corp.	53–03–U14	Houston
William L. Crain	39–04–BGS	Chicago

Dated: February 26, 2007

DANIEL BALDWIN,
Assistant Commissioner,
Office of International Trade.

[Published in the Federal Register, March 7, 2007 (72 FR 10236)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, March 7, 2007

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
Executive Director,
Regulations and Rulings Office of Trade.

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF TZATZIKI GARLIC DIP

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the tariff classification of tzatziki garlic dip.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke a ruling letter pertaining to the tariff classification of tzatziki garlic dip under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP proposes to revoke any treatment previously accorded by CBP to substantially identical

transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before April 20, 2007.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Tom Peter Beris, Tariff Classification and Marking Branch, at (202) 572–8789.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with CBP laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the CBP and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of tzatziki garlic dip. Although in this notice CBP is specifically referring to one ruling, NY 812305, dated November 14, 1995, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for

rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to this notice.

In NY 812305 ("Attachment A" to this document), CBP ruled that tzatziki garlic dip imported from Canada was classified either under subheading 1901.90.42, HTSUS or under subheading 1901.90.43, HTSUS, depending on whether or not it was imported in quantities that fall within the limits described in Additional U.S. Note 10 to Chapter 4.

CBP has had an opportunity to reexamine the issue, and now believes that tzatziki garlic dip is provided for and therefore classified under subheading 2103.90.9091, HTSUS, which provides for other sauces and preparations.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY 812305 and any other ruling not specifically identified, pursuant to the analysis set forth in proposed HQ 968353 ("Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by the CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: March 1, 2007

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY 812305
November 14, 1995
CLA–2–19:R:N2:228 812305
CATEGORY: Classification
TARIFF NO.: 1901.90.4200; 1901.90.4300

MR. STEPHEN WALDMAN
WESTHILL DAIRY INC.
60 Brisbane Road
Downsview, Ontario M3J 2K2 Canada

RE: The tariff classification of Tzatziki Garlic Dip from Canada

DEAR MR. WALDMAN:

In your letter dated June 27, 1995 you requested a tariff classification ruling.

An ingredients breakdown and sample accompanied your letter. The sample was forwarded to the U.S. Customs laboratory for analysis. Tzatziki Garlic Dip is a thick, creamy product, white in color, composed of 85 percent cream, 10 percent cucumber, 4 percent vegetable oil, and less than one percent each of salt, bacterial culture, and fresh garlic. The product is made by adding a bacterial culture to pasteurized cream and allowing the cream to ferment until a desired P.H. is achieved, cooling the product until it thickens, mixing in cucumber, oil, garlic and salt, cooling to 40 degrees Fahrenheit, and packaging. Laboratory analysis determined the overall fat content to be 12.1 percent. The article is packed in 8-ounce plastic cups for retail sale, and in 5-pound plastic pails for food service use.

The applicable subheading for the Tzatziki Garlic Dip, if imported in quantities that fall within the limits described in additional U.S. note 10 to chapter 4, will be 1901.90.4200, Harmonized Tariff Schedule of the United States (HTS), which provides for food preparations of goods of 0401 to 0404 . . . other . . . other . . . dairy products described in additional U.S. note 1 to chapter 4 . . . dairy preparations containing over 10 percent by weight of milk solids . . . described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions. The rate of duty will be 16 percent ad valorem. If the quantitative limits of additional U.S. note 10 to chapter 4 have been reached, the product will be classified in subheading 1901.90.4300, HTS, and dutiable at the rate of $1.187 per kilogram, plus 15.6 percent ad valorem. This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 212–466–5760.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ W968353
CLA–2 RR: CTF: TCM W968353 TPB
CATEGORY: Classification
TARIFF NO.: 2103.90.9091

MR. STEPHEN WALDMAN
WESTHILL DAIRY INC.
60 Brisbane Rd.
Downsview, Ontario M3J 2K2 Canada

RE: Tariff classification of Tzatziki Garlic Dip from Canada; Revocation of NY 812305

DEAR MR. WALDMAN:

This is in regard to New York Ruling Letter (NY) 812305, dated November 14, 1995, issued to you for the tariff classification of the above captioned product under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling letter, the U.S. Customs Service (now U.S. Customs and Border Protection "CBP") determined that the product referred to as Tzatziki Garlic Dip was classified in heading 1901, HTSUS, specifically subheading 1901.90.4200, HTSUS, which provides, in relevant part, for food preparations of goods of 0401 to 0404 . . . not elsewhere specified or included: Other: Other: dairy products described in Additional U.S. Note 1 to Chapter 4[1]: dairy preparations containing over 10 percent by weight of milk solids: described in Additional U.S. Note 10 to Chapter 4[2] and entered pursuant to its provisions. This provision applied if the product was imported in

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[1] Add'l U.S. Note 1 to Chapter 4 reads:

> For the purposes of this schedule, the term "dairy products described in additional U.S. note 1 to chapter 4" means any of the following goods: malted milk, and articles of milk or cream (except (a) white chocolate and (b) inedible dried milk powders certified to be used for calibrating infrared milk analyzers); articles containing over 5.5 percent by weight of butterfat which are suitable for use as ingredients in the commercial production of edible articles (except articles within the scope of other import quotas provided for in additional U.S. notes 2 and 3 to chapter 18); or, dried milk, whey or buttermilk (of the type provided for in subheadings 0402.10, 0402.21, 0403.90 or 0404.10) which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the ultimate consumer in the identical form and package in which imported.

[2] Add'l U.S. Note 10 to Chapter 4 reads:

> The aggregate quantity of dairy products described in additional U.S. note 1 to chapter 4, entered under subheadings 0402.29.10, 0402.99.70, 0403.10.10, 0403.90.90 0404.10.11, 0404.90.30, 0405.20.60, 1517.90.50, 1704.90.54, 1806.20.81, 1806.32.60, 1806.90.05, 1901.10.35, 1901.10.80, 1901.20.05, 1901.20.45, 1901.90.42, 1901.90.46, 2105.00.30, 2106.90.06, 2106.90.64, 2106.90.85 and 2202.90.24 in any calendar year shall not exceed 4,105,000 kilograms (articles the product of Mexico shall not be permitted or included under the aforementioned quantitative limitation and no such articles shall be classifiable therein).

quantities that fall within the limits described in additional U.S. Note 10 to Chapter 4, HTSUS. The ruling further stated that if the quantitative limits of additional U.S. Note 10 to Chapter 4 had been reached, the product would be classified in subheading 1901.90.4300, HTSUS, which provides, in relevant part, for food preparations of goods of 0401 to 0404: Other: Other: Other.

We have recently had an opportunity to revisit this issue and based upon our analysis and for the reasons set forth below, now consider Tzatziki Garlic Dip to be classified under heading 2103, HTSUS, specifically subheading 2103.90.9091, HTSUS, which provides for sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared Mustard: Other: Other: Other: Other.

FACTS:

NY 812305 presents the facts of the merchandise as follows:

> An ingredients breakdown and sample accompanied your letter. The sample was forwarded to the U.S. Customs laboratory for analysis. Tzatziki Garlic Dip is a thick, creamy product, white in color, composed of 85 percent cream, 10 percent cucumber, 4 percent vegetable oil, and less than one percent each of salt, bacterial culture, and fresh garlic. The product is made by adding a bacterial culture to pasteurized cream and allowing the cream to ferment until a desired P.H. is achieved, cooling the product until it thickens, mixing in cucumber, oil, garlic and salt, cooling to 40 degrees Fahrenheit, and packaging. Laboratory analysis determined the overall fat content to be 12.1 percent. The article is packed in 8-ounce plastic cups for retail sale, and in 5-pound plastic pails for food service use.

ISSUE:

What is the proper classification of the Tzatziki Garlic Dip under the HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRIs"). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

When the subheadings, rather than the headings are at issue, GRI 6 is applied. GRI 6 provides in pertinent part that: "the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes, and mutatis mutandis, to [rules 1 through 5] on the understanding that only subheadings at the same level are comparable for the purposes of this rule and the relative section and chapter notes also apply, unless the context otherwise requires."

The headings and subheadings under consideration are as follows:

1901 Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:

1901.90 Other:

Other:

Dairy products described in additional U.S. note 1 to chapter 4:

Dairy preparations containing over 10 percent by weight of milk solids:

1901.90.4200 Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions

1901.90.4300 Other

* * *

2103 Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard:

2103.90 Other:

Other:

2103.90.90 Other

2103.90.9091 Other

NY 812305 based the classification of the Tzatziki Garlic Dip upon its identity as a food preparation based on cream, i.e., a good of heading 04.01 to 04.04, HTSUS. That provision, however, is qualified. It applies only if the good is "not elsewhere specified or included." It is CBPs belief that tzatziki is provided for elsewhere in the HTSUS. Specifically, we find that tzatziki meets the parameters for classification as a sauce, in heading 2103, HTSUS. In Nestle Refrigerated Food Co v. United States, 18 C.I.T. 661, 668 (1994), the court concluded that the common meaning of "other tomato sauces" is based on the common meaning of the term "sauce." The Nestle court stated,

> [i]n 1894, the U.S. Supreme Court reviewed the common meaning of the term "sauce" and determined that: '[t]he word "sauce," as commonly used, designates a condiment, generally but not always of liquid form, eaten as an addition to and together with a dish of food, to give it flavor and make it more palatable; and is not applied to anything which is eaten, alone or with a bit of bread, either for its own sake only, or to stimulate the appetite for other food to be eaten afterwards.'

Id. at 668 (citations omitted).

The court in Nestle, following the seminal Bogle v. Magone, 152 U.S. 623, 625–26 (1894) (subsequently followed by Del Gaizo Distrib. Corp. v. United

States, 24 CCPA 64, T.D. 48,376 (1936)) and its progeny, determined that in ascertaining whether a product fits within the common meaning of sauce, the court will "examine a variety of key features, including its ingredients, flavor, aroma, texture, consistency, actual and intended use, and marketing." *See*, e.g., Neuman & Schwiers Co., 18 CCPA at 3. The court further concluded that of these key features, actual and intended use are of paramount importance and that a product is a sauce if it can be used "as is," that is, if it may be eaten as an accompaniment to other foods to make such foods more flavorful and palatable. "Whether a product is fit for use as a sauce depends upon more than the mere possibility of use; rather, substantial actual use as a sauce must be demonstrated. See Wah Shang Co. v. United States, 44 CCPA 155, 159, C.A.D. 654 (1957). Also, according to Nestle, a product's physical features are also considered in light of their effect on the product's ability to be used as a sauce.

In this instance, we find that in its condition as imported, the product is ready for use principally as a spread, similar to mayonnaise or as a dressing or dip, similar to salsa. These uses place it within the class or kind of goods used as a sauce. *See*, e.g., NY H81014 (dated May 29, 2001); J81714 (dated March 20, 2003); K83948 (dated March 10, 2004); M81138 (dated March 28, 2006). *See also* HQ 962417 (dated March 3, 1999).

For the foregoing reasons, we find that the ready to use Tzatziki Garlic Dip falls within the scope of "sauces" of heading 2103, HTSUS. Because it meets the terms of that heading, it cannot fall to be classified under heading 1901, HTSUS, as it is elsewhere specified or included.

HOLDING:

For the reasons set forth above by application of GRI 1, the subject Tzatziki Garlic Dip is classified under heading 2103, HTSUS, as a sauce. It is provided for under subheading 2103.90.9091, HTSUSA, as: "Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard: Other: Other: Other: Other." The 2007 column one, general rate of duty is 6.4%.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the Internet at *www.usitc.gov/tata/hts*.

EFFECT ON OTHER RULINGS:

NY 812305 is revoked.

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.