October 31, 2018

U.S. Customs and Border Protection
Office of Trade, Regulations and Rulings
Attention: Trade and Commercial Regulations Branch
90 K St., NE, 10th Floor
Washington, DC 20229-1177

Dear Sir or Madam:

The Cheese Importers Association of America (CIAA) offers the following comments in response to Customs and Border Protection’s (CBP) September 26, 2018, notice of proposed revocation of 11 ruling letters, proposed modification of five ruling letters and revocation of treatment relating to the tariff classification of certain sheep’s milk cheeses. The CIAA is a trade association representing companies and individuals responsible for the importation of the majority of foreign cheeses entering the United States. The proposed revocations and modification action represents a significant adverse impact for those who have invested in businesses importing the subject cheeses, and should be reversed for reasons detailed below.

We start by reiterating our request of October 19 for an extension of the comment period. (Attachment 1) While we appreciate the revised comment deadline of November 9, we strongly believe that this matter warrants an additional 30 days to responsibly comment. Since you cite 19 USC 1625(c)(1) as the authority for your action, we note that 19 USC 1625 (c)(2) provides that “The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision.” Therefore the 30-day comment period is the minimum should be provided, and CBP has not only the authority to extend this comment period, but, indeed, the rationale to extend the comment period. Without the requested extension, CIAA members and other interested parties will not have a meaningful opportunity to comment on the proposed revocations and modification.

CBP Fails to State a Justifiable Basis for its Action

In Attachment Q to the notice, CBP states that the issue pertains to the subject merchandise classified under subheading 0406.90.57, HTSUS, as sheep's milk pecorino cheese, or under subheading 0406.90.59, HTSUS, as an "other" type of sheep’s milk cheese.

CBP itself states that “the term ‘pecorino’ is not defined in the HTSUS,” and argues that other common definitions should be allowed to serve as the basis for the CBP action. In Attachment Q, CBP relies on two definitions of Pecorino which are approximately 50 years old. One of those definitions, (U.S. Dep't. of Agriculture, Agriculture Handbook No. 54, Cheese Varieties and Descriptions 89 (1969)) identifies the cheese as being of Italian origin, while the second (Frank Kosikowski, Cheese and Fermented Milk Foods, 185-186 (1966)) refers to Pecorino Romano.

Two other Federal Agencies have adopted different standards more recently.

First, Section 401 of the Federal Food, Drug, and Cosmetic Act (FFDCA) establishes the specific legal authority for the Food and Drug Administration (FDA) to promulgate standards of identity for food. According to this statutory authority, a standard of identity for a particular food is necessary if such a
standard would “promote honesty and fair dealing in the interest of consumers.” Pursuant to that authority, FDA promulgated a standard for Romano as:

(e) When romano cheese is made solely from cow’s milk, the name of such cheese is “Romano cheese made from cow’s milk”, and may be preceded by the word “Vaccino” (or “Vacchino”); when made solely from sheep’s milk, the name is “Romano cheese made from sheep’s milk”, and may be preceded by the word “Pecorino”; when made solely from goat’s milk, the name is “Romano cheese made from goat’s milk”, and may be preceded by the word “Caprino”; and when a mixture of two or all of the milks specified in this section is used, the name of the cheese is “Romano cheese made from ___”, the blank being filled in with the names of the milks used, in order of predominance by weight.”


In this report USITC said “Pecorino is not a specific type of sheep’s milk cheese, but rather a term properly descriptive of any cheese made from sheep’s milk.” The report went on to recognize Pecorino production in other countries: “Pecorino imported from non-EC countries has shown a steady decline over the past 3 years.”

This USITC action is in addition to the February 26, 1953 decision of the United States Customs Court, Third Division in, Fontana Hollywood Corp. v. United States agreed with the plaintiff that “Pecorino’ when used in connection with cheese means cheese made from sheep’s milk and not a specific cheese.” In this case involving the trade agreement with Argentina, the court went on to say “Since the term ‘Pecorino’ used by itself does not indicate any particular cheese, it must have been used by the negotiators of the trade agreement in a generic sense to denote cheeses made from sheep’s milk.” Additionally, it must be noted that within the European Union, the term pecorino is a generic term and may be used by any producer in any region of the European Union. There is, therefore, a substantial difference between the generic name pecorino and those EU Protected Designation of Origin (PDO) such as “Pecorino Romano”.

The recognition by two Federal Agencies – FDA and USITC – the United States Customs Court, and production practices within the European Union should be recognized by CBP.

European Union Does Not Recognize the United States Distinction Between 0406.90.56 and 040690.57

CIAA has been advised that the European Union does not make the distinction between 0406.90.56 and 0406.90.57, resulting in potential confusion regarding how specific cheeses are to be classified. The Official Journal of the European Union shows only 0406.90.50 – “Cheese of sheep’s milk or buffalo milk…” demonstrating that the production of these cheeses is neither restricted to Italian origin, or distinguishes cheeses as suitable or not suitable for grating. (Attachment 2)

CBP Errors in Reclassifying All Subject Cheeses as “Other” under 0406.90.59

CBP, without specific justification, proposes that all of the subject cheeses should be reclassified as “Other” under 0406.90.59, without examining other classifications that may be applicable. Even if some of these cheeses merit reclassification, they should not be characterized as 0406.90.59.

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1 www.usitc.gov/publications/701_731/pub1079.pdf
3 IBID, p. A-10 (emphasis supplied).
Specifically, various forms of Manchego, which is made from 100% sheep’s milk and particularly those designated as PDO, are suitable for grating and should be reclassified as 0406.90.56. Producers can demonstrate that the ingredients used and production methods followed for Manchego are virtually the same as those followed for the production of generic Italian-sourced Pecorino cheese.

**CBP Fails to Take Adequate Notice of the Economic Impact of its Proposed Ruling** –

Regulatory activity should be prudent and recognize the potential adverse economic impact of its actions. According to data maintained by USITC, the vast majority of cheeses imported into the United States under 0406.90.57 by both value and volume are of non-Italian origin. In 2016, 62.0% of the value was of non-Italian origin, while 64.3% of volume was non-Italian. In 2017, 81.1% of the value was of non-Italian origin, while 79.2% of volume was non-Italian. Through August, 2018, the year-to-date value of non-Italian cheeses is 83.7%, while the volume is 84.9%. (Attachment 3)

This data clearly shows that the imposition of higher duties due to reclassification risks a substantial economic harm to the industry which has relied on prior CBP practices to develop their businesses.

In conclusion, we disagree with the proposed revocations and modifications as being unjustified and economically harmful. We also respectfully reiterate that the current comment period merits extension.

Sincerely,

Philip Marfuggi
President