Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2014-023

Dealers Ingredients Inc.

v.

President of the Canada Border Services Agency

Decision and reasons issued
Tuesday, November 28, 2017

Corrigendum issued
Friday, December 1, 2017

Canada

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IN THE MATTER OF an appeal heard on August 24-25, 2017, pursuant to subsection 67(1) of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated August 8, 2014, with respect to a request for re-determination pursuant to section 60 of the *Customs Act*.

BETWEEN

DEALERS INGREDIENTS INC. **Appellant**

AND

THE PRESIDENT OF THE CANADA BORDER SERVICES AGENCY **Respondent**

DECISION

The appeal is allowed in part.

Jean Bédard, Q.C.

Jean Bédard, Q.C.
Presiding Member

IN THE MATTER OF an appeal heard from August 24-25, 2017, pursuant to subsection 67(1) of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency dated August 8, 2014, with respect to a request for a re-determination pursuant to section 60 of the *Customs Act.*

BETWEEN

DEALERS INGREDIENTS INC. **Appellant**

AND

THE PRESIDENT OF THE CANADA BORDER SERVICES AGENCY **Respondent**

CORRIGENDUM

Paragraphs 92, 124, 135, 149 and 163 of the Tribunal's reasons erroneously refer to tariff item No. 2109.90.94. These paragraphs should instead refer to tariff item No. 2106.90.94.

By order of the Tribunal,

Jean Bédard, Q.C.
Jean Bédard, Q.C.
Presiding Member

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	August 24-25, 2017
Tribunal Member:	Jean Bédard, Presiding Member
Counsel for the Tribunal:	Elysia Van Zeyl
Senior Registrar Officer:	Sara Pelletier

PARTICIPANTS:

Appellant	**Counsel/Representative**
Dealers Ingredients Inc.	Michael Kaylor
Respondent	**Counsel/Representatives**
President of the Canada Border Services Agency	Mathew Johnson Amy Smeltzer
Intervener	**Counsel/Representatives**
Dairy Farmers of Canada	David K. Wilson Christopher Hutchison Benjamin Grant

WITNESSES:

Thomas A. Konar	Senior Research Scientist, Butter Buds Inc.
Charles Harvey	President, Dealers Ingredients Inc.
John Buhler	Vice President of Sales, Butter Buds Inc.
William Chamberlain	Laboratory Manager, EMSL Analytical Inc.
Andrea O'Brien	Senior Chemist, Customs Analysis Section, Canada Border Services Agency
Michel Britten	Research Scientist, Saint-Hyacinthe Research and Development Centre of Agriculture and Agri-Food Canada
Bita Farang	Research and Market Development Manager, Dairy Farmers of Canada

Please address all communications to:

The Registrar
Secretariat to the Canadian International Trade Tribunal
333 Laurier Avenue West
15th Floor
Ottawa, Ontario K1A 0G7

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

SUMMARY

1. This matter involves an appeal filed by Dealers Ingredients Inc. (Dealers) pursuant to subsection 67(1) of the *Customs Act*.[1] This appeal was filed on September 22, 2014, from a re-determination made by the President of the Canada Border Services Agency (CBSA) on August 8, 2014, pursuant to subsection 60(4).

2. This appeal concerns the tariff classification of five different enzyme-modified cheese or butter flavourings: Cheese Buds Bleu, Cheese Buds Cheddar EX, Cheese Buds Emmenthal, Buttermilk Buds and Milk Buds J (together, the goods in issue). The goods in issue were manufactured by Butter Buds Food Ingredients (Butter Buds) and imported by Dealers.

3. The CBSA submits that the goods in issue are properly classified under tariff item No. 2106.90.94 of the schedule to the *Customs Tariff*[2] as other food preparations containing 50% or more by weight of dairy content, over access commitment. Dealers contends that the goods in issue should be classified under tariff item No. 2106.90.95 as other food preparations containing, in the dry state, over 10% by weight of milk solids but less than 50% by weight of dairy content.

4. Having examined the submissions of the parties and the evidence on the record, the Canadian International Trade Tribunal (the Tribunal) finds, for the reasons that follow, that the Cheese Buds Bleu should be classified under tariff item No. 2106.90.95, whereas the Cheese Buds Cheddar EX, Cheese Buds Emmenthal, Buttermilk Buds and Milk Buds J are properly classified under tariff item No. 2106.90.94.

PROCEDURAL HISTORY

5. On June 11, 2012, the CBSA initiated a verification for the period of December 1, 2011, to December 31, 2011.[3] Samples of the goods in issue, with the exception of the Cheese Buds Emmenthal, were later provided to the CBSA for testing.[4]

6. On January 16, 2013, Ms. Andrea O'Brien, chemist at the CBSA's Science and Engineering Directorate, issued a report detailing her findings in regard to the goods in issue.[5] In short, she was unable to conclusively state that the goods she tested consisted of over 50% dairy content due to the fact that some of the components she analyzed can be found in both dairy and non-dairy ingredients.

7. On February 26, 2013, the CBSA issued an Interim Verification Report advising Dealers of the laboratory's inconclusive findings and requesting additional information from the manufacturer, Butter Buds.[6]

8. On March 19, 2013, the CBSA spoke to a representative from Butter Buds and explained the request for information.[7]

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1. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].
2. S.C. 1997, c. 36.
3. Exhibit AP-2014-023-11A, tab 3, Vol. 1A.
4. *Ibid.*, tab 4.
5. With the exception of the Cheese Buds Emmenthal as no sample of it was provided to the CBSA. Exhibit AP-2014-023-11A, tab 5, Vol. 1A.
6. *Ibid.*, tab 6.
7. *Ibid.*, tab 7.

9. On April 15, 2013, having received no further information from Butter Buds, the CBSA issued its final report, reclassifying the goods in issue under tariff item No. 2106.90.94 as "containing 50% or more by weight of dairy content".[8]

10. On August 23, 2013, the CBSA issued a Detailed Adjustment Statement on August 23, 2013, pursuant to section 59 of the *Act*.[9]

11. On October 17, 2013, Dealers submitted its own laboratory report, done by EMSL Analytical Inc. (EMSL), which assessed the dairy content of the goods in issue and concluded that they contained less than 50 percent dairy content.[10]

12. On October 29, 2013, Dealers submitted a request for re-determination pursuant to section 60 of the *Act*, in response to the decision on August 23, 2013.[11]

13. On May 14, 2014, Butter Buds provided a letter to the CBSA that, for each of the goods in issue, listed the ingredients and the proportion of the ingredients containing dairy (i.e. the ingredient list).[12]

14. On May 15, 2014, the representatives from the CBSA and Butter Buds participated in a conference call to discuss the manufacturer's report. Dealers did not participate in the call.[13]

15. On July 17, 2014, the CBSA issued a preliminary decision letter informing Dealers that the goods in issue were properly classified under tariff item No. 2106.90.94.[14]

16. On August 8, 2014, the CBSA issued a final determination, confirming the classification of the goods in issue under tariff item No. 2106.90.94.[15]

17. On September 22, 2014, Dealers filed this appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

18. On February 29, 2016, the Dairy Farmers of Canada (DFC) asked to intervene in this appeal. After reviewing the submissions of parties, the Tribunal granted intervener status to the DFC on March 30, 2016.

19. The Tribunal held a hearing on August 24-25, 2017. The following witnesses testified at the hearing:

- Mr. Charles Harvey of Dealers;
- Mr. John Buhler, Vice President of Sales for Butter Buds;
- Mr. Thomas Konar, Senior Research Scientist for Butter Buds;

8. *Ibid.*, tab 8. The CBSA also reclassified several other goods imported by Dealers; however, these are not at issue in the current appeal.
9. Exhibit AP-2014-023-11B, tab 9, Vol 1A. Note that although this exhibit was initially designated as "protected" by the parties, at the hearing, the parties agreed that it no longer needed to be treated as such.
10. Exhibit AP-2014-023-11A, tab 10, Vol. 1A.
11. Exhibit AP-2014-023-11B, tab 11, Vol. 1A.
12. *Ibid.*, tab 1.
13. Exhibit AP-2014-023-11A, tab 12, Vol. 1A.
14. *Ibid.*, tab 13.
15. Exhibit AP-2014-023-11B, tab 14, Vol. 1A.

- Mr. William Chamberlain, Laboratory Manager, EMSL;
- Ms. Andrea O'Brien, Senior Chemist, Customs Analysis Section, CBSA;
- Dr. Michel Britten, Research Scientist, Saint-Hyacinthe Research and Development Centre of Agriculture and Agri-Food Canada; and
- Ms. Bita Farang, Research and Market Development Manager, Dairy Farmers of Canada.

LEGAL FRAMEWORK

20. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).[16] The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

21. Subsection 10(1) of the *Customs Tariff* provides that, subject to subsection 10(2), the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*[17] and the *Canadian Rules*[18] set out in the schedule.

22. The *General Rules* comprise six rules. Classification begins with Rule 1, which provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the other rules.

23. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*[19] and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,[20] published by the WCO. While classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.[21]

24. The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. If the goods in issue cannot be classified at the heading level through the application of Rule 1, then the Tribunal must consider the other rules.[22]

16. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.
17. S.C. 1997, c. 36, schedule [*General Rules*].
18. S.C. 1997, c. 36, schedule.
19. World Customs Organization, 2nd ed., Brussels, 2003 [*Classification Opinions*].
20. World Customs Organization, 5th ed., Brussels, 2012 [*Explanatory Notes*].
21. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that the *Explanatory Notes* be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to the *Classification Opinions*.
22. Rules 1 through 5 of the *General Rules* apply to classification at the heading level.

25. Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to use a similar approach to determine the proper subheading.[23] The final step is to determine the proper tariff item.[24]

26. In this case, the parties agree on classification at both the heading and the subheading levels. Thus, the Tribunal is asked to determine the appropriate tariff item classification.

GOODS IN ISSUE

27. The goods in issue are various enzyme-modified cheese or dairy flavourings in powder form. They are used in a wide range of applications including baked goods, dairy products, seasonings, sauces, meat, dressings, dips and snacks. They are generally referred to as cheese, butter or milk buds.

28. The descriptions and product numbers of the goods in issue in this appeal are as follows:

i) *Cheese Buds Bleu* (Product No. 38194) – Natural cheese flavour prepared from cultured and enzyme-modified cheese spray dried with whey solids and maltodextrin.

ii) *Cheese Buds Cheddar EX* (Product Nos. 38309/66858) – Natural cheddar cheese flavour enhancer prepared from cultured and enzyme-modified cheese spray dried with whey solids and maltodextrin.

iii) *Cheese Buds Emmenthal* (Product Nos. 66907/66862) – Natural Emmenthal cheese flavour prepared from enzyme-modified cheese spray dried with whey solids and maltodextrin.

iv) *Buttermilk Buds* (Product Nos. 66809/66857) – Natural concentrated buttermilk flavour produced through a proprietary enzyme modification process.

v) *Milk Buds J.* (Product No. 66822) – Natural milk flavour encapsulated into water soluble powder by spray drying with maltodextrin.[25]

TARIFF CLASSIFICATION AT ISSUE

Heading No. 21.06

Section IV

PREPARED FOODSTUFFS; BEVERAGES, SPIRITS AND VINEGAR; TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES

. . .

Chapter 21

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23. Rule 6 of the *General Rules* provides 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 the above Rules [i.e. Rules 1 through 5] . . ." and that ". . . the relative Section and Chapter Notes also apply, unless the context otherwise requires."
24. Rule 1 of the *Canadian Rules* provides that ". . . the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, mutatis mutandis, to the [*General Rules*] . . ." and that ". . . the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires." Classification opinions and explanatory notes do not apply to classification at the tariff item level.
25. Exhibit AP-2014-023-08A at para. 2, Vol. 1; Exhibit AP-2014-023-11A, tab 2, Vol. 1A.

MISCELLANEOUS EDIBLE PREPARATIONS

. . .

21.06 **Food preparations not elsewhere specified or included**

. . .

2106.90 **-Other**

. . .

- - -Other:

. . .

2106.90.93 - - - -Containing 50% or more by weight of dairy content, within access commitment

. . .

2106.90.94 - - - -Containing 50% or more by weight of dairy content, over access commitment

2106.90.95 - - - -Other preparations, containing, in the dry state, over 10% by weight of milk solids but less than 50% by weight of dairy content

29. There are no relevant section, chapter or explanatory notes to Chapter 21.

POSITIONS OF PARTIES

Arguments by Dealers

30. Dealers argued that the goods in issue contain less than 50% dairy content and, accordingly, that they should be classified under tariff item No. 2106.90.95.

31. The term "dairy content" is defined in neither the *Customs Tariff* nor the *Explanatory Notes*. The CBSA's Memorandum D10-18-4 (the memorandum) defines "dairy content" as the following:

> . . . the total of all dairy ingredients in a product. Dairy ingredients include milk, cream, cheese, butter, yogurt, whey, and other dairy products, including dairy products which have been treated with enzymes (such as enzyme-modified cheese or lipolyzed butteroil). The calculation for "dairy content" includes casein, caseinates, and lactose whether or not separately added, and the water that is added as part of the dairy ingredients (see tariff items . . . 2106.90.94, and 2106.90.95).[26]

32. Dealers argued that the definition of "dairy content" in the memorandum is incomplete and cried out for the CBSA to provide more comprehensive guidance, as the definition itself does not enable the importing community to understand what does and does not constitute "dairy content" or how to accurately test for it.

33. Dealers submitted that the CBSA's classification of the goods in issue was flawed in several ways. In particular, Dealers maintained that the laboratory report completed by the CBSA (the CBSA report) was deficient, as it did not definitively determine whether the dairy content for the goods in issue was greater or less than 50 percent. Given the inconclusive nature of the CBSA report, Dealers contended that the results cannot be relied upon as evidence and that any uncertainty in the test results should be resolved in Dealers' favour.

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26. Memorandum D10-18-4, *Importation of Certain Agricultural Products and the Import Control List*, at para. 8.

34. In terms of the dairy content of the specific goods in issue, Dealers initially relied on a report conducted by EMSL, which purported to show that the dairy content of each of the goods in issue is below 50 percent. At the hearing, however, Dealers disavowed reliance on the EMSL report[27] and instead suggested that the Tribunal could determine the dairy content of the goods in issue by considering the values for protein, fat, sugar, sodium and calcium, as indicated in nutritional information provided by Butter Buds. It admitted that, if the Tribunal were to take this approach, two of the goods in issue (namely, the Buttermilk Buds and Cheese Buds Cheddar EX) would exceed the 50 percent threshold.[28]

Arguments by the CBSA

35. The CBSA submitted that Dealers bears the onus of proving that the CBSA's tariff classification is incorrect and that Dealers has failed to discharge its burden in this case.[29]

36. The CBSA acknowledged that its laboratory results were inconclusive, and the Tribunal heard extensive testimony from Andrea O'Brien as to why she was not comfortable drawing a conclusion with regard to whether the dairy content of the goods in issue was above or below the 50 percent threshold based on her test results. It was for this reason that the CBSA sought additional information, including an ingredient list and composition percentages, from the manufacturer of the goods in issue, Butter Buds. With this additional information, the CBSA stood by its determination that the dairy content of the goods in issue is greater than 50 percent and, therefore, that the goods are properly classified under tariff item No. 2106.90.94.

37. The CBSA argued that dairy content is not limited to the sum of the protein, lactose and fat contained in a dairy product; these are merely constituents which indicate the presence of a dairy ingredient. In other words, the CBSA argued that it is the totality of the dairy ingredients (namely the sum of all ingredients derived from milk or milk products) which matters for purposes of calculating the dairy content of a particular product. As the EMSL report only accounts for the protein, lactose and fat, the CBSA maintained that it is not an accurate measure of the dairy content in the goods in issue.

38. Accordingly, the CBSA argued that the best approach to determine the dairy content of the goods in issue is to consider the proportion of dairy versus non-dairy ingredients, as stated in the ingredient list provided to the CBSA by Butter Buds. In the alternative, the CBSA suggested that the Tribunal adopt the more "holistic" approach, which is to rely on the CBSA's laboratory results combined with the values for fat content reflected in the product specification sheets. With respect to the Cheese Buds Emmenthal, for which there was no CBSA laboratory analysis, the CBSA suggested simply relying on the ingredient information obtained from the manufacturer.

Arguments by the DFC

39. In accordance with the terms of its participation, as outlined in a letter from the Tribunal dated March 30, 2016, the DFC's submissions addressed the nature, composition, use, marketing and distribution of enzyme-modified products made with dairy and other ingredients, as those issues related to the tariff classification of the goods in issue.

40. The DFC argued that the goods in issue contain more than fifty percent dairy content, as confirmed by information from the manufacturer. The DFC also argued that the goods in issue are marketed and sold

27. *Transcript of Public Hearing*, Vol. 2, 25 August 2017 at 335-336.
28. *Ibid.* at 348, 352-353.
29. *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 (CanLII) at paras. 17, 21-22.

as natural dairy products. Finally, the DFC argued that Dealers failed to satisfy the burden of proof under subsection 152(3) of the *Act* to show that the goods in issue contain less than 50 percent dairy content. Accordingly, in the DFC's view, the goods in issue should be classified under tariff item No. 2106.90.94.

ANALYSIS

41. The parties agree that the goods are classified in heading No. 21.06, which includes "food preparations not elsewhere specified or included", and subheading No. 2106.90 as "other". The disagreement lies at the tariff item level. The CBSA argued that the goods in issue are classified under tariff item No. 2106.90.94, while Dealers submitted that the goods in issue should be classified under tariff item No. 2106.90.95. The key distinction between these two tariff item numbers, and the factual issue at the heart of this appeal, is whether there is greater or less than 50 percent dairy content in the goods in issue.

42. In order for the goods to be classified under tariff item No. 2106.90.94, the Tribunal must be satisfied that the goods in issue (1) are food preparations, (2) contain 50 percent or more dairy content, and (3) were imported over access commitment.[30] Issues (1) and (3) are not in dispute. Therefore, the Tribunal's analysis will focus on the issue of whether or not the goods in issue contain 50 percent or more by weight of dairy content.

43. In order to determine the dairy content of the goods in issue, the Tribunal must also resolve the following two issues: a) the interpretation of the term "dairy content" as that term is used in the relevant tariff items, and b) the most accurate information upon which to assess whether there is greater or less than 50 percent dairy content in each of the five goods in issue.

Burden of Proof

44. Before delving into its analysis, the Tribunal will address the parties' arguments regarding the burden of proof in this case.

45. It is clear that in customs appeals the burden is on the appellant to establish its case on a *prima facie* basis, at which point the onus shifts to the respondent to rebut same.[31]

46. Dealers in this case demonstrated the flaws in the methodologies used by the CBSA to support its determination that the goods in issue contain greater than 50 percent dairy content. In particular, Dr. Britten explained the reasons why the ingredient list relied upon by the CBSA would not constitute an acceptable substitute to determine the dairy content as it was lacking critical information.[32] As discussed in these reasons, notwithstanding the measures taken by the CBSA to resolve the uncertainties in its own laboratory

30. Dairy products—including certain food preparations classifiable under tariff item No. 2106.90.94, such as (potentially) the goods in issue—are included on the Import Control List established under the *Export and Import Permits Act* (*EIPA*) and have an established quota. Imports within the quota amount are subject to the lower rates of duty of the "within access commitment" tariff items, and imports over the quota amount are subject to the higher rates of duty of the "over access commitment" tariff items. Subsection 10(2) of the *Customs Tariff* provides that, in order to benefit from the "within access commitment" tariff item duty rates, the goods must be imported under the authority of a general import permit issued under section 8.3 of the *EIPA* and comply with the conditions of the permit. There is no evidence that such a permit exists in connection with the goods in issue, which were imported in 2011.
31. *BSH Home Appliance Ltd. v. President of the Canada Border Services Agency* (27 October 2014), AP-2013-057 (CITT) at para. 29.
32. *Transcript of Public Hearing*, 25 August 2017, Vol. 2 at 315-317.

assessment, the CBSA's decision was based on evidence that was not reliable, and the Tribunal finds accordingly.

47. That said, during the hearing and in its written submissions, the CBSA showed that the analysis conducted by EMSL, on behalf of Dealers, was also inadequate. Likewise, the alternative method proposed by Dealers to determine the dairy content by relying on the nutritional value of the goods in issue also turned out to be flawed. These shortcomings are surprising, considering the possibility that the goods in issue might fall under the tariff rate quota regime and the very high rates of duty that would apply to the goods in issue on this basis. For these reasons, the Tribunal would have expected Dealers to present strong evidence supporting its position that the dairy content of the goods in issue falls under 50 percent. Yet it failed to do so.

48. In his closing arguments, counsel for the DFC stated that criticizing the CBSA's approach is insufficient to satisfy the burden faced by Dealers. Indeed, the Tribunal has recognized that this burden rests with Dealers on the basis of subsection 152(3) of the *Act*, and that to meet this burden, Dealers is expected to submit the evidence establishing the basic facts supporting the tariff classification it argued.[33] The Tribunal has dismissed past appeals on the basis that a party has failed to satisfy its burden.[34]

49. However, there have also been cases where the Tribunal has, on the basis of the specific evidence presented, considered tariff classifications other than those proposed by the parties, and, in some cases, the Tribunal's determination reflects that self-identified alternate tariff classification.[35] This more active role in certain appeals is consistent with the Tribunal's recognized expertise in tariff classification matters.

50. Thus, while the DFC's proposition is applicable in many instances before the Tribunal, given the Tribunal's expertise in tariff classification matters, the Tribunal is not necessarily *required* to dismiss the appeal if the evidence provided by the importer does not effectively support the tariff classification proposed by the importer. Although a dismissal based on the burden of proof may be appropriate in certain cases, in this instance, the Tribunal is not lacking evidence and is able to arrive at a determination notwithstanding the deficiencies of the parties' arguments.

51. In other words, the Tribunal does not view its role as limited to a binary choice between two opposing arguments on tariff classification, particularly when the evidence on record is sufficient to determine the proper tariff classification notwithstanding that the process for doing so does not accord with the approaches advocated by the parties. The Tribunal is under no obligation to pick one of the methodologies or reports presented by the parties. It must analyze and appreciate the evidence as a whole.

52. In the present case, neither of the parties has effectively supported their arguments. As indicated above, Dealers has shown that the CBSA's decision was based on unreliable evidence and that the CBSA's

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33. *Schlumberger Canada Limited v. President of the Canada Border Services Agency* (21 June 2017), AP-2015-022 (CITT) at para. 34.
34. *Canac Marquis Grenier Ltée v. President of the Canada Border Services Agency* (22 February 2017), AP-2016-005 (CITT) at para. 27 [*Canac Marquis*]; *M. Miner v. President of the Canada Border Services Agency* (20 July 2012), AP-2009-080R (CITT).
35. *Premier Gift Ltd. v. President of the Canada Border Services Agency* (21 February 2017), AP-2016-002 (CITT) at para. 8; *Sonos Inc. v. President of the Canada Border Services Agency* (24 October 2017), AP-2016-020 at para. 12; *EMCO Corporation Westlund v. President of the Canada Border Services Agency* (21 December 2015), AP-2014-042 (CITT) at para. 27; *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (17 September 2013), AP-2012-057 (CITT) at para. 48; *Rittal Systems Ltd. v. Deputy M.N.R.* (30 June 2000), AP-99-012 (CITT) at p. 9; *Canac Marquis* at footnote 41.

analytical approach was unsound. The CBSA has shown that the evidence relied on by Dealers is also inaccurate and that Dealers' proposed analytical approach is unsound. However, if the Tribunal were to decide the case on the basis that Dealers has not satisfied its burden under subsection 152(3) of the *Act*, then a determination would stand that the Tribunal knows to be flawed and inadequate. This would not be just.

53. Moreover, a decision on the merits is important in this instance because the stakes involved for Dealers, in particular, and for the dairy industry, in general, are significant.

54. In this instance, there is evidence coming from a variety of sources (the CBSA, EMSL, Butter Buds) that allows the Tribunal to establish, with a reasonable degree of confidence, the dairy content of the goods in issue. The fact that the CBSA's laboratory report and EMSL's laboratory results, when adjusted with numbers for fat and protein that the Tribunal believes are highly reliable, arrive at similar results in almost all circumstances, gives some assurance to the Tribunal that its conclusions can withstand scrutiny.

Meaning of "Dairy Content"

55. Neither the *Customs Tariff* nor the explanatory notes to Chapter 21 define the term "dairy content".[36] However, "dairy content" is ostensibly defined in a departmental memorandum published by the CBSA.[37] At the outset, it is worth noting that the Tribunal is not bound by the definition contained in the memorandum, as it is simply a policy document created by the CBSA.

56. Nonetheless, the Tribunal is of the view that the definition in the memorandum is useful and informative. It contains two distinct elements. The first defines "dairy content" as being the sum of all dairy ingredients. Specifically, it states the following:

> "Dairy content" is the total of all dairy ingredients in a product. Dairy ingredients *include* milk, cream, cheese, butter, yogurt, whey, and *other dairy products*, including dairy products which have been treated with enzymes (such as enzyme-modified cheese or lipolyzed butteroil).
>
> [Emphasis added]

57. The second element of the definition specifies that the calculation for dairy content should include

> . . . casein, caseinates, and lactose whether or not separately added, and the water that is added as part of the dairy ingredients.

58. Dealers took issue with the lack of explicit guidance contained within the memorandum, in particular, pointing to the fact that it does not list all of the individual constituents that are derived from dairy (namely, fat, protein, lactose, etc.), which left Dealers in a difficult predicament when instructing EMSL what to test for.

59. During the hearing, the parties agreed that there is no recognized trade meaning for the term "dairy content". However, the CBSA argued that its interpretation, as reflected in the memorandum, is consistent with the ordinary meaning of "dairy", which properly includes milk and any products derived from milk.

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36. The explanatory notes to Chapter 4 contain a list of goods that are generally considered "dairy products", including (A) milk; (B) cream; (C) buttermilk, curdled milk and cream, yogurt, kephir and other fermented or acidified milk and cream; (D) whey; (E) products consisting of natural milk constituents, not elsewhere specified or included; (F) butter and other fats and oils derived from milk; dairy spreads; and (G) cheese and curd.
37. Exhibit AP-2014-023-11A at p. 99, Vol. 1A.

60. The Canadian Oxford Dictionary defines "dairy" as

> . . . 3. milk and milk products (*contains no dairy, meat, or fish*). 4. (*attributive*) a. of, containing, or concerning milk and its products. . . . [38]

61. Dr. Britten indicated that generally the literature refers to "dairy-derived ingredients" or "dairy-related ingredients". According to Dr. Britten, all of these terms refer to a family of products that are derived from milk.[39] This interpretation of "dairy" and "dairy content" is consistent with the definition provided in the CBSA's memorandum.

62. The Tribunal finds that "dairy content" in this context is intended to reflect the proportion of the final product that originates from milk-derived ingredients. While an examination of individual dairy constituents (namely, the fat, protein, lactose, etc.) may be useful as they are indicative of the presence of dairy, and may be of assistance when the existence of dairy ingredients or the proportion of those ingredients is in question, the key to determining the dairy content of a product are the ingredients themselves.

63. In situations when the ingredients are not available to the CBSA or to the importer, or when the exact proportions of ingredients are not known, an analysis of the constituents can then assist in determining the dairy content of a particular good. Indeed, given the imperfect information provided by the manufacturer of the goods in issue and as discussed below, this is the process that the Tribunal has adopted in order to determine, in a fair and objective way, the percentage of dairy content within each of the five goods in issue.

Evidence for Determining Percentage of Dairy Content

64. The Tribunal was presented with a variety of information sources from which it was asked to glean the dairy content of the goods in issue. Each of these sources are described in detail below. None of these sources provided the Tribunal with perfect information. Accordingly, the Tribunal had to combine certain of the information from those sources to estimate the dairy content of the goods in issue.

The CBSA's Laboratory Tests[40]

65. Initially, the CBSA attempted to discern the dairy content of the goods in issue using testing methods employed in its laboratory, which Ms. O'Brien described in detail during the hearing. In particular, Ms. O'Brien performed tests on the goods in issue[41] to determine the amounts of moisture,[42] the amount of sugars (both lactose, which is from dairy, as well as non-dairy sugars),[43] ash (which reflects mineral content),[44] carbohydrates[45] and fat.[46] On the basis of these test results, Ms. O'Brien was able to estimate the percentage of dairy content of the goods in issue. All estimates fell close to the 50 percent threshold.

38. *Ibid.* at p. 135.
39. *Transcript of Public Hearing*, 25 August 2017, Vol. 2 at 253-6.
40. Exhibit AP-2014-023-11A, tab 5, Vol. 1A.
41. Ms. O'Brien did not perform any tests on the Cheese Buds Emmenthal because the CBSA was not provided with a sample of this product.
42. *Transcript of Public Hearing*, 24 August 2017, Vol. 1 at 145.
43. *Ibid.* at 152.
44. *Ibid.* at 154.
45. *Ibid.* at 156.
46. *Ibid.* at 157-158.

66. However, many laboratory tests have a certain margin of error and those employed by Ms. O'Brien were no exception.[47] Moreover, Ms. O'Brien knew that some of her tests did not fully capture the content she was interested in measuring. Specifically, in her tests for fat, Ms. O'Brien used an accelerated solvent extraction system which employs heat, pressure and solvent systems to extract fat from a product. At the end of the extraction process, Ms. O'Brien described performing an infrared analysis on the residual product to verify whether all of the fat had actually been extracted. The results of the infrared analysis showed that some fat remained.[48] This suggests that the CBSA's estimates as to the fat content of the goods in issue would have been too low.

67. A commonality between the CBSA's test results and the test results of EMSL, which are discussed below, is that both significantly underestimate the quantity of fat in the goods in issue.[49] To understand the limits of the testing methods for fat in the goods in issue, one must first understand that each of the goods in issue starts as a dairy product, be it milk, buttermilk or a particular type of cheese (i.e. cheddar, blue cheese, Emmenthal). That dairy product is then modified with certain enzymes which have the effect of breaking down fat molecules into smaller components: triglycerides become mono- and diglycerides, and free fatty acids. This process is referred to as enzymolosis, which is a particular form of hydrolysis.[50] While initially it was suggested that enzymolosis "destroys" dairy content at the molecular level, the evidence presented at the hearing shows that this is not correct. Rather, enzymolosis alters fat molecules in such a way that they become smaller and more difficult to detect.[51] For these reasons, the Tribunal finds that the results for fat, as determined by the CBSA, are not reliable.

68. Returning to the deficiencies of the CBSA's laboratory test results, some of the measures for which the CBSA tested, moisture for example, could originate from either a dairy source or a non-dairy source.[52] After considering these shortcomings and considering how close to the 50 percent threshold the estimates were, Ms. O'Brien considered her tests to be inconclusive and sought further information from the manufacturer of the goods in issue, Butter Buds.

Ingredient List with Percentage of Dairy from Butter Buds[53]

69. What followed were a series of communications between CBSA officials and Butter Buds, which culminated in the submission, by Butter Buds, of an ingredient list for each of the five goods in issue. Beside each of the dairy ingredients included in this list, Butter Buds indicated a percentage said to reflect the proportion of that ingredient in the final product. For example, the ingredients in Butter Buds Bleu were listed as "maltodextrin, whey solids (30.1%), natural bleu cheese flavor (27.3% dairy), salt". It was on the basis of this correspondence and the stated percentages of dairy content that the CBSA concluded that each of the five goods in issue contained greater than 50 percent dairy content.

70. The evidence presented to the Tribunal suggests that the ingredients incorporated in the goods in issue will be present in the output. The evidence further suggests that nothing is created or lost during the

47. *Ibid.* at 224-225.
48. *Ibid.* at 157-163.
49. *Transcript of Public Hearing*, 25 August 2017, Vol. 2 at 284.
50. *Transcript of Public Hearing*, 24 August 2017, Vol. 1 at 165.
51. *Ibid.* at 90-91, 164-168; *Transcript of Public Hearing*, 25 August 2017, Vol. 2 at 266-267.
52. Dr. Britten also testified that moisture in the goods in issue could originate from either dairy or non-dairy sources and cautioned against including this *holus bolus* as part of the dairy content. See *Transcript of Public Hearing*, 25 August 2017, Vol. 2 at 302, 306-309.
53. Exhibit AP-2014-023-11B, tab 1, Vol. 1A.

process used to produce the goods in issue and that the ingredients are merely modified during the process.[54] In this case, had the ingredient list contained all of the required information, it would have been the best evidence to use to determine the dairy content of the goods in issue. Indeed, it would also have been the simplest and most straightforward method. However, there are a number of uncertainties in the calculations that were provided by the manufacturer, as were identified and discussed in the course of Dr. Britten's testimony. Specifically, after examining the ingredient information provided by Butter Buds, Dr. Britten expressed concern about not knowing the stage at which these calculations were made—in other words, whether the percentages provided for certain dairy products included any water that was mixed with intermediate products, such as when creating a paste from enzyme-modified cheese, or whether the calculations were made at a point after which certain water was lost from the products, as the Tribunal heard happens when enzyme-modified cheese is spray-dried.[55]

71. Accordingly, on the basis of the deficiencies identified by Dr. Britten, the Tribunal finds that the proportions identified in the ingredient list used by the CBSA are not sufficiently reliable to form, in and by themselves, the basis of the Tribunal's decision in this matter. To the extent that the CBSA made its determinations based on the ingredient list, the Tribunal finds that those determinations were made on the basis of unreliable information.

EMSL Laboratory Tests[56]

72. Apparently frustrated with the results of the CBSA's analysis, Dealers sought the assistance of an independent laboratory, EMSL, to help it determine the dairy content of the goods in issue by performing various tests on samples of the goods in issue supplied by Butter Buds. In instructing EMSL, Mr. Harvey sought guidance from the CBSA's memorandum but noted that it did not mention all constituents that Mr. Harvey believed would be included in what constitutes dairy. For example, while it referred to protein, moisture and lactose, it did not specifically mention fat, which Mr. Harvey understood to be a constituent of dairy. Accordingly, EMSL was asked to determine the levels of protein, fat and lactose in the goods in issue.[57]

73. The report prepared for Dealers by EMSL lists the total dairy content for each of the goods in issue as a total of the protein, fat and lactose found in each of the goods in issue.[58] For all five products, the total dairy content was found to be less than 50 percent. Although EMSL established a level of moisture in each of the goods in issue, it assumed that this moisture would not be included as part of the dairy content of the goods in issue. Moreover, EMSL's analysis did not measure levels of ash, which would be indicative of mineral components, or organic acids.[59]

74. The test methods employed by EMSL were not the same as those used by the CBSA,[60] but the Tribunal is not troubled by this fact. Both Mr. Chamberlain and Ms. O'Brien provided satisfactory explanations to the Tribunal as to why they chose the methods they did. That said, as discussed above in connection with the CBSA report, the Tribunal has reason to believe that the EMSL report significantly underestimates the levels of fat in the goods in issue. When questioned about the significant variance in the fat levels between Butter Bud's product specification sheets and EMSL's laboratory results, Mr. Konar,

54. *Transcript of Public Hearing*, 24 August 2017, Vol. 1 at 79, 91, 102-103.
55. *Ibid.* at 99.
56. Exhibit AP-2014-023-11A, tab 10, Vol. 1A.
57. *Transcript of Public Hearing*, 24 August 2017, Vol. 1 at 116.
58. Exhibit AP-2014-023-11A, tab 10, Vol. 1A.
59. *Transcript of Public Hearing*, 24 August 2017, Vol. 1 at 20.
60. *Ibid.* at 118-123.

Senior Scientist at Butter Buds, testified that EMSL's test results were wrong given his knowledge of the products.[61]

Product Specification Sheets[62]

75. The final pieces of evidence presented to the Tribunal to assist in its determination of the dairy content of the goods in issue were product specification sheets for each of the goods in issue. These specification sheets were generated by Butter Buds using an automated system that takes into account input ingredients and are provided to customers to inform them of the attributes of the goods in issue. The specification sheets contain a description of the product, including its physical properties (colour, flavour, particle size, etc.), shelf life, a list of ingredients, and certain nutritional information. Among other things, the nutritional analysis lists the amount of fat, moisture, cholesterol, sodium, sugar, protein, calcium and ash content per 100 grams of the product.

76. For each of the goods in issue, the product specification sheets provide a range for fat content. It was explained that this range, which is denoted by a plus/minus one gram, for example, is to account for variances that may occur between one batch and the next. As these sheets are relied on by both customers and government agencies, their accuracy is important. Further, these measures are unaffected by the inaccuracies inherent in testing methods.

77. For those reasons, taking into account the difficulties in testing fat levels following enzymolysis,[63] the Tribunal finds that the product specification sheets provide the most reliable data for the fat content of the goods in issue.[64]

78. The Tribunal also notes that the protein content disclosed in the specification sheets is similar to the protein measurements stated in both the CBSA's and EMSL's laboratory results; however, the Tribunal finds, on the balance of probabilities, that the value for protein stated in the specification sheets is likely to be the most accurate protein measurement of the three. Again, this stems from difficulties in accurately assessing protein content using routine testing methods. As explained by Mr. Konar, there is a certain amount of protein in the goods in issue that will not generally show up as protein in test results, as it has been broken down into peptides and amino acids.[65]

79. Unfortunately for the Tribunal's purposes, the product specification sheets report only on certain measures that are significant for nutritional reasons. They do not contain a complete account of all constituents which can be said to be part of the dairy content of the goods in issue. Moreover, the product specification sheets do not allow one to differentiate between certain constituents that could be derived either from dairy or non-dairy sources. For example, although the product specification sheets list the level of sodium (a type of mineral), some of this is from enzyme-modified cheese and some is added.

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61. *Transcript of Public Hearing*, 24 August 2017, Vol. 1 at 87-88.
62. Exhibit AP-2014-023-11A, tab 2, Vol. 1A.
63. Dealers initially asserted that the dairy content of the goods in issue diminishes from the time of manufacture to the time of importation due to a process called enzymolysis. However, contrary to these submissions, it was clear from the evidence provided during the hearing that no dairy content is actually lost or destroyed as a result of this process, which takes place before the product is packaged and imported into Canada. Rather, the Tribunal understands this process to result in the breaking down of fat molecules. While the fat that was initially present in the formulation remains part of the final product, the fact that it is broken down into smaller molecules makes it difficult to accurately test for.
64. *Transcript of Public Hearing*, 24 August 2017, Vol. 1 at 89.
65. *Ibid.* at 100.

Tribunal's Analysis of Percentage Dairy Content

80. The evidence presented in this case was far from ideal. After reviewing the entirety of the evidence before it in this matter, the Tribunal finds that none of the reports or methodologies, in and of themselves, offer a complete and reliable accounting of the dairy content of the goods in issue. On the other hand, the Tribunal finds that the evidence on record enables it to construct a methodology that, on the balance of probabilities, gives a reasonably accurate calculation of the total dairy content of the goods in issue. Out of necessity, the Tribunal has conducted five product-specific analyses below, following this same approach to the greatest extent possible.

81. The Tribunal cautions, however, that this type of analysis should not be taken as an endorsement of this approach when the CBSA and importers seek to ascertain the dairy content of imported goods. The Tribunal would have preferred to use a reliable ingredient list to determine the dairy content of the goods in issue. A reliable ingredient list, which sets out the proportions of dairy and other ingredients in final formulation, would have been the most straightforward and expeditious way to determine the tariff classification of these types of goods. However, as discussed above, the Tribunal is of the view that the problems inherent in the ingredient list in this case prevent it from being a reliable source.

82. Accordingly, the Tribunal must attempt to ascertain the total dairy content of the goods in issue by considering individual constituents. As indicated by Mr. Britten in his expert report, milk (and products derived from milk) include protein, fat, lactose, salts, organic acids and water.[66] Dr. Konar corroborated this evidence at the hearing.[67] Accordingly, in order to determine the dairy content of the goods in issue, the Tribunal will consider what quantities of the following individual constituents are contained in each of the goods in issue: protein, fat, lactose, minerals (from dairy) and moisture (from dairy).[68]

83. To do this, the Tribunal will perform a comparative analysis of the laboratory results from the CBSA with those of EMSL. In doing so, it will substitute certain of the respective laboratory's findings with information that it deems more reliable. In particular, with respect to fat and protein, the Tribunal is of the view that the most reliable information is found in the product specification sheets for each of the goods in issue. Accordingly, instead of using the CBSA or EMSL's estimates for these measures, the Tribunal will rely on the values stated in each of the product specification sheets.

84. The CBSA and EMSL both estimated the amount of lactose in the goods in issue. Their estimates vary slightly from one another, but the Tribunal has no reason to consider either of them unreliable. Accordingly, the Tribunal will rely on the lactose figures from both of these laboratories in performing its comparative analysis.

85. EMSL failed to include any estimate as to the amount of minerals that would have originated from the dairy ingredients of the goods in issue. Accordingly, the most reliable estimates that the Tribunal has with respect to minerals are from the CBSA's analysis. In order to complete the analysis by EMSL, the Tribunal has added this mineral content to EMSL's estimates.

86. Counsel disagreed as to whether or not moisture needs to be included in the dairy content calculation. In particular, counsel for Dealers argued, on the basis of the Tribunal's decision in *CDC*

66. Exhibit AP-2014-023-54A at para. 7, Vol. 1E.
67. *Transcript of Public Hearing*, 24 August 2017, Vol. 1 at 39.
68. The Tribunal does not have any estimates for the quantity of organic acids in the goods in issue; however, at the hearing, it heard that salts and organic acids comprise only a "very, very small" percentage of milk. *Transcript of Public Hearing*, 25 August 2017, Vol. 2 at 286.

Foods,[69] that water cannot be included as part of the calculation for dairy content. However, in the Tribunal's view, *CDC Foods* does not stand for this proposition. Rather, *CDC Foods* is clear that the calculation for dairy content will include water that is *part of* the dairy ingredients or where water is used to reconstitute a dairy product. Accordingly, the Tribunal will include the water or moisture that originates from dairy ingredients as part of the dairy content of the goods in issue. The difficulty, however, as pointed out by several witnesses, is that it is unclear how much of the moisture originates from dairy versus that which originates from other ingredients. While the CBSA's calculations included all of the moisture as dairy content, EMSL's calculations included none of it.

87. Neither laboratory attempted to ascertain what percentage of the moisture came from dairy ingredients versus what percentage came from the non-dairy ingredients in the goods in issue. However, Ms. O'Brien provided the Tribunal with a reasonable way to establish the moisture proportions. She testified that, if a product was half maltodextrin and half skim milk powder, one could estimate that half of the moisture was from the maltodextrin and half was from the powder.[70] Accordingly, for the purposes of this case, and given that both the dairy and non-dairy content of the goods in issue are powders,[71] the Tribunal's estimate will reflect that the moisture originates *proportionally* from the dairy as from the non-dairy ingredients. In other words, to the extent that a product is estimated by the CBSA to be comprised of 45 percent dairy content, for example, the Tribunal will estimate that approximately 45 percent of the moisture in the final product (using the moisture estimates of both the CBSA and EMSL) originates from dairy.

88. The Tribunal will then compare the results of the CBSA's adjusted analysis and EMSL's adjusted analysis. To the extent that both adjusted reports arrive at the same conclusion, the Tribunal will be satisfied that the result is a reasonably accurate reflection of the dairy content.

89. The Cheese Buds Emmenthal is a special case because there is no CBSA laboratory analysis for this product. Accordingly, the Tribunal has used the fat and protein percentages found in the product specification sheets instead of those found by EMSL, estimated the moisture content assuming a 50/50 split between the dairy and non-dairy ingredients—which is conservative—and assuming the moisture originates equally from them, and applied a range for the mineral content that is reflective of the range seen in the other goods in issue.

90. After performing the adjustments indicated above, the Tribunal notes that the analysis of the Cheese Buds Bleu is the only scenario in which the adjusted CBSA laboratory analysis and the adjusted EMSL laboratory analysis lead to different results, one placing the dairy content slightly above 50 percent and the other situating the dairy content clearly below this threshold. Of the two, the Tribunal places greater weight on the CBSA's adjusted analysis given that it appeared to contain a more thorough assessment of the various dairy constituents and, for this reason, appears to be more reliable. An alternative option for reconciling these two results would be to take the average, the result of which is that the dairy content remains under 50 percent.

91. For the reasons set out below, and on the basis of the calculations set out in the appendix, the Tribunal finds that the dairy content of the Cheese Buds Bleu is less than 50 percent. Given that there is no question that the goods meet the other requirements of the tariff item, namely that they are preparations and

69. *CDC Foods v. President of the Canada Border Services Agency* (14 December 2016), AP-2015-035 and AP-2016-015 (CITT) [*CDC Foods*].
70. *Transcript of Public Hearing*, 24 August 2017, Vol. 1 at 176.
71. *Ibid.* at 234.

that they contain greater than 10 percent milk solids, the Cheese Buds Bleu are properly classified in tariff item No. 2106.90.95 as "other food preparations, containing, in the dry state, over 10% by weight of milk solids but less than 50% by weight of dairy content".

92. For the other goods in issue, namely the Cheese Buds Cheddar EX, Cheese Buds Emmenthal, Buttermilk Buds and Milk Buds J, the Tribunal finds that the dairy content is more than 50 percent of the total product, based on the calculations set out in the appendix. Accordingly, in the absence of an import permit, these goods are properly classified under tariff item No. 2109.90.94 as "other food preparations containing 50% or more by weight of dairy content, over access commitment".

Cheese Buds Bleu

93. For the reasons discussed below, the Tribunal finds that the Cheese Buds Bleu product contains less than 50 percent dairy content.

94. The ingredients in the Cheese Buds Bleu are maltodextrin, whey solids, natural bleu cheese flavour and salt.[72] Of these ingredients, whey solids and natural bleu cheese flavour are considered dairy products.[73] These dairy products are the only sources of fat, protein and lactose; however, minerals and moisture could come from any or all of these ingredients.[74]

– Adjusted CBSA Percentages

95. For clarity, the adjustments brought by the Tribunal to the CBSA's estimates are in respect of fat and protein, given that the most reliable numbers for these constituents come from the product specification sheets, and to the moisture content, given that the CBSA's report does not distinguish between the moisture that comes from dairy ingredients and the moisture that comes from non-dairy ingredients.

96. As indicated above, the Tribunal finds that the most reliable source for determining the fat content of the Cheese Buds Bleu is the product specification sheet, which lists the fat content as being 11.0 grams +/- 2.0 grams per 100 grams of the product, or the equivalent of 11 percent. The Tribunal notes that this percentage is significantly higher than the percentage found by the CBSA (7 percent), but this difference is unsurprising considering the difficulties in testing for fat in these types of products.

97. Likewise, the most reliable source for the protein content is also the product specification sheet, which lists the level of protein as 10.1 percent. The CBSA's report estimated the protein content of the Cheese Buds Bleu at 11 percent, slightly higher than the values stated in the specification sheet. The protein in this product is derived from enzyme-modified cheese (which appears on the list of ingredients as natural bleu cheese flavour) and whey solids. There are no non-dairy sources of either protein or fat in this product.

98. The CBSA estimated the total lactose in the Cheese Buds Bleu as being 21 percent. The CBSA also estimated that approximately 3 percent of the product consists of minerals originating from dairy.

99. As noted above, a significant defect in the data on record is that it does not elucidate what percentage of the moisture content originates from the dairy ingredients versus the percentage of moisture that is attributable to non-dairy ingredients. As indicated above, and assuming that the moisture is as likely to come from the dairy ingredients as the non-dairy ingredients given that they are dry ingredients (primarily

72. Exhibit AP-2014-023-11B, tab 1, Vol. 1A; Exhibit AP-2014-023-11A, tab 2, Vol. 1A.
73. *Transcript of Public Hearing*, 24 August 2017, Vol. 1 at 91.
74. *Ibid.* at 175-176, 233.

powders), it stands to reason that the proportion of moisture attributable to the dairy ingredients could not be less than the estimated percentage of dairy content.

100. In other words, the CBSA's laboratory reports the total percentage of moisture in the Cheese Buds Bleu to be 6 percent. The CBSA also estimates the amount of non-dairy content for the Cheese Buds Bleu to be 52 percent (being the total of 44 percent complex carbohydrates, 1 percent non-lactose sugar and 7 percent non-dairy minerals). Accordingly, the remaining 48 percent of the Cheese Buds Bleu is comprised of dairy content. Thus, the proportion of moisture attributable to dairy content under the CBSA's analysis should be 48 percent of 6 percent, or 2.88 percent.

101. Accordingly, if one adds the values for fat and protein from the product specification sheets (11 percent fat plus 10.1 percent protein) to the values found by the CBSA for lactose (21 percent) and dairy-derived minerals (3 percent), and then add to that the proportion of moisture likely attributable to dairy content (e.g. 48 percent of a total of 6 percent moisture, as found by the CBSA, resulting in 2.88 percent), one arrives at a total dairy content of 47.98 percent.

– Adjusted EMSL Percentages

102. The same type of adjustments can be made to the laboratory analysis conducted on the Cheese Buds Bleu by EMSL, and the results are similar, but not identical, to the CBSA's adjusted figures.

103. As above, the Tribunal relies on the fat and protein percentages stated in the product specification sheets, namely 11 and 10.1 percent respectively. The Tribunal notes that EMSL's estimate of protein is identical to the CBSA's estimate and very close to the figure provided in the product specification sheets. EMSL's estimate of fat (2.8 percent) is drastically different from that stated in the product specification sheets, but the reason for this is clearly the inadequacies of testing methods when applied to products of this particular nature.

104. EMSL estimates that the Cheese Buds Bleu contains 23 percent lactose, a figure which is close to, but slightly higher than, the CBSA's estimate.

105. An estimate of the total percent of moisture content attributable to dairy can be ascertained using the same process set out above, but relying on the figures provided by EMSL. Specifically, EMSL found that the Cheese Buds Bleu contained 6.9 percent moisture. If the Tribunal relies on the CBSA's conclusion that there is 48 percent dairy content, then 48 percent of 6.9 percent equals 3.3 percent of the final product that is comprised of moisture attributable to dairy content.

106. Accordingly, if the values for fat and protein from the product specification sheets (11 percent fat plus 10.1 percent protein) are added to EMSL's values for lactose (23 percent), the proportion of moisture likely attributable to dairy content (3.3 percent), one arrives at a total dairy content of 47.4 percent.

107. It must be noted that EMSL's laboratory analysis fails to account for any of the minerals that would have originated from the dairy ingredients in this product, which are estimated by the CBSA to comprise 4 percent of the good in issue. This would bring EMSL's adjusted estimate as to the dairy content of the Cheese Buds Bleu to 50.4 percent.

108. The Tribunal notes that this is the only scenario in which the adjusted CBSA laboratory analysis and the adjusted EMSL laboratory analysis lead to different conclusions, one that places the dairy content above 50 percent and the other that places the dairy content below this threshold. Of the two, the Tribunal

places greater weight on the CBSA's adjusted analysis given that it appeared to contain a more thorough assessment of the various dairy constituents and, for this reason, appears to be more reliable. Moreover, if the Tribunal were to consider an alternative approach that takes the combined average of these two estimates, the value also falls below the 50 percent threshold.

– Conclusion

109. Accordingly, the Tribunal finds that the dairy content of the Cheese Buds Bleu is less than 50 percent. Given that there is no question that these particular goods meet the other requirements of the tariff item, namely that they are preparations and that they contain greater than 10 percent milk solids, the Cheese Buds Blue are properly classified in tariff item No. 2106.90.95. The appeal is therefore allowed in respect of the Cheese Buds Bleu.

Cheese Buds Cheddar EX

110. The Tribunal finds that the Cheese Buds Cheddar EX contains more than 50 percent dairy content.

111. The ingredients in the Cheese Buds Cheddar EX are maltodextrin, natural cheddar cheese flavour, whey solids, salt and disodium phosphate.[75] Of these ingredients, whey solids and natural cheddar cheese flavour are considered dairy products.[76] These dairy products are the only sources of fat, protein and lactose; however, minerals and moisture could come from any or all of these ingredients.[77]

– Adjusted CBSA Percentages

112. As indicated above, the Tribunal finds that the most reliable source for determining the fat content of the Cheese Buds Cheddar EX is the product specification sheet, which lists the fat content as being 18.0 g +/- 1.0 g per 100 grams of the product, or the equivalent of 18 percent. The Tribunal notes that this percentage is significantly higher than the percentage found by the CBSA (11 percent).

113. The product specification sheet for the Cheese Buds Cheddar EX, lists the level of protein as 18.84 grams per 100 grams, or 18.84 percent. The CBSA's estimate of the protein content was very close, at 18 percent.

114. The CBSA estimated the total lactose in the Cheese Buds Cheddar EX as being 17 percent. The CBSA also estimated that approximately 2 percent of the product consists of minerals originating from dairy.

115. In terms of the moisture content, the CBSA's laboratory reports the total percentage of moisture in the Cheese Buds Cheddar EX to be 6 percent. The CBSA also estimates the amount of non-dairy content for the Cheese Buds Cheddar EX to be 46 percent (being the total of 39 percent complex carbohydrates, 1 percent non-lactose sugar and 6 percent non-dairy minerals). Accordingly, the remaining 54 percent of the Cheese Buds Cheddar EX is comprised of dairy content. Thus, the proportion of moisture attributable to dairy content under the CBSA's analysis should be 54 percent of 6 percent, or 3.24 percent.

116. Accordingly, if one adds the values for fat and protein from the product specification sheets (18 percent fat plus 18.84 percent protein) to the values found by the CBSA for lactose (17 percent) and

75. Exhibit AP-2014-023-11B, tab 1, Vol. 1A; Exhibit AP-2014-023-11A, tab 2, Vol. 1A.
76. *Transcript of Public Hearing*, 24 August 2017, Vol. 1 at 91-92, 191-192.
77. *Ibid.* at 175-176.

dairy-derived minerals (2 percent), and then add to that the proportion of moisture likely attributable to dairy content (3.24 percent), one arrives at a total dairy content of 59.08 percent.

– Adjusted EMSL Percentages

117. The same type of adjustments can be made to the laboratory analysis conducted on the Cheese Buds Cheddar EX by EMSL, and the results are strikingly similar to the CBSA's adjusted figures.

118. As above, the Tribunal relies on the more accurate fat and protein percentages stated in the product specification sheets, namely 18 and 18.84 percent respectively. The Tribunal notes that EMSL's estimate of protein (16 percent) is similar to the CBSA's but slightly understates this amount. EMSL's estimate of fat (4.1 percent) is drastically different from that stated in the product specification sheets, but the reason for this is clearly the inadequacies of testing methods when applied to products of this particular nature.

119. EMSL estimates that the Cheese Buds Cheddar EX contains 16 percent lactose, a figure which is close to, but slightly lower than, the CBSA's estimate.

120. EMSL estimated the moisture content of the Cheese Buds Cheddar EX as being 7.3 percent. Using the same type of calculation as was performed with respect to the Cheese Buds Bleu and relying on the CBSA's conclusion that there is 54 percent dairy content, then 3.9 percent of this product is comprised of moisture attributable to its dairy content (that being 54 percent of 7.3 percent).

121. Given that EMSL did not test for minerals, the Tribunal will add the amount of minerals found by the CBSA (2 percent) to EMSL's calculations in order to arrive at a more complete assessment of the dairy content.

122. Accordingly, if the values for fat and protein from the product specification sheets (18 percent fat plus 18.84 percent protein) are added to EMSL's values for lactose (16 percent), the proportion of moisture likely attributable to dairy content (3.9 percent) and the CBSA's estimate as to the quantity of dairy-derived minerals (2 percent), one arrives at a total dairy content of 58.74 percent.

123. When the adjusted EMSL estimate is compared to the CBSA's adjusted estimate, the results are strikingly similar and significantly above the 50 percent threshold for dairy content. This is sufficient to satisfy the Tribunal that, on the balance of probabilities, the Cheese Buds Cheddar EX contains more than 50 percent dairy content.

– Conclusion

124. As indicated above, the Tribunal finds that the dairy content of the Cheese Buds Cheddar EX comprises more than 50 percent of the total product. Accordingly, in the absence of an import permit, the Cheese Buds Cheddar EX is properly classified under tariff item No. 2109.90.94 as a food preparation containing 50 percent or more by weight of dairy content, over access commitment.

Cheese Buds Emmenthal

125. The Tribunal finds that the Cheese Buds Emmenthal contains more than 50 percent dairy content.

126. The ingredients in the Cheese Buds Emmenthal are maltodextrin, whey solids, natural cheese flavour, autolyzed yeast extract and salt.[78] Of these ingredients, whey solids and natural cheese flavour are considered dairy products.[79] These dairy products are the only sources of fat, protein and lactose; however, minerals and moisture could come from any or all of these ingredients.[80]

127. As noted above, the Cheese Buds Emmenthal is the only of the five goods in issue that was not analyzed in the CBSA's laboratory, as no sample was provided. Accordingly, the CBSA's decision was based exclusively on the ingredient list provided by Butter Buds, including the proportions set out therein.

128. As explained earlier in these reasons, the proportions stated in the ingredient list are unreliable in the absence of additional information above and beyond what was already before the Tribunal. The Tribunal will not therefore rely on the ingredient list.

129. As a result, the only information that is available to assist the Tribunal in its analysis of the content of the Cheese Buds Emmenthal is the EMSL laboratory report and the product specification sheet.

– Adjusted EMSL Percentages

130. According to the product specification sheet, the Cheese Buds Emmenthal contains 11.5 grams of fat +/- 1.5 grams per 100 grams. In terms of protein content, the specification sheet indicates that the Cheese Buds Emmenthal contains 15.2 grams per 100 grams. This level of protein content is similar to, but slightly higher than, that found by EMSL (13 percent). As with the other products, EMSL's tests significantly underestimated the fat content (4.5 percent). It bears repeating that the Tribunal considers the product specification sheets to be the most accurate indicator of the content of the Cheese Buds Emmenthal.

131. EMSL estimates that lactose makes up 22 percent of the Cheese Buds Emmenthal.

132. In the absence of an estimation of the dairy content by the CBSA, the next best evidence available to determine the proportion of moisture attributable to dairy content is EMSL's own moisture estimate, which assesses the moisture level in the Cheese Buds Emmenthal as constituting 4.6 percent. EMSL does not specify what portion of this moisture originates from dairy versus what portion of moisture originates from the non-dairy ingredients. Absent any evidence to the contrary, the Tribunal will estimate that half of this moisture originates from dairy and the other half originates from the non-dairy ingredients. Although the Tribunal has given the ingredient list no weight because of its inherent problems, the Tribunal notes that, according to the ingredient list and proportions therein, almost 60 percent of the ingredients are considered dairy. Although of limited utility, this perhaps suggests that the Tribunal's estimate of a 50/50 split between the dairy and non-dairy ingredients is likely be a conservative way to establish the moisture proportions. On this basis, the Tribunal estimates that approximately 2.3 percent of the Cheese Buds Emmenthal consists of moisture originating from dairy ingredients (50 percent of 4.6 percent).

133. Combining the amounts for fat and protein contained in the product specification sheets (11.5 percent and 15.2 percent), together with EMSL's estimate for lactose (22 percent) and an estimate for

78. Exhibit AP-2014-023-11B, tab 1, Vol. 1A; Exhibit AP-2014-023-11A, tab 2, Vol. 1A.
79. *Transcript of Public Hearing*, 24 August 2017, Vol. 1 at 93, 191.
80. *Ibid.* at 175-176.

moisture (2.3 percent), the total dairy content, not taking into account any minerals originating from dairy, is calculated by the Tribunal to be 51 percent.

134. On the basis of the Tribunal's understanding of the components of dairy, which necessarily includes some minerals, the Tribunal is of the view that the actual amount of dairy content is likely to be higher than 51 percent. However, with no information before it as to the quantity of minerals in the Cheese Buds Emmenthal, the Tribunal is unable to arrive at a more precise estimate. Suffice it to say, however, that the dairy content of the Cheese Buds Emmenthal cannot reasonably be less than 51 percent and is more likely to be in the range of 53 to 54 percent given that the mineral content for all other goods in issue is in the range of 2-3 percent, and the Tribunal has no reason to believe that this product would be any different in that respect.

– Conclusion

135. As indicated above, the Tribunal finds that the dairy content of the Cheese Buds Emmenthal comprises more than 50 percent of the total product. Accordingly, in the absence of an import permit, the Cheese Buds Emmenthal is properly classified under tariff item No. 2109.90.94 as a food preparation containing 50 percent or more by weight of dairy content, over access commitment.

Buttermilk Buds

136. The Tribunal finds that the Buttermilk Buds contains more than 50 percent dairy content.

137. The ingredients in the Buttermilk Buds are sweet cream buttermilk powder, natural butter flavour, maltodextrin, whole milk powder and cultured buttermilk, citric acid and salt.[81] Of these ingredients, sweet cream buttermilk powder, natural butter flavour, whole milk powder and cultured buttermilk are considered dairy products.[82] These dairy products are the only sources of fat, protein and lactose; however, minerals and moisture could come from any or all of these ingredients.[83]

– Adjusted CBSA Percentages

138. As above, the Tribunal relies on the fat and protein percentages that are found in the product specification sheet for the Buttermilk Buds. Accordingly, a reliable value for the fat content of the Buttermilk Buds is 10.5 +/- 1 gram per 100 grams of product, or 10.5 percent, which is significantly higher than the 4.1 percent found for fat in the CBSA's laboratory analysis. Likewise, a reliable value for protein is 17.4 grams per 100 grams, or 17.4 percent, a value that is slightly lower than that found by the CBSA (19 percent).

139. The CBSA estimated the total lactose in the Buttermilk Buds as being 26 percent. The CBSA also estimated that approximately 2.5 percent of the product consists of minerals originating from dairy.

140. In terms of the moisture content, the CBSA's laboratory reports the total percentage of moisture in the Buttermilk Buds to be 4 percent. The CBSA also estimates the amount of non-dairy content for the Buttermilk Buds to be 44.5 percent (being the total of 41 percent complex carbohydrates, 1 percent non-lactose sugar and 2.5 percent non-dairy minerals). Accordingly, the remaining 55.5 percent of the

81. Exhibit AP-2014-023-11B, tab 1, Vol. 1A; Exhibit AP-2014-023-11A, tab 2, Vol. 1A.
82. *Transcript of Public Hearing*, 24 August 2017, Vol. 1 at 92-93.
83. *Ibid.* at 175-176.

Buttermilk Buds is comprised of dairy content. Thus, the proportion of moisture attributable to dairy content under the CBSA's analysis should be 55.5 percent of 4 percent, or 2.22 percent.

141. Accordingly, if one adds the values for fat and protein from the product specification sheets (10.5 percent fat plus 17.4 percent protein) to the values found by the CBSA for lactose (26 percent) and dairy-derived minerals (2.5 percent), and then add to that the proportion of moisture likely attributable to dairy content (2.22 percent), one arrives at a total dairy content of 58.62 percent.

– Adjusted EMSL Percentages

142. The same type of adjustments can be made to the laboratory analysis conducted on the Buttermilk Buds by EMSL, and the results are consistent with the CBSA's adjusted figures.

143. As above, the Tribunal relies on the fat and protein percentages stated in the product specification sheets, namely 10.5 and 17.4 percent respectively. The Tribunal notes that EMSL's estimate of protein, at 17 percent, is very close to this figure. EMSL's estimate of fat (5.4 percent) is significantly lower, but the reasons for this are well explained.

144. EMSL estimates that the Buttermilk Buds contains 22 percent lactose, a figure which is lower than the CBSA's estimate.

145. EMSL estimated the moisture content of the Buttermilk Buds as being 4.1 percent. Using the same type of calculation as was performed with respect to the other products at issue, and relying on the CBSA's conclusion that there is 55.5 percent dairy content, then 2.28 percent of this product is comprised of moisture that is attributable to dairy content (that being 55.5 percent of 4.1 percent).

146. Given that EMSL did not test for minerals, the Tribunal will add the amount of minerals found by the CBSA (2.5 percent) to EMSL's calculations in order to arrive at a more complete assessment of the dairy content.

147. Accordingly, if the values for fat and protein from the product specification sheets (10.5 percent fat plus 17.4 percent protein) are added to EMSL's values for lactose (22 percent), the proportion of the product likely attributable to moisture from its dairy content (2.28 percent) and the CBSA's estimate as to the quantity of dairy-derived minerals (2.5 percent), one arrives at a total dairy content of 54.68 percent.

148. When the adjusted EMSL estimate is compared to the CBSA's adjusted estimate, the results are quite close and both are significantly above the 50 percent threshold for dairy content.

– Conclusion

149. As indicated above, the Tribunal finds that the dairy content of the Buttermilk Buds comprises more than 50 percent of the total product. Accordingly, in the absence of an import permit, the Buttermilk Buds is properly classified under tariff item No. 2109.90.94 as a food preparation containing 50 percent or more by weight of dairy content, over access commitment.

Milk Buds J

150. The Tribunal finds that the Milk Buds J contains more than 50 percent dairy content.

151. The ingredients in the Milk Buds J are maltodextrin, enzyme-modified cream, whole milk powder and non-fat milk powder.[84] All of these ingredients, with the exception of maltodextrin, are considered dairy products.[85] These dairy products are the only sources of fat, protein and lactose; however, minerals and moisture could also have come from maltodextrin.[86]

– Adjusted CBSA Percentages

152. A reliable value for the fat, coming from the product specification sheets for the Milk Buds J, is 14.5 +/- 2 grams per 100 grams of product, or 14.5 percent. Likewise, a reliable value for protein is 14.1 grams per 100 grams, or 14.1 percent, also as stated in the product specification sheet for the Milk Buds J. Both of these values are incredibly close to the values found for fat (15 percent) and protein (14 percent) by the CBSA's laboratory analysis.

153. The CBSA estimated the total lactose in the Milk Buds J as being 19 percent. The CBSA also estimated that approximately 2 percent of the product consists of minerals originating from dairy.

154. In terms of the moisture content, the CBSA's laboratory reports the total percentage of moisture in the Milk Buds J to be 4 percent. The CBSA also estimates the amount of non-dairy content for the Milk Buds J to be 46 percent (being the total of 43 percent complex carbohydrates, 2 percent non-lactose sugar, and 1 percent non-dairy minerals). Accordingly, the remaining 54 percent of the Milk Buds J is comprised of dairy content. Thus, the proportion of the total product comprised of moisture attributable to dairy content under the CBSA's analysis should be 54 percent of 4 percent, or 2.16 percent.

155. Accordingly, if one adds the values for fat and protein from the product specification sheets (14.5 percent fat plus 14.1 percent protein) to the values found by the CBSA for lactose (19 percent) and dairy-derived minerals (2 percent), and then add to that the proportion of moisture likely attributable to dairy content (2.16 percent), one arrives at a total dairy content of 51.76 percent.

– Adjusted EMSL Percentages

156. The same type of adjustments can be made to the laboratory analysis conducted on the Milk Buds J by EMSL, and the results are very close to the CBSA's adjusted figures.

157. As above, the Tribunal relies on the fat and protein percentages stated in the product specification sheets, namely 14.5 and 14.1 percent respectively. The Tribunal notes that EMSL's estimate of protein, at 14 percent, is almost identical to this figure. EMSL's estimate of fat (8.6 percent) is significantly lower, but the reasons for this are well explained.

158. EMSL estimates that the Milk Buds J contains 20 percent lactose, a figure which is very close to the CBSA's estimate.

84. Exhibit AP-2014-023-11B, tab 1, Vol. 1A; Exhibit AP-2014-023-11A, tab 2, Vol. 1A.
85. *Transcript of Public Hearing*, 24 August 2017, Vol. 1 at 44, 93.
86. *Ibid.* at 175-176.

159. EMSL estimated the moisture content of the Milk Buds J as being 4.6 percent. Using the same type of calculation as was performed with respect to the other products at issue, and relying on the CBSA's conclusion that there is 54 percent dairy content, then 2.48 percent of this product is comprised of moisture that is attributable to dairy content (that being 54 percent of 4.6 percent).

160. Given that EMSL did not test for minerals, the Tribunal will add the amount of minerals found by the CBSA (2 percent) to EMSL's calculations in order to arrive at a more complete assessment of the dairy content.

161. Accordingly, if the values for fat and protein from the product specification sheets (14.5 percent fat plus 14.1 percent protein) are added to EMSL's values for lactose (20 percent), the proportion of the product likely attributable to moisture from its dairy content (2.48 percent) and the CBSA's estimate as to the quantity of dairy-derived minerals (2 percent), one arrives at a total dairy content of 53.08 percent.

162. When the adjusted EMSL estimate is compared to the CBSA's adjusted estimate, the results are quite close and both are above the 50 percent threshold for dairy content.

– Conclusion

163. As indicated above, the Tribunal finds that the dairy content of the Milk Buds J comprises more than 50 percent of the total product. Accordingly, in the absence of an import permit, the Milk Buds J is properly classified under tariff item No. 2109.90.94 as a food preparation containing 50 percent or more by weight of dairy content, over access commitment.

DECISION

164. In light of the foregoing, the appeal in respect of the Cheese Buds Bleu is allowed, and the appeals in respect of the Cheese Buds Cheddar EX, Buttermilk Buds, Milk Buds J and Cheese Buds Emmenthal are dismissed.

Jean Bédard, Q.C.
Jean Bédard, Q.C.
Presiding Member

APPENDIX

Product # 1: Cheese Buds Bleu

CBSA Laboratory Analysis	EMSL Report
Dairy Content: - Fat: 11% (from product specification sheet) - Protein: 10.1% (from product specification sheet) - Lactose: 21% - Minerals: 3% from dairy - Moisture: 2.88% (being 48% of 6%)	Dairy Content: - Fat: 11% (from product specification sheet) - Protein: 10.1% (from product specification sheet) - Lactose: 23% - Minerals: 3% (from CBSA estimate) - Moisture: 3.3 % (being 48% of 6.9%)
Total: 47.98%	Total: 50.4%
Below 50%	Above 50%

Product # 2: Cheese Buds Cheddar EX

CBSA Laboratory Analysis	EMSL Report
Dairy Content: - Fat: 18% (from product specification sheet) - Protein: 18.84% (from product specification sheet) - Lactose: 17% - Minerals: 2% from dairy - Moisture: 3.24% (being 54% of 6%)	Dairy Content: - Fat: 18% (from product specification sheet) - Protein: 18.84% (from product specification sheet) - Lactose: 16% - Minerals: 2% (from CBSA estimate) - Moisture: 3.9% (being 54% of 7.3%)
Total: 59.08%	Total: 58.74%
Above 50%	Above 50%

Product # 3: Cheese Buds Emmenthal

CBSA Laboratory Analysis	EMSL Report
The CBSA's laboratory was not provided with a sample of this product for analysis.	Dairy Content: - Fat: 11.5% (from product specification sheet) - Protein: 15.2% (from product specification sheet) - Lactose: 22% - Minerals: 2-3% (range of other products as estimated by CBSA) - Moisture: 2.3 % (being 50% of 4.6%)
	Total: 53-54%
	Above 50%

Product # 4: Buttermilk Buds

CBSA Laboratory Analysis	EMSL Report
Dairy Content: - Fat: 10.5% (from product specification sheet)	Dairy Content: - Fat: 10.5% (from product specification sheet)

- Protein: 17.4% (from product specification sheet) - Lactose: 26% - Minerals: 2.5% from dairy - Moisture: 2.22% (being 55.5% of 4%)	- Protein: 17.4% (from product specification sheet) - Lactose: 22% - Minerals: 2.5% (from CBSA estimate) - Moisture: 2.28% (being 55.5% of 4.1%)
Total: 58.62%	Total: 54.68%
Above 50%	Above 50%

Product # 5: Milk Buds J

CBSA Laboratory Analysis	EMSL Report
Dairy Content: - Fat: 14.5% (from product specification sheet) - Protein: 14.1% (from product specification sheet) - Lactose: 19% - Minerals: 2% from dairy - Moisture: 2.16% (being 54% of 4%)	Dairy Content: - Fat: 14.5% (from product specification sheet) - Protein: 14.1% (from product specification sheet) - Lactose: 20% - Minerals: 2% (from CBSA estimate) - Moisture: 2.48% (being 54% of 4.6%)
Total: 51.76%	Total: 53.08%
Above 50%	Above 50%