



U.S. Customs and
Border Protection

HQ H298338

CLA-2 OT:RR:CTF:FTM H298338 TSM

CATEGORY: Classification

TARIFF NO.: 0813.50.00

Ms. Jan Forest
J. Forest Consulting
5604 Chevy Chase Parkway, NW
Washington, DC 20015

RE: Modification of NY N296311 and NY N293259; Tariff classification and status under the African Growth and Opportunity Act of fruit products from Ghana

Dear Ms. Forest:

This is in reference to New York Ruling Letter (NY) N296311, issued to J. Forest Consulting on May 18, 2018, concerning the tariff classification of certain fruit products containing pineapple and mango with lime juice, and pineapple and banana with lime juice. In that ruling, U.S. Customs and Border Protection ("CBP") classified the subject merchandise under subheading 2008.97.90, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Mixtures: Other." The fruit products at issue, classified under subheading 2008.97.90, HTSUS, were determined not to be entitled to duty-free treatment under the African Growth and Opportunity ACT (AGOA).

This is also in reference to NY N293259, issued to J. Forest Consulting on February 7, 2018. In that ruling, CBP classified the fruit products containing pineapple and mango with lime juice, and pineapple and banana with lime juice under subheading 2008.97.10, HTSUS, which provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Mixtures: In airtight

containers and not containing apricots, citrus fruits, peaches or pears.” The fruit products at issue, classified under subheading 2008.97.10, HTSUS, were determined to be entitled to duty free treatment under the AGOA.

Upon additional review, we have found NY N296311 to be incorrect with respect to the tariff classification and status under the AGOA of the fruit products containing pineapple/mango with lime juice and pineapple/banana with lime juice. We have also found NY N293259 to be incorrect with regard to the tariff classification of the fruit products containing pineapple/mango with lime juice and pineapple/banana with lime juice. The tariff classification of the other products at issue in those rulings, as well as their status under the AGOA, are not at issue here. For the reasons set forth below, we hereby modify NY N296311 with respect to the tariff classification and status under the AGOA of the fruit products containing pineapple/mango with lime juice and pineapple/banana with lime juice. We also modify NY N293259 with respect to the tariff classification of the fruit products containing pineapple/mango with lime juice and pineapple/banana with lime juice.

FACTS:

NY N296311, describes the subject merchandise as follows:

The pineapple/mango with lime juice products are said to be 49 percent pineapple, 49 percent mango, and 2 percent lime juice. The pineapple/banana with lime juice products are said to be 49 percent pineapple, 49 percent banana, and 2 percent lime juice.

The fruit products will be imported in the shape of round balls for retail sale in airtight printed packaging weighing 2.5 grams, net or 5 grams, net, depending on the customer request. Some of the 2.5 gram, and 5 gram balls will be bulk packed in an airtight bag in Ghana and later coated with chocolate in the U.S.

The product ingredients are locally grown in Ghana. The manufacturing process for all of the products consists of washing, peeling, cutting; drying the fruit in a drying tunnel at temperatures between 60 and 70 degrees Celsius for approximately 14 to 18 hours; mixing, grinding and pressing the fruit into round balls that are each individually wrapped in cellophane.

The applicable subheading for the pineapple/mango with lime juice products, and the pineapple/banana with lime juice products will be 2008.97.9094, HTSUS, which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included . . . other, including mixtures other than those of subheading 2008.19 . . . mixtures . . . other . . . other . . . other.

* * *

The fruit products classifiable under subheading 2008.97.9094, HTSUS, are not entitled to duty-free treatment under AGOA.

NY N293259, describes the subject merchandise as follows:

The pineapple/mango with lime juice products are said to be 49 percent pineapple, 49 percent mango, and 2 percent lime juice. The pineapple/banana with lime juice products are said to be 49 percent pineapple, 49 percent banana, and 2 percent lime juice.

The product ingredients are locally grown in Ghana. The manufacturing process for all of the products consists of washing, peeling, cutting; drying the fruit in a drying tunnel at temperatures between 60 and 70 degrees Celsius for approximately 14 to 18 hours; mixing, grinding and pressing the fruit into rectangles and squares that are each individually wrapped in cellophane.

The applicable subheading for the pineapple/mango with lime juice, and pineapple/banana with lime juice products will be 2008.97.1040, HTSUS, which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included . . . other, including mixtures other than those of subheading 2008.19 . . . mixtures . . . in airtight containers and not containing apricots, citrus fruits, peaches or pears . . . other.

* * *

Based on the information submitted, the fruit products would be "products of" Ghana, and they would satisfy the 35 percent value-content requirement for AGOA purposes. Accordingly, the subject goods, classifiable under subheading 2008.97.1040, HTSUS, are products of Ghana, and will be entitled to duty-free treatment under the African Growth and Opportunity Act (AGOA/"D"), upon satisfaction of the above-described requirements and compliance with all applicable regulations.

ISSUE:

What is the tariff classification of the subject fruit products containing pineapple/mango with lime juice, and pineapple/banana with lime juice?

LAW AND ANALYSIS:

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined

according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

General Note 16, HTSUS, provides in relevant parts as follows:

Products of Countries Designated as Beneficiary Countries under the African Growth and Opportunity Act (AGOA).

- (a) The following sub-Saharan African countries, having been designated as beneficiary sub-Saharan African countries for purposes of the African Growth and Opportunity Act (AGOA), have met the requirements of the AGOA and, therefore, are to be afforded the tariff treatment provided in this note, shall be treated as beneficiary sub-Saharan African countries for purposes of this note:

* * *

Republic of Ghana

* * *

- (b) Articles provided for in a provision for which a rate of duty appears in the "Special" subcolumn followed by the symbol "D" in chapters 1 through 97 of the tariff schedule are those designated by the President to be eligible articles pursuant to section 111(a) of the AGOA and section 506A of the Trade Act of 1974 ("the 1974 Act"). Whenever an eligible article which is a good of a designated beneficiary sub-Saharan African country enumerated in subdivision (a) of this note is imported directly into the customs territory of the United States, such article shall be entitled to receive the duty-free treatment provided for herein, without regard to the limitations on preferential treatment of eligible articles in section 503(c)(2)(A) of the 1974 Act, provided that such good --

- (i) is the growth, product or manufacture of a designated beneficiary sub-Saharan African country enumerated in subdivision (a) of this note, and

- (ii) the sum of --

- (A) the cost or value of the materials produced in one or more designated beneficiary sub-Saharan African countries, plus

(B) the direct costs of processing operations performed in the designated beneficiary sub-Saharan African country or any two or more designated beneficiary sub-Saharan African countries that are members of the same association of countries which is treated as one country under section 507(a)2 of the 1974 Act, is not less than 35 per centum of the appraised value of such article at the time it is entered. If the cost or value of the materials produced in the customs territory of the United States is included with respect to an eligible article, an amount not to exceed 15 per centum of the appraised value of such article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in clause (ii)(B) above. No article or material of a designated beneficiary sub-Saharan African country enumerated in subdivision (a) of this note and receiving the tariff treatment specified in this note shall be eligible for such duty-free treatment by virtue of having merely undergone simple combining or packing operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

* * *

In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

* * *

The General EN to Chapter 8 provides, in pertinent part, the following:

This Chapter covers fruit, nuts and peel of citrus fruit or melons (including watermelons), generally intended for human consumption (whether as presented or after processing). They may be fresh (including chilled), frozen (whether or not previously cooked by steaming or boiling in water or containing added sweetening matter) or dried (including dehydrated, evaporated or freeze-dried); **provided** they are unsuitable for immediate consumption in that state, they may

be provisionally preserved (e.g., by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions).

* * *

Fruit and nuts of this Chapter may be whole, sliced, chopped, shredded, stoned, pulped, grated, peeled or shelled.

It should be noted that homogenisation, by itself, does not qualify a product of this Chapter for classification as a preparation of Chapter 20.

* * *

The EN to heading 08.13 provides in relevant part as follows:

(A) Dried fruit.

This heading includes dried fruits which when fresh are classified in headings 08.07 to 08.10. They are prepared either by direct drying in the sun or by industrial processes (e.g., tunnel-drying).

The fruits most commonly processed in this way are apricots, prunes, apples, peaches and pears. Dried apples and pears are used for the manufacture of cider or perry as well as for culinary purposes. With the exception of prunes, the fruits are usually halved or sliced, and stoned, cored or seeded. They may also be presented (particularly in the case of apricots and prunes) in the form of slices or blocks of pulp, dried or evaporated.

The heading covers tamarind pods. It also includes tamarind pulp, without sugar or other substances added and not otherwise processed, with or without seeds, strings or pieces of the endocarp.

(B) Mixtures of nuts or dried fruits.

The heading also covers all mixtures of nuts or dried fruits of this Chapter (including mixtures of nuts or dried fruits falling in the same heading). It therefore includes mixtures of fresh or dried nuts, mixtures of dried fruits (excluding nuts) and mixtures of fresh or dried nuts and dried fruits. These mixtures are often presented in boxes, cellulose packets, etc.

Certain dried fruits or mixtures of dried fruits of this heading may be put up (e.g., in sachets) for making herbal infusions or herbal "teas". These products remain classified here.

However, the heading **excludes** such products consisting of a mixture of one or more of the dried fruits of this heading with plants or parts of plants of other Chapters or with other substances such as one or more plant extracts (generally heading **21.06**).

* * *

The HTSUS provisions under consideration are as follows:

0813 Fruit, dried, other than that of headings 0801 to 0806; mixtures of nuts or dried fruits of this chapter:

0813.50.00 Mixtures of nuts or dried fruits of this chapter

* * *

2008 Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:

* * *

Other, including mixtures other than those of subheading 2008.19:

* * *

2008.97 Mixtures:

2008.97.10 In airtight containers and not containing apricots, citrus fruits, peaches or pears

* * *

2008.97.90 Other

* * *

Upon review, we noted that the pineapple/mango and pineapple/banana fruit products at issue are dried in a drying tunnel at temperatures between 60 and 70 degrees Celsius for approximately 14 to 18 hours. Online research shows that typical fruit drying temperatures range between 140 and 158 degrees Fahrenheit (corresponding to 60 – 70 degrees Celsius), and typical

fruit drying times range between 6 and 36 hours.¹ Accordingly, we find that the fruit products at issue are dried fruit products of heading 0813, HTSUS, which provides for "Fruit, dried, other than that of headings 0801 to 0806; mixtures of nuts or dried fruits of this chapter." We note that although in NY N296311 and NY N293259 these products were classified under heading 2008, HTSUS, as "products otherwise prepared or preserved," upon additional review we find that the record does not support a conclusion that they have been "otherwise prepared or preserved" beyond drying. See also NY I81943, dated June 7, 2002 (classifying fruit products containing apricot, blackberry, blueberry, passion fruit, raspberry, strawberry, cherry and apple, dried at a temperature of 55 degrees Celsius for 12 hours, under heading 0813, HTSUS).

Based on the foregoing, we conclude that the pineapple/mango and pineapple/banana fruit products at issue are classified in heading 0813, HTSUS, and specifically in subheading 0813.50.00, HTSUS, which provides for "Fruit, dried, other than that of headings 0801 to 0806; mixtures of nuts or dried fruits of this chapter: Mixtures of nuts or dried fruits of this chapter."

We next consider whether the products at issue are entitled to duty-free treatment under the AGOA. General Note 16(a), referenced above, lists the sub-Saharan African countries which have been designated as beneficiaries for purposes of the AGOA. One of the designated beneficiaries is the Republic of Ghana. Further, General Note 16(b) states in relevant part that articles provided for in a provision for which a rate of duty appears in the "Special" subcolumn followed by the symbol "D" are eligible for preferential treatment, provided that those articles are: (i) the growth, product or manufacture of a designated beneficiary sub-Saharan African country enumerated in subdivision (a) of note 16, and (ii) the sum of - (A) the cost or value of the materials produced in one or more designated beneficiary Sub-Saharan African countries, plus (B) the direct costs of processing operations performed in the designated beneficiary sub-Saharan African country, is not less than 35 per centum of the appraised value of such article at the time it is entered.

The pineapple/mango and pineapple/banana fruit products at issue are classified under subheading 0813.50.00, HTSUS, which is a provision for which a rate of duty of "Free" appears in the "Special" subcolumn followed by the symbol "D." Further, based on the information provided, we find that (1) the fruit products are produced in Ghana and (2) approximately 69.4 – 71.2 percent of the total cost of production is attributed to the cost or value of the materials produced in Ghana, and approximately 19.9 - 21.2 percent of the total cost of production is attributed to the direct costs of processing operations performed in Ghana. Therefore, the sum of the cost or value of materials produced in Ghana, plus the direct costs of processing operations performed in Ghana, is not less than 35 percent of the appraised value of the subject fruit products at the time they are entered.

Based on the foregoing, we conclude that the pineapple/mango and pineapple/banana fruit products at issue, classified under subheading 0813.50.00, HTSUS, are products of Ghana and will be entitled to duty-free treatment under the African Growth and Opportunity Act (AGOA/"D"), upon satisfaction of the above-described requirements and compliance with all applicable regulations.

¹ <http://www.cals.uidaho.edu/edcomm/pdf/pnw/pnw0397.pdf>

HOLDING:

By application of GRI 1, we find that the pineapple/mango and pineapple/banana fruit products at issue are classified in heading 0813, HTSUS. Specifically, they are classified in subheading 0813.50.00, HTSUS, which provides for "Fruit, dried, other than that of headings 0801 to 0806; mixtures of nuts or dried fruits of this chapter: Mixtures of nuts or dried fruits of this chapter." The 2018 column one, general rate of duty is 14%. The pineapple/mango and pineapple/banana fruit products at issue will be entitled to duty-free entry upon satisfaction of the relevant AGOA requirements.

EFFECT ON OTHER RULINGS:

NY N296311, dated May 18, 2018, is hereby MODIFIED with regard to the tariff classification and preferential treatment under the AGOA of fruit products containing pineapple and mango with lime juice, and pineapple and banana with lime juice. NY N293259, dated February 7, 2018, is hereby MODIFIED with regard to the tariff classification of fruit products containing pineapple and mango with lime juice, and pineapple and banana with lime juice.

Sincerely,

Myles B. Harmon, Director
Commercial and Trade Facilitation Division

U.S. Customs and Border Protection

PROPOSED MODIFICATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION AND STATUS UNDER THE AFRICAN GROWTH AND OPPORTUNITY ACT OF FRUIT PRODUCTS CONTAINING PINEAPPLE AND MANGO WITH LIME JUICE AND PINEAPPLE AND BANANA WITH LIME JUICE

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

ACTION: Notice of proposed modification of two ruling letters and revocation of treatment relating to the tariff classification of fruit products containing pineapple and mango with lime juice, and pineapple and banana with lime juice.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") intends to modify two ruling letters concerning tariff classification under the Harmonized Tariff Schedule of the United States ("HTSUS") and status under the African Growth and Opportunity Act ("AGOA"), of fruit products containing pineapple and mango with lime juice and pineapple and banana with lime juice. Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before June 14, 2019.

ADDRESS: Written comments are to be addressed to 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. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Tatiana Salnik Matherne, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0351.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to modify two ruling letters pertaining to the tariff classification and status under the AGOA of fruit products containing pineapple and mango with lime juice, and pineapple and banana with lime juice. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N296311, dated May 18, 2018 (Attachment A); and NY N293259, dated February 7, 2018 (Attachment B), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N296311, dated May 18, 2018, CBP classified fruit products containing pineapple and mango with lime juice and pineapple and banana with lime juice, in heading 2008, HTSUS, and specifically in subheading 2008.97.90, HTSUS, providing for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Mixtures: Other." Further, in NY N296311 CBP determined that the fruit products at issue are not entitled to duty-free treatment under the AGOA.

In NY N293259, dated February 7, 2018, CBP classified fruit products containing pineapple and mango with lime juice, and pineapple and banana with lime juice in heading 2008, specifically in subheading 2008.97.10, HTSUS, providing for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Mixtures: In airtight containers and not containing apricots, citrus fruits, peaches or pears."

CBP has reviewed NY N296311 and NY N293259, and has determined these ruling letters to be in error. It is now CBP's position that the fruit products at issue are properly classified in subheading 0813.50.00, HTSUS, which provides for "Fruit, dried, other than that of headings 0801 to 0806; mixtures of nuts or dried fruits of this chapter: Mixtures of nuts or dried fruits of this chapter." Further, it is now CBP's position that the fruit products at issue are entitled to duty-free treatment under the AGOA.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N293259 and NY N296311, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H298338, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: April 19, 2019

YULIYA A. GULIS
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments