

N245956

September 17, 2013

CLA-2-11:OT:RR:NC:N2:228

CATEGORY: Classification

TARIFF NO.: 1106.30.4000

Mr. Stephan Broburg
The Tryline Group LLC.
DBA Baobab Foods
365 118th Ave. SE Suite 100
Bellevue, WA 98005

RE: The tariff classification of Baobab Fruit Powder from South Africa

Dear Mr. Broburg:

In your letter dated September 4, 2013, you requested a tariff classification.

Descriptive literature, advertisement, certificate of analysis, and technical data were submitted with your letter. Baobab Fruit Powder is said to be a free flowing, cream-colored, fine powder prepared by chopping the fruit pods in half, mechanically separating the naturally dried fruit pulp from any unwanted fibrous material, milling, sieving the fruit pulp through three sieves into a fine powder, and packed into heavy foil airtight bags. More than 95 percent of powder passes through a sieve with an aperture of less than 125 microns. It will be used as an ingredient in various food products.

In your letter, you suggested the baobab fruit powder would be classified under subheading 0813.40.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other dried fruit. We disagree. Based on the manufacturing processes, the product will be classified elsewhere.

The applicable subheading for the baobab fruit powder will be 1106.30.4000, HTSUS, which provides for flour, meal and powder ... of the products of chapter 8 ... other. The rate of duty will be 9.6 percent ad valorem.

In your letter, you stated that baobab fruit came from Malawi and Zimbabwe, and was processed in South Africa. You believed that the product qualified for the preferential treatment under the African Growth and Opportunity Act (AGOA).

General Note 16(b), HTSUS, sets forth the criteria for determining whether a good is an eligible article under the AGOA. General Note 16(b), HTSUS, states, in pertinent part, that

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”).

Applying the guidance set forth in General Note 16(b), HTSUS, we note that articles classified in subheading 1106.30.4000 do not receive the special "D" rate of duty in the "Special" subcolumn. Therefore, the subject product is not eligible for the preferential treatment under AGOA without needing to further examine whether additional requirements of the program are met.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Bruce N. Hadley, Jr. at (646) 733-3029.

Sincerely,

Myles B. Harmon
Acting Director
National Commodity Specialist Division