

N248848

January 10, 2014

CLA-2-16:OT:RR:NC:N2:231

CATEGORY: Classification

TARIFF NO.: 1604.14.10; 1604.14.22; 1604.14.30

Mr. Abou Fall
Lighthouse Consulting
Cite Africa, Ouakam Pharmacie, 1er Etage
Dakar
Senegal

RE: The tariff classification and AGOA eligibility of canned and pouched tuna from Senegal.

Dear Mr. Fall:

In your letter dated December 20, 2013, you requested a tariff classification and AGOA-eligibility ruling on behalf of your client, Société de Conserverie en Afrique (SCASA S.A.).

You have outlined a scenario in which whole frozen tunas will be purchased from fishing vessels flagged in both AGOA- and non-AGOA-eligible countries. (“AGOA” refers to the African Growth and Opportunity Act.) For the purposes of this ruling it is assumed that the subject fish will be within the genus *Thunnus* or of the species *Katsuwonus pelamis*. In Senegal, the whole fish will be processed by SCASA S.A. into canned or pouched chunk tuna (in oil or water), which will then be exported to the United States. You seek a determination as to the tariff classification of the canned/pouched tuna and whether it will be eligible for duty-free treatment under AGOA. We note that Senegal is listed as a “Beneficiary Sub-Saharan African Country” (“BSAC”) for purposes of AGOA (HTSUS indicator “D”) in General Note 16 of the HTSUS.

In Senegal, the tunas will be thawed and cooked, after which the heads, tails, fins, viscera and skin will be removed. Red meat and bones will then be removed so as to leave loins, which will then be cut into smaller fillets. The fillets will subsequently be made into chunk-style tuna by a “chopper.” Mechanical fillers will then place specific portions of the chunk-style tuna into cans or pouches, after which oil, salt or water will be added. The filled containers will then be hermetically sealed, washed, and retorted in autoclaves.

The applicable subheading for the above-described canned or pouched tuna, when packed in oil or in a medium containing oil, will be 1604.14.10, Harmonized Tariff Schedule of the United States (HTSUS), which provides for prepared or preserved fish ... fish, whole or in pieces, but not minced: tunas, skipjack and bonito (*Sarda* spp.): tunas and skipjack: in airtight containers: in oil. The general rate of duty will be 35% ad valorem.

The applicable subheading for the tuna, when not packed in oil or not packed in a medium containing oil, and entered under quota, will be 1604.14.22, HTSUS, which provides for prepared or preserved fish ... fish, whole or in pieces, but not minced: tunas, skipjack and bonito (Sarda spp.): tunas and skipjack: in airtight containers: not in oil: in containers weighing with their contents not over 7 kg each, and not the product of any insular possession of the United States, for an aggregate quantity entered in any calendar year not to exceed 4.8 percent of apparent United States consumption of tuna in airtight containers during the immediately preceding year, as reported by the National Marine Fisheries Service. The general rate of duty will be 6% ad valorem.

The applicable subheading for the tuna, when not packed in oil or not packed in a medium containing oil, and entered after the tariff rate quota for subheading 1604.14.22 has filled, will be 1604.14.30, HTSUS, which provides for prepared or preserved fish ... fish, whole or in pieces, but not minced: tunas, skipjack and bonito (Sarda spp.): tunas and skipjack: in airtight containers: not in oil: other. The general rate of duty will be 12.5% ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

In order to qualify for duty-free treatment under AGOA, merchandise imported directly into the customs territory of the United States must:

- (i) be the growth, product or manufacture of a designated beneficiary sub-Saharan African country, and
- (ii) the sum of the cost or value of the materials produced in one or more designated beneficiary Sub-Saharan African countries, plus the direct costs of processing operations performed in the designated beneficiary sub-Saharan African country or any two or more designated beneficiary sub-Saharan 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 percent of the appraised value of the merchandise at the time it is entered.

Based on the information submitted, the finished goods (canned/pouched tuna) would be “products of” Senegal, thus meeting part (i) of the above requirements. Satisfaction of part (ii) would of course depend on actual cost figures in particular instances. Please be advised, however, that in instances where the tunas are caught by a non-BSAC-flagged vessel, the value of the raw tuna cannot be applied toward satisfaction of the 35 percent value-content requirement because a “double substantial transformation” does not occur in Senegal. See Headquarters Ruling Letter 562708, dated June 13, 2003, for a detailed explanation of these factors.

Accordingly, the subject goods, classifiable under subheadings 1604.14.10, 1604.14.22 and 1604.14.30, HTSUS, which are products of Senegal, 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. Please be aware that the administration of AGOA is subject to modification, which may affect the status of your

transaction at the time of entry for consumption or withdrawal from warehouse. Public notification of any changes generally would be published in the Federal Register, and may also be reflected on our Web site at www.cbp.gov.

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 Nathan Rosenstein at (646) 733-3030.

Sincerely,

Gwenn Klein Kirschner
Acting Director
National Commodity Specialist Division