

N255853

August 18, 2014

CLA-2-20:OT:RR:NC:N2:228

CATEGORY: Classification

TARIFF NO.: 2008.19.9090

Ms. Shelby Zitelman
Soom Foods LLC
428 E. Erie Ave.
Philadelphia, PA 19134

RE: The tariff classification of tahini from Ethiopia

Dear Ms. Zitelman:

In your letters dated July 10 and July 20, 2014 you requested a tariff classification ruling.

An ingredients breakdown, a description of the manufacturing process, and a sample of the product along with a copy of the label accompanied your latter letter. The sample was examined and disposed of. Sesame seed butter, also known as tahini, is a tan colored, free-flowing article with a consistency of a syrup. The product is made from 100 percent Ethiopian grown white humera sesame seeds hulled, roasted, and ground to extract the oil and the “meat” into the creamy, homogenous form represented by the sample. The product will be imported in containers holding 482 gr. (17 oz.), net weight.

The applicable subheading for the tahini will be 2008.19.9090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved ... nuts, peanuts (ground-nuts) and other seeds ... other ... other ...other ... other. The rate of duty will be 17.9 percent 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 the World Wide Web at <http://www.usitc.gov/tata/hts/>.

Articles classifiable under subheading 2008.19.9090, HTSUS, which are products of Ethiopia may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP is subject to modification and periodic suspension which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check our Web site at www.cbp.gov and search for the term “GSP”.

In your July 10, 2014 letter, you stated that you believed that you should be able to import the sesame seed butter under HS code 2008.19.9090 duty free under AGOA.

General Note 16(b), HTSUS, sets forth the criteria for determining whether a good is an eligible article under the African Growth and Opportunity Act (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 2008.19.9090 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 although the product is wholly produced in Ethiopia.

However, due to the expiration of the GSP on July 31, 2013, the Office of the United States Trade Representative and Customs & Border Protection (CBP) have provided specific guidance and instructions for processing imports of GSP-eligible products from AGOA beneficiary countries.

“Imports of GSP-eligible imports from beneficiary countries of the African Growth and Opportunity Act (AGOA) will continue to be eligible for duty-free entry, notwithstanding the lapse in GSP authorization, pursuant to the provisions of the statute governing the AGOA program.” See <http://www.ustr.gov/sites/default/files/03112014-FAQs-on-GSP-Expiration.pdf>.

“To receive AGOA preference on a tariff item with the SPI “A” or “A+” in the “Special” column of the HTSUS (and thus no “D”), the importer will file the entry summary with the SPI “A” but without duty.” See http://apps.cbp.gov/csms/viewmssg.asp?Recid=19484&page=&srch_argv=gsp&srctype=&btype=&sortby=&sby.

In this instance, the tahini is a product of Ethiopia, which is an AGOA beneficiary country. It is classified in subheading 2008.19.9090 with the SPI “A” in the “Special” column of the HTSUS. Based on the above, the product may continue to be eligible for duty-free treatment upon compliance with all applicable regulations.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides, in general, that all articles of foreign origin imported into the United States must be legibly, indelibly, conspicuously, and permanently marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. The implementing regulations to 19 U.S.C. 1304 are set forth in Part 134, Customs Regulations (19 CFR Part 134). The sample you submitted does not appear to be properly marked with the country of origin. You may wish to discuss the matter of country of origin marking with the Customs Import Specialist at the proposed port of entry.

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 [ww.fda.gov/oc/bioterrorism/bioact.html](http://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 bruce.hadleyjr@cbp.dhs.gov.

Sincerely,

Gwenn Klein Kirschner
Director
National Commodity Specialist Division