

N296323

May 9, 2018

CLA-2-22:OT:RR:NC:N2:232

CATEGORY: Classification

TARIFF NO.: 2202.10.0040

Gladys Mawoneke
Breva Beverages LTD
11 Mobile Road, Airport Industria
Cape Town 8000
South Africa

RE: The tariff classification, marking and status under the African Growth and Opportunity Act (AGOA) of "BREVA Fine Malt Beverage" from South Africa

Dear Ms. Mawoneke:

In your letter dated April 22, 2018 you requested a ruling concerning the tariff classification and marking of "BREVA Fine Malt Beverage". Ingredients breakdown, manufacturing flowchart, and photographs were provided.

The subject merchandise, "BREVA Fine Malt Beverage", is a non-alcoholic malt-based and fruit-flavored beverage. It is available in four flavors: apple, passion fruit, peach and pineapple. The product consists of 86 percent carbonated water, 10 percent cane sugar, 4 percent barley malt extract, and less than 1 percent citric acid, potassium sorbate, flavoring, sodium benzoate and stabilizer. All of the items, except the barley malt extract, originate in South Africa. The barley malt extract is a product of Germany. The soft drink can be consumed on its own or can be mixed with spirits. The beverage will be packaged in 330ml glass bottles. The product will be sold to retail outlets. Retailers can sell single bottles, packs or wholesale the cases to the consumers.

The applicable subheading for the "BREVA Fine Malt Beverage" will be 2202.10.0040, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored, and other nonalcoholic beverages, not including fruit or vegetable juices of heading 2009: Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored: Carbonated soft drinks: Other. The general rate of duty will be 0.2 cents per liter.

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 <https://hts.usitc.gov/current>.

In your letter you request the application of a trade program or agreement on your product. Articles classifiable under subheading 2202.10.0040, HTSUS, which are products of South Africa may be entitled to duty free 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 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”).

In order to qualify for duty-free treatment under the AGOA, merchandise imported directly into the customs territory of the United States must be: (i) 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 percent of the appraised value of such article at the time it is entered.

With regard to the value content, you provided the following information for the “BREVA Fine Malt Beverage”: approximately 96 percent of the total cost of production is attributed to the cost or value of the materials produced in South Africa, and the 100 percent of the total cost of production is done in South Africa. Therefore, the sum of the cost of materials produced in South Africa, plus the direct costs of processing operations performed in South Africa is more than 35 percent of the appraised value of the articles at the time they are entered.

Based on the information submitted, the “BREVA Fine Malt Beverage” is a “product of” South Africa, and it would satisfy the 35 percent value content requirement for AGOA purposes. Accordingly, the subject goods, classifiable under subheadings 2202.10.0040, HTSUS, are products of South Africa, 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.

Please be aware that the administration of AGOA 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. 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.

In your letter you also requested a determination on the marking of the product. You did not submit a sample nor did you pose a specific question. However, please note that when the item is imported into the United States, the product label and all information delivered on it must be written in the English language according to Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304)

which provides in general that all articles of foreign origin imported into the United States must be legibly, 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 (CFR Part 134). Additionally, please refer to Title 21 CFR, subchapter B for the Food & Drug Administration Food Labeling Guidance & Regulatory Information.

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 telephone number (301) 575-0156, or at the website 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 Frank Troise at frank.l.troise.cbp.dhs.gov.

Sincerely,

Steven A. Mack
Director
National Commodity Specialist Division