

N322087

October 28, 2021

CLA-2-22:OT:RR:NC:N2:N232

CATEGORY: Classification; Marking; Trade Program

TARIFF NO: 2208.90.8000

Don Kirk Klatt
Native Spirits LLC
306 N Knoll
Rochelle, IL 61068
Dear Mr. Klatt:

RE: The tariff classification, marking and status under the African Growth and Opportunity Act (AGOA) of Distilled Spirits from Togo

Dear Mr. Klatt:

This is in response to your letter dated September 20, 2021, requesting a ruling on the classification, marking and eligibility of the AGOA on Distilled Spirits.

The subject merchandise is described as distilled spirits made from fermented palm tree sap. The palm tree sap is extracted from palm trees (grown in Togo), fermented with natural yeast, distilled and heated to produce the Distilled Spirits which has an alcohol by volume content of approximately 45 to 50 percent. The finished product will be packaged in bulk form in 1,000 liter plastic totes ready for export to the United States. You state that no other ingredients are added to the distilled palm spirit during distillation, and all manufacturing is done in Togo.

Classification:

The applicable subheading for the Palm Spirit will be 2208.90.8000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages: Other: Other: Other. The general rate of duty will be 21.1 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>.

Imports under this subheading may be subject to Federal Excise Tax (26 U.S.C. 5001, 26 U.S.C.

5041 or 26 U.S.C. 5051). Additional requirements may be imposed on this product by the Alcohol and Tobacco Tax and Trade Bureau (TTB). You may contact the TTB at the following number: (1-866-927-2533), Email-ttbinternetquestions@ttb.gov. Written requests may be addressed to: Alcohol and Tobacco Tax and Trade Bureau, Advertising, Labeling and Formulation Division, 1310 G Street NW, Box 12, Washington, DC 20005.

Marking

The marking statute, section 304, Tariff Act of 1930, as amended (19 USC 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was “that the ultimate purchaser should be able to know by an inspection of the marking on imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” United States v. Friedlaender & Co., 27 C.C.P.A. 297, 302 (1940).

It is our opinion, the proposed marking " Made in Togo West Africa" for the Distilled Spirits, satisfies the marking requirements of 19 U.S.C. 1304 and 19 CFR Part 134 and is an acceptable country of origin marking for the imported products.

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.

It is noted that Togo is one of the designated beneficiaries listed in General Note 16(a). The Distilled Spirits are classified under subheading 2208.90.8000, HTSUS, which is a provision for which a rate of duty of "Free" appears in the "Special" subcolumn followed by the symbol "D."

Based on the information submitted, the Distilled Spirits would be "products of" Togo, thus meeting part (i) of the above requirements. Further, we find that 100 percent of the total cost of production is attributed to the cost or value of the materials produced in Togo. Therefore, the sum of the cost or value of materials produced in Togo, plus the direct costs of processing operations performed in Togo, is not less than 35 percent of the appraised value of the subject distilled spirits at the time they are entered.

Accordingly, we conclude that the Distilled Spirits, classified under subheading 2208.90.8000, HTSUS, are products of Togo 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.

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 Frank Troise at frank.l.troise.cbp.dhs.gov.

Sincerely,

Steven A. Mack
Director
National Commodity Specialist Division