

N326044

June 8, 2022

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

CATEGORY: Classification; Country of Origin

TARIFF NO.: 2005.99.9700

Mr. Ricardo Moretti
Cape Herb & Spice
50 Bell Crescent, Westlake,
Cape Town
South Africa

RE: The tariff classification and country of origin of black garlic seasoning from Spain

Dear Mr. Moretti:

In your letter dated May 12, 2022, you requested a tariff classification and country of origin ruling.

An ingredients breakdown, description of the manufacturing process, manufacturing flowchart, and a picture of the product accompanied your letter.

The subject merchandise, "Black Garlic Seasoning," is said to contain approximately 98 percent dried ground black garlic and 2 percent rice hull. The rice hull is said to function as an anticaking agent.

The fresh garlic bulbs with skins on will be imported from Spain. In South Africa, the manufacturing process is said to commence with garlic bulbs being stacked in the fermenter for 14 days at a temperature of 60 to 70 degrees Celsius. Upon completion of this stage, the bulbs are cooled at an ambient temperature for 1 day prior to being subjected to additional toasting in a heat exchanger oven at a temperature of 70 to 80 degrees Celsius for 1 to 2 days. Next, the bulbs are peeled and placed into cold storage at a temperature between 0 and 10 degrees Celsius for 1 to 2 days, subsequent to mixing in the rice hull, grinding, sieving and packaging in glass bottles. The product will be imported for retail sale and will be sold at grocery stores.

The applicable subheading for the subject merchandise, "Black Garlic Seasoning," will be 2005.99.9700, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006 . . . other vegetables and mixtures of vegetables . . . other . . . other. The general rate of duty will be 11.2 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

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

As defined in 19 CFR 134.1(b), "country of origin" means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to change the country of origin of the article. A substantial transformation occurs when an article emerges from a process with a new name, character or use different from that possessed by the article prior to processing. A substantial transformation will not result from a minor manufacturing or combining process that leaves the identity of the article intact. See *United States v. Gibson-Thomsen Co.*, 27 C.C.P.A. 267 (1940); and *National Juice Products Association v. United States*, 628 F. Supp. 978 (Ct. Int'l Trade 1986).

In NY K81363, dated November 28, 2003, U.S. Customs and Border Protection (CBP) has previously ruled that garlic bulbs grown in China, Spain, Chile, and Argentina that underwent processing that included separation into cloves in Columbia, subsequent to peeling, and packing for retail sale, did not result in a substantial transformation.

With the exception of coffee, CBP has consistently held that roasting and processing similar to roasting is not a substantial transformation. See, N008056, dated March 16, 2007 (shelled cashews roasted and canned is not a substantial transformation); and G89921, dated June 12, 2001 (dried beans and chickpeas rehydrated, blanched, canned, covered with hot (180° F) brine, sealed, cooked in a rotary cooker for over 15 minutes at 260° F, cooled, labeled, and packed did not undergo a substantial transformation).

In the present case, fresh garlic bulbs with skins on are placed in a fermenter, toasted, and mixed with 2 percent rice hull. As such, they are not substantially transformed as a result of the processing in South Africa. The black garlic seasoning will remain a product of the country where the bulbs were grown, which in this case is Spain.

Your inquiry does not provide enough information for us to provide a ruling on the eligibility of the merchandise for preferential treatment under the African Growth and Opportunity Act (AGOA). When this information is available, you may wish to consider resubmission of your request. Your request for an eligibility ruling should include answers to the following questions:

1. The approximate appraised value per unit of the black garlic seasoning upon importation to the United States.
2. The cost/value of the materials to manufacture the finished product in South Africa.
3. Provide the direct costs of processing operations performed in South Africa ((Direct costs of processing are goods that are consumed during product of-but not incorporated into the finished good. i.e., fuel and energy, gloves, glasses, clothing, safety equipment, testing and inspection devices, etc.)

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 Timothy Petrulonis at timothy.petrulonis@cbp.dhs.gov.

Sincerely,

Steven A. Mack
Director
National Commodity Specialist Division