

U.S. Department of Homeland Security
U.S. Customs and Border Protection
One Penn Plaza, 10th Floor
New York, NY 10119



U.S. Customs and
Border Protection

N145131

MAR-2 RR:NC:2:231

CATEGORY: MARKING

Mr. James Magee
Ruggiero Seafood, Inc.
P.O Box 5369
Newark, NJ 07105

RE: COUNTRY OF ORIGIN MARKING OF SQUID (CALAMAR) AFTER IT HAS
UNDERGONE CERTAIN PROCESSING IN THE UNITED STATES OR A FOREIGN
COUNTRY

Dear Mr. Magee:

This is in response to your letter dated January 21, 2011, requesting a ruling on the country of origin status and marking requirements applicable to squid within the context of two different scenarios. Exhibits illustrating the merchandise and the steps in its processing accompanied your letter.

In scenario #1, whole, uncleaned frozen squid of foreign origin will first be imported into the United States from the source country (e.g., China). In the United States, the squid will be defrosted, fully cleaned, refrozen, and then packaged for retail and/or foodservice. The cleaning process will consist of the removal of the head/tentacles, guts, gladius (internal shell), and skin. The resulting "cleaned squid tube/body" will either be packed as is, or, in some cases, will also be cut into rings. In some instances, tentacles will also be included in the package along with the cleaned tubes or rings. You ask whether this operation would change the country of origin from China to the United States, and would thus allow the packages of cleaned squid to be marked "Product of U.S.A." If not, you ask whether it would be proper to label the packages "Product of China, Processed in USA," or merely "Product of China."

In scenario #2, whole, uncleaned frozen squid of U.S. origin will first be shipped from the United States to another country (e.g., China). In China, the squid will undergo the same kind of processing described in the first scenario above. (It is assumed that, after the Chinese processing, the squid will then be returned to the United States and entered for consumption here.) You ask whether this operation would change the country of origin from the United States to China, and would thus require the packages of cleaned squid to be marked "Product of China." If not, you ask

whether it would be proper to label the packages "Product of USA, Processed in China," or merely "Product of U.S.A."

Section 304, Tariff Act of 1930, as amended (19 U.S.C. 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.

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Pursuant to 19 CFR Section 134.1(b), the country of origin is the country of manufacture, production or growth of any article of foreign origin entering the U.S. Further work or material added to a foreign article in the United States must effect a substantial transformation in order to render the final product a good of the U.S. Likewise, further work or material added to a U.S. article in a foreign country (other than a NAFTA country) must effect a substantial transformation in order to render the final product a good of that foreign country.

A substantial transformation occurs when a new and different article of commerce emerges from a process with a new name, character or use different from that possessed by the article prior to processing. See United States v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98) (1940).

In a number of rulings involving the origin of shrimp, U.S. Customs and Border Protection ("CBP") has held that operations such as heading, peeling, de-veining and butterfly cutting do not result in a substantial transformation in shrimp processed by such means. See, for example, Headquarters Ruling Letter ("HRL") 563154, dated February 3, 2005. Also, CBP generally has found that no substantial transformation results from processes such as the cutting, freezing, thawing and packaging of food products. See, for example HRL 729365 (June 2, 1985, published as C.S.D. 86-26), and subsequent rulings in which that ruling is cited.

Both scenarios of the present case begin with frozen raw squid having a generally round cross section, and end with pieces of frozen raw squid having a generally round cross section. The Harmonized Tariff classification of the merchandise would be the same before and after processing. In light of these facts, considered in conjunction with the precedents summarized above, we find that the squid is not substantially transformed in either of your scenarios. For purposes of 19 U.S.C. 1304, the finished, cleaned product therefore retains its original country of origin in each instance.

Accordingly, in the example given in scenario #1, the country of origin of the cleaned squid (after the post-importation processing in the U.S.) is China. Therefore, upon importation into the U.S., the certification procedures of 19 CFR 134.25 must be followed and, upon completion of domestic processing, the packages of finished squid must be marked with the foreign country of origin of their contents, e.g., "Product of China." So long as the country of origin is clearly stated, the label may, if desired, also indicate that the merchandise has been processed in the U.S. Thus, marking such as "Product of China, Processed in USA," or "Product of China, Processed and Packaged in USA" would also be acceptable.

In scenario #2, the U.S. squid, returned from China after processing there, remains a product of the United States for CBP marking purposes. Thus, since it is not a "foreign" product, it is not required to be marked with its country of origin for CBP purposes. Your question about labeling consisting of or including the phrase "Product of USA" is under the jurisdiction of the Federal Trade Commission (FTC), which may be contacted for advice at 6th & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Since seafood is also subject to the Mandatory Country of Origin Labeling ("COOL") requirements administered by the USDA's Agricultural Marketing Service (AMS), we advise you to check with that agency for their further guidance on both of your scenarios. Contact information for AMS is as follows:

USDA-AMS-LS-SAT
Room 2607-S, Stop 0254
1400 Independence Avenue, SW
Washington, DC 20250-0254
Tel. (202) 720-4486
Website: www.ams.usda.gov/COOL
Email address for inquiries: COOL@usda.gov

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR Part 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,

Robert B. Swierupski
Director,
National Commodity Specialist Division