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April 7, 2003 MAR-2 RR:NC:231:J81644 CATEGORY: MARKING  
Daniel Fusco Global Food Trading Corp.

14 Mechanic Street Ramsey, NJ 07446

RE: THE COUNTRY OF ORIGIN MARKING OF TUNA LOINS AND SWORDFISH FILLETS FROM SINGAPORE, PROCESSED IN THE UNITED STATES.

Dear Mr. Fusco:

This is in response to your letter dated February 21, 2003, on behalf of ACS Seafoods, Inc., of Largo, FL. You requested a ruling on certain imported tuna loins (5 pounds or larger) and swordfish fillets (10 pounds up to about 100 pounds), imported in bulk from Singapore into the United States. These loins and fillets will be sold to fish processors, or "steakers," who will cut them into individual portions. These portions will be graded by size (and sometimes marinated), then vacuum packed and packaged into cartons, which are labeled under brand names for sale to the food service industry.

You ask whether the vacuum packed fish portions can be marked as product of the U.S.A., as ACS Seafoods, Inc., is interested in selling to the U.S. military, which requires that these goods be of U.S. origin.

The marking statute, 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. Section 134.41(b), Customs Regulations (19 CFR 134.41(b)), mandates that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain. Section 134.1(d), defines the ultimate purchaser as generally the last person in the U.S. who will receive the article in the form in which it was imported. 19 CFR 134.1(d)(1) states that if an imported article will be used in manufacture, the manufacturer may be the ultimate purchaser if he subjects the imported article to a process which results in a substantial transformation of the article. The case of *U.S. v. Gibson-Thomsen Co., Inc.*, 27 C.C.P. A. 267 (C.A.D. 98) (1940), provides that an article used in manufacture which results in an article having a name, character or use differing from that of the constituent article will be considered substantially transformed and that the manufacturer or processor will be considered the ultimate purchaser of the constituent materials. In such circumstances, the imported article is excepted from marking and only the outermost container is required to be marked. See, 19 CFR 134.35.

The issue raised by your letter is whether the instant tuna loins and swordfish fillets will be so processed, after importation into the United States, as to be considered substantially transformed into an American product. In *Koru North America v. United States*, 701 F. Suppl. 229 (C.I.T. 1988), the issue before the Court involved certain fish which were harvested by foreign flag vessels in a fishery zone off the coast of New Zealand. After taking, the fish were beheaded, de-tailed, eviscerated and frozen aboard ship. Subsequently, they were offloaded in Korea for further processing. In Korea, the fish were thawed, skinned, boned, trimmed, glazed, refrozen and packaged for exportation to the United States. The Court held, in this case, that the conversion, in Korea, of the frozen "headed and gutted" fish into "individual quick-frozen (IQF) fillets" constituted a substantial transformation of the fish into a new and different product with "a new name, character or use." *Koru* would appear to be distinguishable from the present case, based on the facts presented. The decision in *Koru* rested largely on the transformation of what appeared as whole frozen fish to a product which no longer had the shape of the fish,--whose skin and bones had been removed, and which had been trimmed, with fat lines and other impurities removed, then glazed and frozen. In contrast to the headed and gutted fish entering Korea, these fillets were considered discrete commercial goods, sold in separate areas and markets. The instant fish, as imported into the United States, are already in the form of frozen, boneless fish fillets,--essentially, the end product in *Koru*. The cutting of these fillet pieces into smaller, portion-size pieces after importation, represents merely a final preparation to render the fillets more useful to the ultimate consumer,--in this case, to the food service industry. In our opinion, such cutting and repackaging does not substantially alter the character of these goods as boneless fish fillet. Finally, while your inquiry did not provide any detailed description of a flavoring process (other than to note that the U.S. "steakers" "sometimes marinate the portions"), we do not believe that the addition of a flavoring would substantially alter the character of the product as boneless swordfish or tuna fish. In this case, the imported tuna loins and swordfish fillets are not substantially transformed as a result of the U.S. processing, and therefore the country of origin, for marking purposes, would remain the foreign country of origin.

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 Thomas P. Brady at 646-733-3030.

Sincerely,  
Robert B. Swierupski  
Specialist Division

Director,

National Commodity