

HQ 563104

October 19, 2004

MAR-2-05 RR:CR:SM 563104 EAC

CATEGORY: Marking

Kimenyi Kabetu
Regulatory Affairs Specialist
King & Prince Seafood Corporation
1 King & Prince Boulevard
P.O. Box 899
Brunswick, GA 31521

RE: Country of origin marking requirements applicable to imported seafood; CBP marking requirements; mandatory country of origin labeling requirements; 19 U.S.C. §1304

Dear Kimenyi:

This is in response to your letter, dated August 30, 2004, requesting a ruling on behalf of King & Prince Seafood Corporation (hereinafter "King & Prince"), pertaining to the country of origin marking and labeling requirements applicable to seafood that is imported into the United States.

FACTS:

It is stated that King & Prince will import various seafood products into the United States. For purposes of the present case, you have identified three scenarios under which the seafood products will be imported, and in each instance you propose to mark the goods with the term "imported from" to indicate the country of origin of the various items. Additionally, you propose to include labeling statements informing the purchaser that the products were "processed in the United States" (in instances where the products are substantially transformed in the U.S.) and of the method of growth (for example, "farm raised" or "wild raised").

The first scenario pertains to situations where the seafood is imported into the United States in a finished state. As an example, you offer raw shrimp that is breaded and battered in Indonesia and only repackaged in the United States. The label would indicate "Imported from Indonesia" and either "Farm Raised" or "Wild Raised".

Under the second scenario, raw seafood is imported, but not substantially transformed, in the United States. Illustrative of this situation is raw shrimp imported from Indonesia that is only marinated in the United States. Again, the label in this scenario would indicate "Imported from Indonesia" and either "Farm Raised" or "Wild Raised".

The third scenario refers to cases where imported raw products are substantially transformed within the United States. As an example, you assume a situation where raw seafood from Indonesia is breaded and seasoned within the United States. The label in the third scenario would indicate "Imported from Indonesia", "Processed in the U.S.", and either "Farm Raised" or "Wild Raised".

ISSUE:

Whether the proposed markings set forth above satisfy the requirements of 19 U.S.C. §1304.

LAW AND ANALYSIS:

In your submission, you state that King and Prince intends to develop retail labels that comply with the “mandatory country of origin proposed rule.” In making this statement, we assume that you are referring to a proposed rule that was published by the Agricultural Marketing Service, United States Department of Agriculture (“USDA”) in the Federal Register on October 30, 2003 (68 Fed. Reg. 61944), under the title “Mandatory Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts.” We recommend you contact the USDA directly regarding whether certain labeling statements would be within compliance of the above-referenced proposed rule. Examples of labeling statements for which we recommend seeking USDA guidance are those which inform the consumer of the method of growth of the good (i.e., farm or wild raised) as well as those which indicate that an item has been processed within the United States. However, please be aware that U.S. Customs and Border Protection (“CBP”) administers certain country of origin marking regulations (discussed, *infra*) which are not obviated by the USDA rule and are applicable to this case.

In this regard, please note that section 304 of the Tariff Act of 1930 (19 U.S.C. §1304), provides that, unless excepted, every article of foreign origin imported into the United States 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 United States 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 the 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. Friedlander & Co., 27 C.C.P.A. 297 at 302 (1940).

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. §1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines “country of origin” as 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 render such other country the “country of origin” within the meaning of the marking laws and regulations. The case of United States 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, as a result, 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(a).

In scenarios one and two, the imported products are only repackaged or marinated and, therefore, would not undergo a substantial transformation. Under the third scenario, you

propose to mark certain items as "Imported from Indonesia/Processed in the U.S." As an example, we are asked to consider raw seafood from Indonesia that is breaded and seasoned within the United States. We note that in Headquarters Ruling Letter ("HRL") 560931 dated July 18, 1998, CBP ruled that imported cooked, de-veined, shelled, and frozen crawfish tails were substantially transformed when seasoned and breaded within the United States. Therefore, we would agree with your conclusion that under the third scenario, where the raw seafood is breaded and seasoned within the United States, the products are substantially transformed within the United States. In such cases, where imported seafood is substantially transformed in the United States, it appears as if the USDA's above-referenced rule requires a labeling statement such as "From Indonesia/Processed in the U.S.", however, we recommend you contact the USDA directly for definitive guidance on this matter. Concerning situations where seafood products are substantially transformed within the United States, please be advised that CBP would not object to labels of this nature ("From Country X/Processed in the U.S.") provided the product does not include a marking with a country of origin indicator "Product of", "Made in", or "Assembled in" in conjunction with a foreign country (i.e., "Product of Foreign Country X").

As the products under scenarios one and two are not substantially transformed and are subject to the country of origin marking regulations under CBP's jurisdiction, the remaining question is whether the term "imported from" is an acceptable indicator of origin under the applicable marking requirements. Concerning this matter, CBP has held that marking an imported item with "made in", "product of", or with the country of origin alone (for example, "Indonesia") is acceptable for country of origin marking purposes. See, for example, New York Ruling Letters ("NY") R00172 dated April 6, 2004, and F87506 dated May 31, 2000. However, it is our opinion that using the term "Imported From" is confusing and misleading because an indication of actual origin is not clearly given. In this regard, an ultimate purchaser may be confused when inspecting such products because, for country of origin marking purposes, an item is not necessarily a product of the country from where it is imported. For example, in HRL 563033 dated July 6, 2004, shrimp was grown and harvested in Bangladesh. After harvest, the shrimp was exported to India for processing which included heading, shelling, deveining, cooking, freezing or some combination of these processes. The processed shrimp was then imported into the United States. In finding that such processing failed to substantially transform the shrimp, CBP held that the country of origin of the shrimp was Bangladesh, even though the shrimp was actually imported into the United States from India. In consideration of the foregoing, we find that marking the goods with "Imported from Indonesia" under scenarios one and two fails to inform the ultimate purchaser of the actual origin of the imported products. Examples of acceptable markings are "Product of Indonesia", or "Indonesia" alone, assuming there are no other non-origin references on the product.

Concerning non-origin references, section 134.46 requires that, in instances where the name of any city or locality in the United States, or the name of any foreign country or locality other than the name of the country or locality in which the article was manufactured or produced, appears on an imported article or its container, and those words or name may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear, legibly and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning. CBP has ruled that in order to satisfy the close proximity requirement, the country of origin marking must appear on the same side(s) or surface(s) in which the name of the locality other than the country of origin appears. See, HRL 708994 dated April 24, 1978. The requirements of 19 CFR 134.46 are designed to alleviate the possibility of misleading an ultimate purchaser with regard to the country of origin of an

imported article, if such article or its container includes language which may suggest a U.S. origin (or other foreign locality not the correct country of origin).

On the other hand, section 134.47, Customs Regulations (19 CFR 134.47), provides that when as part of a trademark or trade name or as part of a souvenir marking, the name of a location in the U.S. appears, the article shall be legibly, conspicuously, and permanently marked to indicate the name of the country of origin of the article preceded by the words "Made in," "Product of," or other similar words, in close proximity or in some other conspicuous location. In such circumstance, no comparable size requirement exists.

HOLDING:

Based upon the information before us, it is our opinion that the marking "Imported From", in scenarios one and two, fails to inform the ultimate purchaser of the actual country of origin of the products. Therefore, "Imported from Indonesia" is not an acceptable marking for country of origin marking purposes. Where seafood products are substantially transformed within the United States, CBP would not object to labels which indicate "From Country X/Processed in the U.S." provided the product does not include a label with a country of origin indicator preceding a foreign country.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

Sincerely,

Myles B. Harmon, Director
Commercial Rulings Division