

**HQ 735084**[Print](#)[HQ 735084](#) August 17, 1993

MAR-2-05 CO:R:C:V 735084 ER

CATEGORY: MARKING

Mr. Joe Hamby Chief Financial Officer Tri-Marine International 150 W. Seventh Street Suite 205 San Pedro, California 90731

RE: Country of Origin Marking Requirements for Frozen Swordfish Fillets; Substantial Transformation; **Koru** North America v.

United States, 701 F.Supp. 229, 12 CIT 1120 (CIT 1988).

Dear Mr. Hamby:

This is in response to your letter dated April 1, 1993, in which you request a ruling regarding the country of origin marking requirements for certain frozen swordfish fillets.

FACTS:

According to your letter and subsequent telephone conversation with this office on July 28, 1993, the swordfish is caught by Taiwanese longliner fishing vessels in the Indian Ocean. The heads, tails and viscera are removed on board the fishing vessel and the fish is frozen. In this condition the fish is known as "dressed without tail" ("DWT"). The DWT is discharged from the fishing vessel at Singapore where it is subjected to further processing to become "individually quick-frozen" fillets.

The processing performed in Singapore consists of cutting the fish in half, taking out the bones and trimming off the dark meat and edges of the fish. After cutting and trimming, the fillet is coated with a water glaze to protect it from dehydrating in its frozen state. Each fillet is individually bagged and the bag marked with the name of the product, its weight and origin. You informed us that unlike certain other types of fish, leaving some skin on the swordfish fillets is desirable to the consumer.

ISSUE:

Whether swordfish captured by a Taiwanese fishing vessel, dressed without tails and frozen on board the vessel, is later substantially transformed by the processing performed in Singapore to make it into individually quick-frozen fillets?

LAW AND ANALYSIS:

The marking statute, Section 304 of the 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.

The primary purpose of the country of origin marking statute 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 CCPA 297, 302, C.A.D. 104 (1940).

The "ultimate purchaser" is defined generally as 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). If an article is to be sold at retail in its imported form, the purchaser at retail is the "ultimate purchaser." 19 CFR 134.1(d)(3).

The country of origin for marking purposes is defined at section 134.1(b), Customs Regulations (19 CFR 134.1(b)), as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. 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 Part 134. A substantial transformation occurs when articles lose their identity and become new articles having a new name, character, or use. **Koru** North America v. United States, 12 CIT 1120, 701 F.Supp. 229 (CIT 1988).

On the high seas, the country of origin of fish is determined by the flag of the catching vessel. **Koru** at 1122. However, if the fish is later substantially transformed in another country then such other country will be the country of origin of the fish, within the meaning of the marking statute. **Koru** at 1125. In **Koru**, fish beheaded, de-tailed, eviscerated and frozen on board the capturing vessel was later substantially transformed into a product of Korea by the processing necessary to make it into individually quick frozen fillets.

In Korea, the fish was "thawed, skinned, boned, trimmed, glazed, refrozen and packaged for exportation to the United States." In finding a substantial transformation, the court noted that when the fish arrived in Korea, it had the look of whole fish, "albeit without heads, tails or viscera" whereas the fish exported from Korea no longer possessed "the essential shape of the fish" having been "trimmed of jagged edges, fat lines and impurities, glazed to preserve [its] moisture ... frozen ... and finally, packaged". Also significant was the fact that the fillets were considered discrete commercial goods and were sold in separate areas and markets. The court found that such changes went to the fundamental nature and character of the fish transforming the fish and creating a new article of commerce. Although not determinative, the change in tariff classification was considered by the court to be additional evidence of a substantial transformation. **Koru** at 1121 and 1127.

In the instant case, the processing performed on board and in Singapore is identical to that described in the **Koru** decision with the one exception of the skin, which is left on the swordfish fillets because of consumer preference. In view of the similarity between the instant facts and those in the **Koru** decision, Customs finds that the operations performed in Singapore substantially transform the swordfish into a product of Singapore. Accordingly, the fillets must be properly marked as products of Singapore.

HOLDING:

Swordfish captured by Taiwanese vessels and processed into individually quick-frozen fillets in Singapore is substantially transformed. Accordingly, the fillets are a product of Singapore and should be properly marked as such.

Sincerely,
John Durant, Director