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June 27, 2019

Submitted via e-mail

Myles B. Harmon,
Director, Commercial and Trade Facilitation Division
U.S. Customs and Border Protection
Office of Trade, Regulations and Rulings
Attention: Trade and Commercial Regulations Branch
90 K St., NE
10th Floor
Washington, DC 20229-1177

Re: Proposed Modification and Revocation of New York Ruling Letter N281670

Dear Director Harmon:

The Southern Shrimp Alliance respectfully submits the following comments on U.S. Customs and Border Protection's ("CBP") notice of proposed modification of one ruling letter and proposed revocation of treatment relating to the country of origin for marking purposes of cooked shrimp.[1] The Southern Shrimp Alliance offers these written comments in support of the proposed modification and revocation.

As explained in greater detail below, the agency's country of origin finding with regard to cooked shrimp in New York Ruling Letter N281670 ("NY N281670") departed from decades of consistent CBP rulings. In light of the established and clear country of origin holdings regarding cooked shrimp made by CBP over the last thirty years, the anomaly of NY N281670's inconsistent holding (and the lack of any explanation for this ruling) introduces unnecessary and unwelcome confusion into the appropriate identification of the country of origin of processed shrimp imported

[1] See Proposed Modification of One Ruling Letter and Proposed Revocation of Treatment Relating to the Country of Origin for Marking Purposes of Cooked Shrimp, 53 Customs Bulletin and Decisions 17 (May 29, 2019) pp. 2-10 ("Proposed Modification"); see also 19 U.S.C. § 1625(c)(2) (providing interested parties the opportunity to submit "comments on the correctness of the proposed ruling or decision").

into the United States. In addition to expressing support for CBP's proposed actions, the Southern Shrimp Alliance also seeks through these comments to reinforce the importance of consistent determinations of country of origin for marking purposes of cooked and processed shrimp.

I. About the Southern Shrimp Alliance

The Southern Shrimp Alliance is an organization comprised of shrimp fishermen, shrimp processors, and other members of the domestic industry in the eight warmwater shrimp producing states of Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas.[2] Since its founding in 2002, the Southern Shrimp Alliance has worked to ensure the continued vitality of the U.S. shrimp industry. Accordingly, the central mission of the Southern Shrimp Alliance is to ensure that the shrimp industry remains a foundation of the economy and social structure of coastal communities throughout the Gulf and Southeast Atlantic regions.

Because of substantial differences in regulatory control and oversight in the major shrimp importing countries around the world, the U.S. market has become a dumping ground for shrimp that would not be accepted in other markets. These imports, in turn, have posed an existential threat to the warmwater shrimp industry in this country. In response, the Southern Shrimp Alliance has pursued, obtained, and maintained antidumping duty orders on unfairly-traded shrimp and has sought to establish a level playing field in terms of the regulation of shrimp producers in the United States and overseas. The Southern Shrimp Alliance works to achieve these objectives through educational activities and by working directly with local, state, and federal agencies.

Throughout the Southern Shrimp Alliance's existence, CBP has been an essential partner in enforcing U.S. laws at the border. CBP's efforts have allowed thousands of commercial fishermen in dozens of communities across the coast to continue working.

II. Factual Background

(1) Issuance of NY N281670

In response to a request for a ruling letter filed on behalf of Pescanova Inc. ("Pescanova"), CBP issued NY N281670 on January 3, 2017.[3] Pescanova's request sought rulings from CBP regarding the tariff classification, marking, and country of origin for three types of farm raised shrimp products. CBP described the three types of merchandise subject to the ruling letter as follows:

> {F}rozen farm raised shrimp of the *litopenaeus vannamei* species. Per the description provided, the shrimp will be exported from India to Guatemala as frozen headless shell-on of various sizes for further processing. The product will be thawed, deveined and soaked in sodium tripolyphosphate and salt. The shrimp will be processed into

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2 About Us, SOUTHERN SHRIMP ALLIANCE, http://www.shrimpalliance.com/about/ (last visited June 27, 2019).

3 Proposed Modification at Attachment A (copy of NY N281670).

> three products: "Raw Peeled Shrimp" (Size 31/35), "Cooked Peeled Shrimp" (Size 31/35), and "Breaded Shrimp" (Size 25/30).
>
> The "Raw Peeled Shrimp" and "Cooked Peeled Shrimp" will be individually quick frozen and packaged in a polyethylene bag which will have a total net weight of two pounds. Each master case for both items will contain five bags which in turn will have a total net weight of ten pounds. The product will be labeled "Frozen P&D Tail-Off Shrimp IQF," and "Frozen P&D Tail-Off Cooked Shrimp IQF," respectively. The "Breaded Shrimp" will be lightly breaded, then individually quick frozen and packaged in a polyethylene bag which will have a total net weight of twenty pounds. Each master case will contain one bag with a total net weight of twenty pounds and will be labeled "Lightly Breaded Shrimp."[4]

In response to this request, the New York ruling letter found that "processing of the 'Raw Peeled Shrimp' in both the Indian and Guatemalan facilities by the means you outline does not effect a substantial transformation."[5] However, the ruling letter concluded that "the processing of the 'Cooked Peeled Shrimp" and 'Breaded Shrimp' by the means you outline satisfy the requirements of a substantial transformation . . ." As such, the New York ruling letter determined that Pescanova's "Cooked Peeled Shrimp" were substantially transformed in Guatemala where they were cooked and, therefore, that the country of origin for marking purposes was Guatemala and not India.[6]

In reaching the conclusion that the processing required to produce "Cooked Peeled Shrimp" constituted a substantial transformation, CBP cited the test outlined in United States v. Gibson-Thomsen Co., *i.e.*, whether "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."[7] However, the New York ruling letter did not explain why "Cooked Peeled Shrimp" would be understood to have created an article of commerce "with a new name, character or use different" from the frozen headless shell-on shrimp used as the input for this processing.

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4 Id.

5 Id. It is unclear from the context of the ruling letter what relevance there might be, if any, of processing steps taken with regard to the shrimp at an Indian facility. As the ruling letter explains, the factual circumstance at issue is shrimp "exported from India to Guatemala as frozen headless shell-on of various sizes for further processing." Id. One of the further processing steps discussed is the peeling of the shells off of this shrimp in a facility in Guatemala. In light of these facts, any processing in an Indian facility would appear to not be germane to the ruling request. Accordingly, CBP should additionally consider whether to further modify NY N281670 to clarify that the quoted sentence should read "processing of the 'Raw Peeled Shrimp' by the means you outline does not effect a substantial transformation."

6 Id.

7 Id.; see also United States v. Gibson-Thomsen Co., 27 C.C.P.A. 267 (C.A.D. 98) (1940).

(2) Proposed Modification of NY N281670

CBP revisited NY N281670 following an inquiry from the National Fisheries Institute ("NFI").[8] CBP's proposed modification of NY N281670 considers the issue of "{w}hether the process of cooking shrimp substantially transforms the shrimp for country of origin marking purposes."[9] CBP's analysis on reconsideration concludes that "'Cooked Peeled Shrimp' is not substantially transformed when it is cooked in Guatemala, therefore, the country of origin for marking purposes is the country where the shrimp is raised, which is India."[10] CBP explained that the agency "has previously held that the process of cooking shrimp does not substantially transform shrimp because it 'does not result in a change in the name, character, or use' of the shrimp."[11]

III. Legal Framework for Determining Country of Origin for Marking Purposes

Section 304 of the Tariff Act of 1930, as amended, provides that "every article of foreign origin" must generally "be marked in a conspicuous place as legibly, indelibly, and permanently as the nature or the article . . . will permit . . . the country of origin of the article."[12] CBP's regulations define "country of origin" as:

> {T}he Country of manufacturer, 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 this part . . . .[13]

Over the years, CBP and the federal courts have given meaning to the phrase "substantial transformation," resulting in what is referred to as the "substantial transformation" test. Under this test, CBP analyzes whether further processing has changed the name, character, or use of the product.[14]

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8 Proposed Modification at Attachment B (copy of proposed Headquarters Ruling Letter) (noting that the National Fisheries Institute inquired "whether the country of origin decision concerning the 'Cooked Peeled Shrimp' {(in NY N281670)} is inconsistent with an existing CBP ruling concerning the same issue").

9 Id.

10 Id.

11 Id. (quoting Gibson-Thomsen, 27 C.C.P.A. at 273).

12 19 U.S.C. § 1304(a).

13 19 C.F.R. § 134.1(b).

14 See Proposed Modification at Attachment B (citing Gibson-Thomsen for the main factors to be considered in a substantial transformation determination).

IV. The Proposed Headquarters Ruling Corrects NY N281670

(1) Prior Rulings Involving Substantial Transformation of Shrimp

For three decades, with the exception of NY N281670, CBP has issued consistent, clear holdings regarding the country of origin of shrimp products imported into the United States. These consistent, clear rulings have been numerous and have provided an objective and standardized basis for enforcement of trade regulations, including the administration of the antidumping duty orders on certain frozen warmwater shrimp issued by the U.S. Department of Commerce ("Commerce") and the Import Alerts issued by the U.S. Food and Drug Administration ("FDA"). As explained below, NY N281670 conflicts with numerous CBP rulings issued over the last three decades which have consistently held that minor processing of shrimp, including cooking, does not constitute a substantial transformation resulting in a change of the country of origin of the shrimp processed.

Over thirty years ago, CBP conducted a country of origin analysis for shrimp products with regard to the appropriate application of the marking requirements under 19 U.S.C. § 1304 to imported shrimp that were further processed in the United States in HQ 731472.[15] Specifically, HQ 731472 considered whether the peeling and deveining of foreign, imported shrimp in U.S. processing plants constituted a substantial transformation.[16] In this ruling, CBP reviewed its law and practice regarding labeling requirements for imported food products and explained what types of activities constituted a "substantial transformation" and then applied these holdings to shrimp processing as follows:

> Applying the principles set forth in the above precedents to the facts in this case, we are of the opinion that the shelling and deveining of foreign shrimp does not constitute a substantial transformation. First, the processing does not result in a change of name that is material. While the imported product may be known simply as frozen shrimp whereas the processed product may be described as "peeled and deveined" frozen shrimp, both products have essentially the same name – frozen shrimp. Such a minor name change is not enough to warrant a finding of substantial transformation.
>
> More importantly, the character of the imported product is not changed by peeling and deveining. Both before and after peeling and deveining, the product is still basically the same, i.e., raw frozen shrimp. The quality and size of the product is attributable to the imported product and not the domestic processing. While the peeling and deveining changes the physical appearance of the shrimp to a certain degree and renders the product ready for eating, in our opinion, the change is minor and does not fundamentally change the character of the imported product. Just as the imported orange juice concentrate in National Juice, the imported raw broccoli in HQ 729365 and the imported upper in Uniroyal, imparted the essential character to the final product, we believe that in this case the imported shrimp similarly imparts the essential character to the final product.

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15 Attached as **Exhibit 1**.

16 Id.

> Finally, the shelling and deveining operations do not significantly change the product's intended use, which we believe is dictated primarily by the very nature of the product itself (as raw shrimp) and by its size. These criteria are already determined at the time of importation. The purchaser of frozen raw shrimp has already decided he would like to purchase raw shrimp, that the product will be frozen, and that the raw shrimp will be a particular size. Whether or not the purchaser would also like the added convenience of not having it deveined and shelled at the time of purchase is but one factor to consider. We note that peeling and deveining is often performed by many consumers in their own kitchens.[17]

CBP rejected arguments that because processing limited the potential uses of the imported product it fundamentally changed the character of the product.[18] Instead, CBP analogized to its holdings with respect to imported broccoli that had been processed so as to be cut and frozen, explaining that although this product could no longer be used as broccoli spears, "both the imported and processed products had essentially the same use."[19] Accordingly, CBP concluded that "the domestic manufacturing processing is merely a minor one which leaves the identity of the imported article intact."[20]

CBP's holding in HQ 731472 with respect to imported shrimp that was peeled and deveined in a U.S. processing plant was extended to imported shrimp that was cooked in the United States in HQ 731763, issued on May 17, 1989.[21] In that case, NFI requested a ruling regarding imported shrimp that are "thawed, washed, graded and cooked," and, in some cases, "peeled and deveined" in a U.S. processing plant.[22] NFI argued that cooking was "a sophisticated process which produces significant changes in chemical composition, moisture content, physical appearance, marketability and cost per pound."[23] In response, CBP explained that the agency had "not previously ruled on this precise issue" but that it had issued "rulings regarding the effects of somewhat similar processes," including blanching, roasting, and smoking of various food products.[24] In each of these cases, "Customs concluded that despite some physical changes that the processing produced to the article in question, the basic character and use of the product was attributable to the imported product and not, the domestic processing."[25] CBP applied a similar analysis to the cooking of shrimp as it had to peeling and deveining and concluded "that the manufacturing process of peeling, deveining and

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17 Id.

18 Id.

19 Id.

20 Id.

21 Attached as **Exhibit 2**.

22 Id.

23 Id.

24 Id.

25 Id.

cooking shrimp is not a substantial transformation but rather, a minor one which leaves the identity of the imported shrimp intact."[26]

The Headquarters ruling further explained:

> A determination that the imported shrimp is not substantially transformed as a result of the processing described above, is consistent with the primary purpose of the country of origin marking statute which 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. This purpose is not served if the package of the cooked shrimp is not required to indicate the country of origin of the imported shrimp. With regard to the argument that the consumer may want to know that the shrimp was processed in the U.S. because of higher health standards, so long as the country of origin of the shrimp is clearly stated, the label may also indicate that the shrimp is processed in the U.S.[27]

Just as CBP has held that foreign, imported shrimp is not transformed into a product of the United States through peeling, deveining, and/or cooking in the United States, CBP has consistently held that shrimp harvested in the United States and shipped to a foreign country for minor processing is not transformed into the product of another country by virtue of that processing. For example, CBP issued HQ 563063 on July 26, 2004, regarding shrimp that were "harvested by U.S.-flag vessels operating in U.S. waters in the Gulf of Mexico."[28] This shrimp was to be "shipped to China to be processed at its facilities," with the processing consisting of "thawing, sorting, heading, shelling, deveining, repackaging, and refreezing."[29] Further, "{i}n some instances, the shell would not be removed from the tail of the shrimp and a cut would be made on the meat to produce a 'tail-on butterfly' shrimp" while, "{i}n other instances, the peeled and deveined shrimp would be {} pulled to elongate or stretch the shrimp."[30] In response, CBP held that "{b}ased on the facts you have presented, the raw shrimp harvested and frozen by a U.S. flag vessel would be considered a product of the U.S."[31] CBP held that "{t}he imported shrimp would not be substantially transformed in China as a result of the processing described above" and that "the country of origin of the imported shrimp would be the U.S."[32]

Consistent with this holding, almost a decade later, on November 8, 2013, CBP issued Ruling Letter N247131 in response to a request from Pearl Inc., regarding wild-caught shrimp landed in the United States that was shipped to China for further processing consisting of "the removal of the heads and shells, and possibly also deveining" as well as frozen and "packed in 2, 3, or 5 pound boxes"

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26 Id.

27 Id.

28 Attached as **Exhibit 3**.

29 Id.

30 Id.

31 Id.

32 Id.

before being shipped back to the United States.[33] CBP held that "even after being processed in China, the shrimp currently under discussion retain their initial country of origin status as U.S. products for CBP marking purposes."[34]

CBP has also consistently held that shrimp harvested in one foreign country and processed in a second foreign country is not transformed into a product of that second foreign country by virtue of any peeling, deveining, and/or cooking. For example, CBP has issued a series of rulings regarding wild-caught shrimp landed in Argentina that are shipped to China or Vietnam for further processing. The most recent was published earlier this year, on February 1, 2019, when CBP issued Ruling Letter N302051, in which the agency held that "frozen, raw, unprocessed, wild-caught Argentine Red shrimp" shipped to China for further processing wherein the shrimp was "thawed, graded, beheaded, deveined, washed, soaked in the food additive Carnal 659S and salt" did not effect a substantial transformation of the shrimp and that, once these shrimp were shipped from China to the United States "the products retain their initial country-of-origin status for CBP marking purposes."[35] In making this holding, CBP explained that the agency had "previously ruled that the processing of shrimp by means you outline (i.e., beheading, peeling, de-veining) does not effect a substantial transformation."[36]

Similarly, on September 21, 2017, CBP issued Ruling Letter N289554, in which the agency held that "raw, frozen headless shrimp of the pleoticus muelleri species from Argentina" shipped to China for further processing "of thawing, grading, a knife cut across the back of the shrimp, deveining, washing, soaking in food additive and salt" and thereafter the shrimp would be "rewashed, graded by size, frozen and packed for shipping" did not effect a substantial transformation of the shrimp and that the shrimp "retain{ed} their initial country of origin status and is a product of Argentina for U.S. Customs and Border Protection marking purposes."[37] Moreover, on January 18, 2017, CBP issued Ruling Letter N282063, holding that Argentinian "frozen wild caught shrimp of the pleoticus muelleri species" shipped to China for processing consisting of "defrosting, sorting, removal of the head, deveining, and a knife cut along the back side of the shrimp," along with individual quick freezing and packaging in two pound bags did not effect a substantial transformation of the shrimp and that shrimp "retain{ed} their initial country of origin status" and were "a product of Argentina for U.S. Customs and Border Protection marking purposes."[38] In Ruling Letter N286963 (July 5, 2017), CBP was asked to evaluate a factual circumstance where "{t}he subject merchandise is wild shrimp caught in Argentina where the headless shells are frozen in block form."[39] This shrimp is then "shipped to Vietnam where it is peeled and deveined while in the frozen state" and, in

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33 Attached as **Exhibit 4**.

34 Id.

35 Attached as **Exhibit 5**.

36 Id.

37 Attached as **Exhibit 6**.

38 Attached as **Exhibit 7**.

39 Attached as **Exhibit 8**.

Vietnam, "is packaged in 2-pound retail sized bags for shipment to the United States."[40] In response to this fact pattern, CBP found "that the processing undertaken by the means you outline at the facility in Vietnam does not effect a substantial transformation."[41] Accordingly, CBP held "that the frozen wild caught shrimp retain their initial country of origin status and is a product of Argentina for U.S. Customs and Border Protection marking purposes."[42]

These rulings have not been limited to shrimp harvested in Argentina. For example, in Ruling Letter N010853 (June 5, 2007), CBP considered a scenario which involved "raw, unprocessed frozen shrimp of U.S. or Mexican origin . . . shipped to Vietnam for processing."[43] "After being processed in Vietnam, the shrimp (again in frozen form) will be imported into the United States for human consumption."[44] As explained by CBP, "{t}he processing in Vietnam will in each instance be one or more of the following: beheading, peeling, removing the tails, de-veining, and/or cooking."[45] CBP further explained that based on the requestor's presentation "it appears that any cooked versions of the imported processed shrimp will be in peeled condition."[46] In its ruling, CBP made clear that no variety of this processing in Vietnam altered the country of origin of the shrimp:

> U.S. Customs and Border Protection (CBP) has previously ruled that the processing of shrimp by means identical or similar to those you outline (i.e., peeling, de-veining, cooking, etc.) does not effect a substantial transformation. See Headquarters Ruling Letters 731763 (5/17/89), 563033 (7/6/04) and 563063 (7/26/04). Accordingly, we find that even after being processed in Vietnam, the products currently under discussion retain their initial country-of-origin status for CBP marking purposes.[47]

In Ruling Letter N210398, issued by the agency on April 10, 2012, CBP addressed "raw, whole, unprocessed frozen shrimp from Ecuador, Thailand or Vietnam" shipped to China for processing into three different versions of shrimp (peeled and deveined, raw; peeled and deveined, cooked; and headless, shell-on, raw).[48] In that letter, CBP held that peeling, de-veining, and cooking of shrimp did not "effect a substantial transformation" and that "even after being processed in China, the products currently under discussion retain their initial country-of-origin status for CBP marking purposes."[49]

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40 Id.

41 Id.

42 Id.

43 Attached as **Exhibit 9**.

44 Id.

45 Id.

46 Id.

47 Id.

48 Attached as **Exhibit 10**.

49 Id.

Further, in HQ 563033, issued by the agency on July 6, 2004, CBP held that shrimp grown and harvested in Bangladesh that was shipped to India for processing consisting of "heading, shelling, deveining, cooking, freezing or some combination of these processes" was not substantially transformed in India and that the "country of origin of the imported shrimp would be Bangladesh."[50] And, finally, in Ruling Letter N265032, issued by the agency on June 5, 2015, CBP held that shrimp that was farm-raised and harvested in Saudi Arabia that was subsequently shipped to facilities in either Taiwan or Malaysia for further procession consisting of defrosting, peeling (removal of the heads and shells), deveining, leavening (2-hour soaking, in water mixed with small amounts of trisodium citrate and citrate acid, intended to prevent dehydration and other damage to the shrimp meat during the freezing process), and rinsing and freezing would not be substantially transformed and "must be marked to indicate that their contents are products of the original country, e.g., "Product of Saudi Arabia."[51]

In sum, a review of CBP's country of origin determinations with regard to shrimp products imported into the United States makes clear that minor processing, such as the cooking of shrimp, does not constitute a substantial transformation. In at least a dozen ruling letters issued over the last three decades, CBP has clearly and consistently articulated this standard.

(2) CBP's Ruling in NY N281670 Conflicts with this Well-Established Precedent and Should be Modified

NY N281670 improperly concluded that the cooking of shrimp substantially transforms the product for CBP's marking purposes. As noted above, decades of agency rulings hold that cooking, along with other minor shrimp processing, does not substantially transform shrimp for CBP country of origin determinations. NY N281670 reached an incorrect decision by failing to consider these existing rulings and by incorrectly applying the substantial transformation test.

As noted in the proposed Headquarters ruling, Commerce evaluates the name, character, and use when evaluating whether there has been a substantial transformation.[52] The cooked shrimp subject to Pescanova's ruling request are still referred to as shrimp following cooking. Moreover, they retain the same size, quality, and shape. Finally, the use of the shrimp remains the same after cooking because cooking "merely render{s} the product ready for eating."[53]

The conclusion reached by CBP in the proposed Headquarters ruling cures the error made in NY N281670 and is consistent with case law which has declined to find a substantial transformation when the manufacturing or production process is "minor" and accounts for "only a small fraction of the time and cost involved."[54] For example, the production of orange juice from orange concentrate, orange essences, orange oil, and water has been held by the U.S. Court of International Trade to be

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50 Attached as **Exhibit 11**.

51 Attached as **Exhibit 12**.

52 Proposed Modification at Attachment B.

53 Id. (quoting HQ 731763 (**Exhibit 2**)).

54 Uniroyal, Inc. v. United States, 542 F. Supp. 1026, 1029-30 (Ct. Int'l Trade 1982).

unsubstantial despite a change in name and use.[55] In this case, CBP should continue to follow decades of consistent agency practice and modify NY N281670 in the manner proposed in the draft Headquarters ruling.

(3) Consistency of Country of Origin for Marking Purposes is Important to the Southern Shrimp Alliance's Continued Efforts to Enforce U.S. Trade Regulations

The history of evasion and circumvention of Commerce's antidumping duty orders on certain frozen warmwater shrimp and the FDA's Import Alerts covering imported shrimp products underscores the importance of maintaining clear, consistent rules regarding country of origin with regard to shrimp products imported into the United States.

CBP's enforcement efforts in response to unlawful evasion and circumvention of our trade regulations are well documented. For example, CBP has described, in a public document (HQ H028384, issued on February 28, 2012), its enforcement efforts in a circumstance where Chinese shrimp was commingled in the shrimp exports from an Indonesian exporter as follows:

> By Notice of Action dated, November 15, 2005, {CBP} notified {King & Prince ("KP")} that it was investigating its imports for evasion of the {Antidumping Duty ("ADD")} order on frozen warmwater shrimp from China. After receiving this Notice, on January 11, 2006, KP filed what it termed a prior disclosure under 19 U.S.C. § 1592 and it produced information demonstrating that its shrimp supplier, P.T. Ocean Gemindo, had falsely identified Chinese-origin shrimp as having originated in Indonesia.
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> On June 1, 2007, CBP's Office of Regulatory Audit issued its report of an audit on the origin of KP's warmwater shrimp of the subject entries in Report 431-06-ADD-{Audit ("AU")}-20940. The audit concluded that KP falsely declared Chinese-origin shrimp on these entries that were actually subject to ADD order A-570-893. The report indicated that the Indonesian-origin shrimp was commingled with Chinese-origin shrimp. CBP instructed KP to pay this lost revenue and on July 2, 2007, KP tendered the lost revenue. . . .[56]

Separately, the U.S. Government Accountability Office has documented CBP's enforcement efforts with respect to the transshipment of Chinese shrimp through Indonesia and Malaysia:

> Another step CBP takes to detect and prevent seafood fraud is to target shipments that CBP officials suspect are part of a scheme to evade customs duties. CBP has five National Targeting and Analysis Groups (NTAG) that develop criteria to target potentially fraudulent imports. One of these NTAGs develops criteria to target potentially fraudulent shipments of seafood and reviews leads from other CBP officials and external organizations, such as trade associations, on transshipping

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55 See National Juice Products Assoc. v. United States, 628 F. Supp. 978, 977-92 (Ct. Int'l Trade 1986).

56 Attached as **Exhibit 13**.

schemes to avoid paying antidumping and countervailing duties. This NTAG researches and monitors trade trends to identify changes or patterns in trade that may signal potential fraudulent activity. For example, as part of their 2005 inquiry into an allegation of illegal transshipment of Chinese shrimp through Indonesia, the NTAG staff reviewed information on the shippers of Indonesian shrimp before and after the antidumping duty order for Chinese shrimp was put in place. They found a sharp decrease in shrimp imports from China after the antidumping duty order was issued in early 2005 and a concurrent increase in shrimp imports from Indonesia, among other countries. The NTAG staff enlisted the support of ICE to investigate Indonesian shrimp exporters who they suspected were illegally transshipping Chinese shrimp. They found that some Indonesian firms were importing Chinese shrimp and then shipping them to the United States labeled as Indonesian shrimp. CBP found that, in 2005, approximately $6 million worth of Chinese shrimp had been illegally transshipped through Indonesia to avoid antidumping duties.

While the illegal transshipment of Chinese shrimp continued through a different transshipping point, this time it also had a health- and food safety-related effect. In June 2007, FDA announced a countrywide import alert on five Chinese-farmed seafood products, including shrimp. This import alert required that all Chinese shrimp be detained and refused entry, unless the importer could prove the absence of unapproved drugs in the shrimp. On the basis of industry information and CBP and ICE investigations, CBP determined that Chinese shrimp was being transshipped to the United States through Malaysia. Due to this illegal transshipment, importers of Chinese shrimp were able to circumvent not only the 2005 antidumping duty but also FDA's recent import alert. In September 2007, CBP tested shipments of suspected Chinese shrimp illegally transshipped through Malaysia for the presence of unapproved drugs and found some contaminated shrimp. On the basis of CBP's information, in March 2008, FDA issued a new import alert requiring importers of shrimp from one Malaysian manufacturer to prove the absence of unapproved drugs prior to entering future shipments of shrimp into U.S. commerce.[57]

CBP's successful enforcement efforts with respect to shrimp imports have depended upon long-standing clear, consistent rules regarding the country of origin of shrimp imports that are known and understood broadly by the trade community. Consistency within and between CBP rulings is of critical importance to enforcement of our trade regulations moving forward. Inconsistent country of origin rulings issued by CBP ultimately handcuff the agency's own ability to enforce the law.

The factual circumstances presented in NY N281670 cover shrimp raised in India. Indian shrimp is subject to an antidumping duty order,[58] as well as the FDA's Import Alert 16-35 "Detention

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57 "SEAFOOD FRAUD: FDA Program Changes and Better Collaboration among Key Federal Agencies Could Improve Detection and Prevention," GAO-09-258 (Feb. 2009), available at: https://www.gao.gov/new.items/d09258.pdf (last visited June 27, 2019).

58 See Certain Frozen Warmwater Shrimp from India, 70 Fed. Reg. 5,147 (Dep't Commerce Feb. 1, 2005) (Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order).

Without Physical Examination of Raw and Cooked Shrimp from India."[59] In these circumstances, the proposed modification of NY N281670 and the revocation of treatment relating to the country of origin for marking purposes of cooked shrimp is of even greater importance. The ambiguity created by the inconsistent holding of NY N281670 invites bad actors to further adopt and develop evasion and circumvention tactics while claiming that country of origin rules are no longer clear and thirty years of consistent rulings have now been muddled.

For these reasons, the Southern Shrimp Alliance strongly supports CBP's proposed modification and revocation and encourages the agency to take action as quickly as possible.

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Thank you in advance for your consideration of these comments on the proposed modification of NY N281670. The Southern Shrimp Alliance supports CBP's reconsideration of NY N281670 and its continued efforts to ensure the consistent application of the substantial transformation test with regard to the importation of shrimp products into the United States.

Respectfully submitted,

John Williams
Executive Director

Dated: June 27, 2019
Tarpon Springs, Florida

[59] Available at https://www.accessdata.fda.gov/cms_ia/importalert_43.html (last visited June 27, 2019).

EXHIBIT LIST

Exhibit Number	Exhibit Name
1	HQ 731472 (June 23, 1988) (Letter from CBP to the American Shrimp Processors Association)
2	HQ 731763 (May 17, 1989) (Letter from CBP to the Freeman, Wasserman & Schneider)
3	HQ 563063 (July 26, 2004) (Letter from CBP to Reed Smith LLP)
4	N247131 (November 8, 2013) (Letter from CBP to Pearl Inc. d/b/a Indian Ridge Shrimp Co.)
5	N 302051 (February 1, 2019) (Letter from CBP to Flegenheimer International Inc.)
6	N 289554 (September 21, 2017) (Letter from CBP to Flegenheimer International)
7	N 282063 (January 18, 2017) (Letter from CBP to Rod International)
8	N 286963 (July 5, 2017) (Letter from CBP to Rosy Service Forwarders)
9	N 010853 (June 5, 2007) (Letter from CBP to The Gwenn Law Group)
10	N 210398 (April 10, 2012) (Letter from CBP to Fortune Laurel LLC)
11	HQ 563033 (July 6, 2004) (Letter from CBP to Garvey Schubert Barer)
12	N 265032 (June 5, 2015) (Letter from CBP to Stein Shostak Shostak Pollack & O'Hara, LLP)
13	HQ H028384 (February 28, 2012) (Letter from CBP to Port of Savannah)

EXHIBIT 1

HQ 731472
June 23, 1988

MAR 2-O5 CO:R:C:V 731472 LR

CATEGORY: Marking

Mr. William D. Chauvin
Executive Director
American Shrimp Processors Association
P.O. Box 50774
New Orleans, Louisiana 70150

Re: Country of Origin Marking Requirements for Shrimp Processed in the U.S. by Shelling and Deveining

Dear Mr. Chauvin:

This ruling is in further response to our letter dated May 16, 1988, stating our position that the peeling of imported shrimp does not constitute a substantial transformation. We advised you that a ruling would follow.

BACKGROUND:

On April 13, 1988, the Customs Service seized certain foreign shrimp that had been repacked into boxes that labeled the shrimp as a product of the U.S. In some cases, the shrimp was merely repacked from one box to another. In other cases, the shrimp was also deveined and peeled. Though never the subject of a formal ruling, Customs specifically advised numerous processors who are members of your association, as well as the National Marine Fisheries Service (NMFS) as early as 1984, that containers of imported shrimp must be marked to indicate the foreign country of origin of the shrimp. Although the position of the Customs Service has remained constant, i.e. that the mere repacking or repacking along with deveining and/or peeling is not a substantial transformation and that country of origin marking is required, it has come to our attention that the NMFS advised shrimp repackers that such labeling was not required. The purpose of this ruling is to clarify any misunderstandings that may have resulted. While your letter addresses only shelling, the letter from the NMFS addresses both shelling and deveining. Our ruling, which covers both shelling and deveining, will be published in the Customs Bulletin, a publication that is widely disseminated to members of the importing community.

FACTS:

The imported product is green headless frozen shrimp (i.e., shrimp which has been headed). After importation, the shrimp is thawed, sorted, iced, peeled, deveined, iced and packaged. The peeling and deveining (removal of the intestinal tract) is done either by automated or semi-automated machinery. The domestic processing results in some weight loss which increases the remaining per pound product cost. (For example, we are told that a processor normally yields 80 percent of the original weight after peeling 70-90 count size Chinese white shell-on shrimp. By virtue of the weight loss alone, this increases the price per pound from $2.00 to $2.50. After adding the cost of processing and profit, the product is sold for $3.10). Although not specifically stated, it would appear that the removal of the shell from larger imported shrimp would result in a greater percentage yield of the original weight and would result in a smaller percentage increase in price.

ISSUE:

Whether containers of imported shrimp must be marked to indicate the country of origin after the shrimp has been deveined and peeled in the U.S.

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that, unless excepted, every article of foreign origin or its container must be legibly, permanently, and conspicuously marked to indicate the country of origin to an ultimate purchaser in the United States. 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 C.C.P.A. 297, 302, C.A.D. 104 (1940) (quoted in Globemaster, Inc. v. United States, 68 Cust. Ct. 77, 79-80, 340 F. Supp. 975-76 (1972) and National Juice Products Association v. United States, 10 CIT ___, 628 F. Supp. 978 (1986).

The regulations implementing the statute are set forth in Part 134, Customs Regulations (19 CFR Part 134). Under 19 CFR 134.1(d), the ultimate purchaser is generally the last person in the U.S. who will receive the article in the form in which it was imported. If an imported article is further manufactured in the

U.S. and the manufacturing process is merely a minor one which leaves the identity of the imported article intact, pursuant to 19 CFR 134.1(d)(2), the consumer or user of the article who obtains the article after the processing, will be regarded as the ultimate purchaser.

Foreign natural products (such as shrimp) are on the so-called J-list and are excepted from individual marking requirements (19 U.S.C. 1304(a)(3)(J) and 19 CFR 134.33). However, the outermost container in which the article ordinarily reaches the ultimate purchaser is required to be marked to indicate the origin of its contents. As provided in 19 CFR 134.25, if the imported J-list product will be repacked prior to sale to the ultimate purchaser, the importer must certify to Customs that he will properly mark the new package or alternatively notify the repacker of the obligation to mark the new package. The certification procedures, which are for the purpose of ensuring that despite the repacking, the ultimate purchaser will be advised of the country of origin, apply to imported J-list articles processed and repacked after importation unless the articles are substantially transformed prior to repacking. Absent a substantial transformation, the consumer or other recipient of the shrimp is considered the ultimate purchaser and is entitled to be informed of the country of origin of the shrimp.

In order for a substantial transformation to be found, an article having a new name, character and use must emerge from the processing. See United States v. Gibson-Thomsen Co, Inc, 27 C.C.P.A. 267, C.A.D. 98 (1940). The issue before the Customs Court in that case was whether hairbrushes and toothbrushes manufactured in the U.S. by inserting bristles into wooden handles imported from Japan were required to be marked as products of Japan. After careful examination of the statute and its legislative history, the court concluded that Congress had not intended the marking requirements to continue to apply to an imported article which is used in the U.S. as a material in the manufacture of a new article having a new name, character and use, and which consequently loses its separate identity in the finished product.

This decision was followed and quoted extensively in Grafton Spools, Ltd. v. United States, 45 Cust. Ct. 16, 22, C.D. 2190 (1960), in which empty metal spools imported from England and wrapped in the U.S. with inked ribbons to create typewriter ribbons and business machine ribbons were found to have lost their identity in the finished product. The court observed that

what the ribbon manufacturers were selling were ribbons, which of course had to be wound on a spool, but it was the ribbon and not the spool which the manufacturer's customers were interested in purchasing.

A more recent court decision on the issue of country of origin marking is Uniroyal Inc. v. United States, 3 C.I.T. 220, 542 F. Supp. 1026 (1982), aff'd, 702 F.2d 1022 (Fed Cir. 1983). In this case the merchandise before the Court of International Trade consisted of "footwear uppers consisting of complete shoes except for an outsole...," manufactured in Indonesia and imported into the U.S. where a pre-shaped rubber outsole was affixed and the complete shoe was sold to retailers. The question was whether the addition of the outsoles substantially transformed the uppers so that the uppers did not have to be individually marked as a product of Indonesia.

After carefully examining both the imported upper and the finished shoe, the court concluded that the imported upper did not lose its distinct identity in the finished shoe and to the contrary, was the very essence of the completed shoe. This was so even though the imported upper could not be sold to or worn by consumers without the heavy rubber outsole being attached and even though following attachment of the rubber outsole the shoe was called by a different name, a deck shoe, rather than an upper or a moccasin.

In the most recent court decision involving a country of origin marking question, National Juice Products Association v. United States, supra, the Court of International Trade upheld Customs determination that imported orange juice concentrate is not substantially transformed when it is domestically processed into retail orange juice products. In that case, the orange concentrate was mixed with water, orange essences, orange oil and in some cases, fresh juice and either packaged in cans and frozen or pasteurized, chilled and packed in liquid form. Customs found, and the court agreed, that the domestic processing did not produce an article with a new name, character or use because the essential character of the final product was imparted by the imported concentrate and not the domestic processing. The court stated "the retail product in this case is essentially the juice concentrate derived in substantial part from foreign grown, harvested and processed oranges. The addition of water, orange essences and oils to the concentrate, while making it suitable for retail sale does not change the fundamental character of the product, it is still essentially the product of the juice or oranges."

The court found that since the U.S. processing did not constitute a substantial transformation, the retail packages of juice had to be marked to indicate the country of origin of the imported concentrate. See also HQ 729365, dated June 25, 1986 (imported broccoli is not substantially transformed when it is processed in the U.S. by cutting, blanching, packaging and freezing; the imported broccoli does not lose its fundamental character and identity and the repacked broccoli is subject to the requirements of 19 U.S.C. 1304).

Applying the principles set forth in the above precedents to the facts in this case, we are of the opinion that the shelling and deveining of foreign shrimp does not constitute a substantial transformation. First, the processing does not result in a change of name that is material. While the imported product may be known simply as frozen shrimp whereas the processed product may described as "peeled and deveined" frozen shrimp, both products have essentially the same name - frozen shrimp. Such a minor name change is not enough to warrant a finding of substantial transformation.

More importantly, the character of the imported product is not changed by peeling and deveining. Both before and after peeling and deveining, the product is still basically the same, i.e., raw frozen shrimp. The quality and size of the product is attributable to the imported product and not the domestic processing. While the peeling and deveining changes the physical appearance of the shrimp to a certain degree and renders the product ready for eating, in our opinion, the change is minor and does not fundamentally change the character of the imported product. Just as the imported orange juice concentrate in National Juice, the imported raw broccoli in HQ 729365 and the imported upper in Uniroyal, imparted the essential character to the final product, we believe that in this case the imported shrimp similarly imparts the essential character to the final product.

Finally, the shelling and deveining operations do not significantly change the product's intended use, which we believe is dictated primarily by the very nature of the product itself (as raw shrimp) and by its size. These criteria are already determined at the time of importation. The purchaser of frozen raw shrimp has already decided that he would like to purchase raw shrimp, that the product will be frozen, and that the raw shrimp will be a particular size. Whether or not the purchaser would also like the added convenience of having it deveined and shelled at the time of purchase is but one factor to consider. We note that peeling and deveining is often performed by many consumers in their own kitchens.

We are not persuaded by the argument that the processing changes the use of the imported product since peeled shrimp cannot be utilized for any of the shell-on presentations, e.g. "boil and peel", and "tail-on cocktail" dishes. Although the peeling may limit some of the uses of the imported product, this limitation does not equate with substantial transformation. In each of the cases cited above, where the U.S. processing did not effect a substantial transformation, the processed product could no longer be used for certain presentations. For example, after water was added to the orange juice concentrate it could no longer be sold as a frozen concentrated product; nonetheless, it is clear that the addition of water does not effect a substantial transformation. Similarly, after the imported broccoli was cut and frozen, it could no longer be used as broccoli spears. Nonetheless, it was held that both the imported and processed products had essentially the same use.

Based on the above considerations, we find that the peeling and deveining of shrimp does not change the name, character or use of the imported product and thus, does not constitute a substantial transformation. To the contrary, the domestic manufacturing processing is merely a minor one which leaves the identity of the imported article intact. Therefore, the consumer or user of the shrimp who obtains it after the processing is regarded as the ultimate purchaser within the meaning of 19 U.S.C. 1304 and 19 CFR 134.1(d). As such, the repacked shrimp must be labeled to reflect the country of origin of the shrimp. To say that a consumer is not entitled to know the origin of the shrimp by virtue of the peeling and deveining operations would, in our opinion, render the marking statute meaningless.

HOLDING:

Foreign shrimp which is processed in the U.S. by peeling, deveining and repacking is not substantially transformed. Therefore, the repacked shrimp is subject to the country of origin marking requirements of 19 U.S.C. 1304 and 19 CFR Part 134 and the repacked product must be labeled to indicate the country of origin of the shrimp. In addition, the importer of such shrimp is subject to the certification requirements set forth in 19 CFR 134.25.

Sincerely,

John Durant, Director
Commercial Rulings Division

EXHIBIT 2

HQ 731763

May 17, 1989

MAR 2-05 CO:R:C:V 732337 LR

CATEGORY: Marking

Donald W. Lewis, Esq.
Freeman, Wasserman & Schneider
300 Metropolitan Square
655 Fifteenth Street, NW.
Washington, D.C. 20005

RE: Country of Origin Marking of Cooked Shrimp

Dear Mr. Lewis:

This is in response to your letter dated September 8, 1988, submitted on behalf of the National Fisheries Institute (NFI), requesting a ruling on the country of origin marking requirements for imported raw shrimp which is cooked in the U.S. We have also considered the supplemental letter dated January 9, 1989, from the NFI and the arguments that were raised during a meeting at Customs on April 14, 1989.

FACTS:

According to your submission, raw shrimp is imported into the U.S. in three different forms: (1) shell-on shrimp (commercially known as "green headless shrimp"), (2) peeled, undeveined shrimp ("PUD shrimp"); and (3) peeled and deveined shrimp ("P&D shrimp)". The shrimp are imported frozen in either five pound or two kilogram blocks.

After importation, the shrimp are thawed, washed, graded and cooked. In some cases, the shrimp are also peeled and deveined. According to the NFI submission, the objectives of the cooking operations are to coagulate the protein and raise the temperature of the core of the shrimp above 167 degrees Fahrenheit to kill any pathogens.

The first step in the cooking operations is the dipping of the raw shrimp into a solution of salt and sodium tripolyphosphate (TPT). The salt enhances the flavor and texture, while the TPT stabilizes the loss of moisture during processing. In some cases, the shrimp are also marinated in

herbs and spices to further enhance their flavor. The second step consists of the cooking of the raw shrimp by any one of three alternate methods. The first method utilizes high pressure cookers which employ steam under pressure to cook batches of the raw shrimp. The second method utilizes a continuous hot air oven in which very hot and humid air is blown over a moving belt carrying shrimp though the oven. The third method involves boiling the shrimp on either a batch or continuous basis. The actual cooking times needed to achieve these objectives vary depending upon the type of cooker used and the size of the shrimp. As a general rule, a batch steam cooker is operated for about 20-25 minutes which includes a heating up period, a cooking period from 1 to 5 minutes, and a cooling down period. When shrimp are cooked in a continuous hot air oven, the cooking times vary from about 2 to 7 minutes. No information was provided as to the cooking period when the shrimp are boiled. After cooking, the shrimp are immersed in a series of water baths, which is followed by a second freezing operation.

You state that cooking is a sophisticated process which produces significant changes in chemical composition, moisture content, physical appearance, marketability and cost per pound. The temperature at which the shrimp are cooked and the timing of the operation is said to require constant adjustment in order to produce a consistent cooked product from an inconsistent raw product.

With regard to chemical composition, cooking results in the coagulation of the protein in the raw shrimp, changes the levels of ash, cholesterol, fatty acids, vitamins and minerals, and causes a moisture loss. As to marketability, cooking reduces the shelf life of the product from about one year to three to six months and is said to result in a different commercial commodity. With regard to physical appearance, cooking turns the shrimp a uniform dark pink irrespective of the various colors of the raw product, changes the color of the meat from a translucent or opaque color to white, and changes the texture of the meat from watery or mushy to one which is firm and slightly resilient. Finally, the cooking process allegedly adds approximately 14 to 21 percent to the cost of a pound of green headless shrimp and about 35 percent to the cost of a pound of PUD or P&D shrimp. In light of these changes, it is claimed that the imported shrimp is substantially transformed into a new and different article which is not required to be labeled as a foreign product.

Two Headquarters Rulings (HQ), 070395, June 6, 1983, pertaining to roasting of green coffee beans, and 726040, August 30, 1984, pertaining to roasting of macadamia nuts, are cited in support of your contentions. In both cases, Customs determined

that the roasting process resulted in a substantial transformation. In your opinion, cooking of shrimp involves more extensive processing than roasting. It was also argued during the meeting that the two court decisions, Koru North America v. U.S., Slip Op. 88-162 (Court of International Trade, decided November 23, 1988) and The Torrington Co. v. U.S. 764 F.2d 1563 (1985) support a finding of substantial transformation in this case. 1/

Finally, it was stated during the meeting that there are stronger quality controls in the U.S. market so that the consumer would want to know that the shrimp are processed in the U.S.

ISSUE:

For purposes of 19 U.S.C. 1304, does the cooking of shrimp constitute a substantial transformation?

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that, unless excepted, every article of foreign origin, or its container, must be legibly, permanently, and conspicuously marked to indicate the country of origin to an ultimate purchaser in the U.S. 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 C.C.P.A. 297, 302, C.A.D. 104 (1940) (quoted in Globemaster, Inc. v. United States, 68 Cust. Ct. 77, 79-80, 340 F. Supp. 975-76 (1972) and National Juice Products Association v. United States, 10 CIT 48, 628 F. Supp. 978 (1986).

The regulations implementing the requirements and exceptions to 19 U.S.C. 1304 are set forth in Part 134, Customs Regulations (19 CFR Part 134). Under 19 CFR 134.1(d), the ultimate purchaser is generally the last person in the U.S. who will receive the article in the form in which it was imported. If an imported

1/ In Torrington, the Court of Appeals for the Federal Circuit affirmed a decision of the CIT that certain sewing machine needles may be entered free of duty under the Generalized System of Preferences. Although the case involved the issue of substantial transformation, it is not relevant here since Customs determined in T.D. 86-7 that the decision shall be applied only in those instances in which the factual situation conforms to the one on which the decision is based.

article is further manufactured in the U.S. and the manufacturing process is merely a minor one which leaves the identity of the imported article intact, pursuant to 19 CFR 134.1(d)(2), the consumer or user of the article who obtains the article after the processing, will be regarded as the ultimate purchaser.

Foreign natural products (such as shrimp) are on the so-called "J-list" and are excepted from individual marking requirements pursuant to 19 U.S.C. 1304(a)(3)(J) and 19 CFR 134.33. However, the outermost container in which the article ordinarily reaches the ultimate purchaser is required to be marked to indicate the origin of its contents. As provided in 19 CFR 134.25, if the imported J-list product will be repacked prior to sale to the ultimate purchaser, the importer must certify to Customs that he will properly mark the new package or alternatively, notify the repacker of the obligation to mark the new package. The certification procedures, which are for the purpose of ensuring that the ultimate purchaser will be advised of the country of origin, apply to imported J-list articles processed and repacked after importation unless the articles are substantially transformed prior to repacking. Absent a substantial transformation, the consumer or other recipient of the shrimp is considered the ultimate purchaser and must be advised of the country of origin of the shrimp.

For a substantial transformation to be found, an article having a new name, character or use must emerge from the processing. See United States v. Gibson-Thomsen Co, Inc, 27 C.C.P.A. 267, C.A.D. 98 (1940).

Koru North America v. United States, supra, is the most recent judicial decision involving the issue of substantial transformation in the context of 19 U.S.C. 1304. Specifically, the court considered whether the processing of headed and gutted fish in South Korea by thawing, skinning, boning, trimming, refreezing and packaging, changed the name, character or use of the fish so as to effect a substantial transformation and render Korea the country of origin for marking purposes. The court concluded that the processing performed in Korea constituted a substantial transformation because it changed the name of the article from "headed and gutted fish" to "individually quick-frozen fillets" and more importantly, because it vastly changed the fish's character. In this regard, the court noted that while the fish arrive in Korea with the look of a whole fish, when they leave they no longer possess the essential shape of the fish. The court also noted that the fillets are considered discrete commercial goods which are sold in separate areas and markets. The fact that the products also have different tariff classifications was found to be additional evidence of substantial transformation.

In the other recent "food marking case" National Juice Products, supra, the Court of International Trade considered the effects, for purposes of marking, of domestic processing of foreign orange juice concentrate. The court upheld Customs determination that imported orange juice concentrate is not substantially transformed when it is mixed with water, orange essences, orange oil and in some cases, fresh juice and either packaged in cans and frozen or pasteurized, chilled and packed in liquid form. Customs found, and the court agreed, that the domestic processing did not produce an article with a new name, character or use because the essential character of the final product was imparted by the imported concentrate and not the domestic processing. The court stated "the retail product in this case is essentially the juice concentrate derived in substantial part from foreign grown, harvested and processed oranges. The addition of water, orange essences and oils to the concentrate, while making it suitable for retail sale does not change the fundamental character of the product, it is still essentially the product of the juice of oranges." Therefore, the orange juice products had to be marked with the country of origin of the imported concentrate.

Based on the rationale of National Juice Products, Customs determined in HQ 731472, June 23, 1988, published as C.S.D. 88-10 on August 17, 1988, that the peeling and deveining of shrimp in the U.S. does not change the name, character or use of the imported product and thus, does not constitute a substantial transformation. In this regard, Customs stated that: "the quality and size of the product is attributable to the imported product and not the domestic processing. While the peeling and deveining changes the physical appearance of the shrimp to a certain degree and renders the product ready for eating, in our opinion, the change is minor and does not fundamentally change the character of the imported product. We believe that in this case the imported shrimp similarly imparts the essential character to the final product."

The issue presented here is whether the additional cooking operations performed in the U.S. is enough to substantially transform the imported shrimp so that it does not have to be labeled as a foreign product. We find that it is not.

Although Customs has not previously ruled on this precise issue, there are rulings regarding the effects of somewhat similar processes. For example, in C.S.D. 86-26, June 25, 1986, Customs determined that for marking purposes, the blanching, cutting and freezing of broccoli and other vegetables did not constitute a substantial transformation. Blanching is a process which prepares vegetables for freezing whereby the vegetables are subjected to steam heat to partially cook and retard any deterioration of the vegetable from within. Customs found that

the blanching and other processing did not change the fundamental character and identity of the imported broccoli. In this regard, the ruling states: "despite the fact that the imported product may be known as "fresh" broccoli whereas the processed products may be described as "frozen" broccoli or "chopped" broccoli, the fundamental identity of the imported product (as broccoli) is maintained, and is not lost or subordinated in the processed product." The broccoli had been steam blanched for 6 minutes at 210 degrees Fahrenheit. The shrimp undergoes processing similar to blanching. Like the broccoli, some of the shrimp are subjected to steam heat for approximately the same amount of time to raise the internal temperature of the product.

Customs has also ruled on the effects of roasting, another process which involves the application of high heat to raise the internal temperature of the product. In T.D. 85-158, dated June 2, 1985 (overruling earlier rulings), Customs found that for purposes of 19 U.S.C. 1304, the roasting of pistachio nuts for 20-30 minutes to bring the internal temperature of the nut to 280 degrees Fahrenheit, did not substantially transform the nut. Customs concluded that the physical and commercial changes which occur in the pistachio nuts as a result of roasting are not significant and that the identity and use of the pistachio nuts remains intact. The decision states that roasting appears to be, like picking, sorting, and bagging, simply one of several processing steps to which all pistachio nuts are subjected, no one of which alters or limits the intended or potential commercial use. See also HQ 730058, June 2, 1987 (roasting of pecan nuts is not a substantial transformation).

Although Customs has ruled that the roasting of coffee beans and macadamia nuts does result in a substantial transformation (HQ 722360, June 6, 1984, and HQ 722980, October 17, 1983, both relating to country of origin marking; and 070395, June 6, 1983, relating to tariff classification), these rulings are of limited precedential value. This is because of the more recent rulings on the roasting of pistachio and pecan nuts mentioned above and a recent ruling on the roasting of coffee, HQ 554971, December 1, 1988, which held that for purposes of the free entry provisions of General Headnote 3(a), TSUS, which was replaced by General Note 3(a)(iv), Harmonized Tariff Schedule of the United States (HTSUS), the sorting, grading, blending, and roasting of coffee beans is not sufficient to substantially transform them into a new and different article of commerce.

Finally, in HQ 729256, May 23, 1988, Customs ruled that the smoking of raw salmon did not result in a substantial transformation for purposes of marking. The smoking process involves the introduction of smoke to the product to alter the taste and render it ready for eating.

The principle underlying each of the above marking decisions is that the processing in question did not create an article with a different name, character or use, but resulted in minor changes which rendered the product more suitable for consumption. In each case, Customs concluded that despite some physical changes that the processing produced to the article in question, the basic character and use of the product was attributable to the imported product and not, the domestic processing.

Applying the principles set forth above to the facts in this case, we conclude that cooking shrimp, like blanching vegetables, roasting pistachio nuts and smoking salmon, does not result in a change in the name, character or use of the imported product which is significant. First, the name of the product remains basically the same. Both before and after the cooking, the product is referred to as shrimp. As indicated in the broccoli decision, the fact that the product may have a different modifier preceding it is not determinative.

More important, cooking does not change the fundamental character of the imported shrimp. Both before and after the cooking, the product is still basically the same, frozen shrimp. As stated in our previous shrimp ruling, we are of the opinion that the character of the shrimp (i.e., its size and quality) is determined at the time of importation. This character is not changed significantly by cooking. Although the cooking process produces some changes in the color, texture and chemical composition, it does not change the basic shape of the product as did the processing of a whole fish into fillets in Koru or change the essential character of the imported product as described in National Juice. The character of the imported product, as frozen shrimp, is not lost or subordinated in the final product.

Finally, we are of the opinion that the use of the product is not changed as a result of the cooking process. Cooking, like peeling and deveining, are simple operations which merely render the product ready for eating. Like roasting of pistachio nuts, cooking is one process which all shrimp undergo before eating. Our observation in the earlier shrimp ruling that peeling and deveining are operations that are easily performed by a consumer in the kitchen, is also applicable here. Although the cooking of shrimp in a processing plant involves more sophisticated machinery, we note that cooking of shrimp can also be performed in the consumer's kitchen by simply placing the shrimp into boiling water for a few minutes. In our opinion, none of these operations is sufficient to render the shrimp outside the purview of the country of origin marking requirements.

Although the finished product would be classified differently than the imported product under the Harmonized Tariff

Schedule of the U.S., a change in tariff classification is but one factor to consider and is certainly not determinative.

Based on the above considerations, we conclude that the manufacturing process of peeling, deveining and cooking shrimp is not a substantial transformation but rather, a minor one which leaves the identity of the imported shrimp intact. Therefore, the consumer who obtains the shrimp after the processing is the ultimate purchaser.

A determination that the imported shrimp is not substantially transformed as a result of the processing described above, is consistent with the primary purpose of the country of origin marking statute which is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, by able to buy or refuse to buy them, if such marking should influence his will. This purpose is not served if the package of the cooked shrimp is not required to indicate the country of origin of the imported shrimp. With regard to the argument that the consumer may want to know that the shrimp was processed in the U.S. because of higher health standards, so long as the country of origin of the shrimp is clearly stated, the label may also indicate that the shrimp is processed in the U.S.

HOLDING:

For purposes of 19 U.S.C. 1304, the domestic processing of imported shrimp consisting of peeling, deveining, cooking, freezing, and repacking, does not constitute a substantial transformation. Accordingly, the repacked shrimp is subject to the country of origin marking requirements of 19 U.S.C. 1304 and 19 CFR Part 134 and the importer must follow the certification procedures of 19 CFR 134.25.

Based on the information we received from the industry regarding the necessary implementation period for HQ 731472, covering the marking of imported shrimp which is peeled and deveined in the U.S., we have determined that a similar implementation period (approximately 6 months) would be appropriate in the present case. Accordingly, the ruling will be effective as to shrimp imported on or after January 1, 1990.

Sincerely,

Harvey B. Fox
Director
Office of Regulations and Rulings

EXHIBIT 3

HQ 563063

July 26, 2004

MAR-2 RR:CR:SM 563063 KSG

CATEGORY: Marking

Richard E. Gutting, Jr.
Reed Smith LLP
Suite 1100- East Tower
1301 K Street, NW
Washington, D.C. 20005-3373

RE: Country of origin of imported shrimp; substantial transformation

Dear Mr. Gutting:

This is in response to your letter dated July 8, 2004, on behalf of the Red Chamber Company, requesting a country of origin ruling regarding imported shrimp.

FACTS:

You state that the shrimp are harvested by U.S.-flag vessels operating in U.S. waters in the Gulf of Mexico. The raw shrimp are frozen and bagged according to size onboard the ship. You state that the frozen raw shrimp are classified in subheadings 0306.13.0000.03 to subheading 0306.13.00.27 of the Harmonized Tariff Schedule of the United States ("HTSUS").

The bags of frozen raw shrimp are purchased by the Red Chamber Company and shipped to China to be processed at its facilities. The processing in China will consist of thawing, sorting, heading, shelling, deveining, repackaging, and refreezing. In some instances, the shell would not be removed from the tail of the shrimp and a cut would be made on the meat to produce a "tail-on butterfly" shrimp. In other instances, the peeled and deveined shrimp would be would be pulled to elongate or stretch the shrimp.

The processed shrimp will then be exported to the U.S. as either blocks of frozen raw shrimp packed in coated paperboard boxes, each holding 4 or 5

pounds net weight or bags of individually frozen raw shrimp each holding 2 pounds net weight. You state that the frozen shrimp sent to the U.S. would be classified in subheading 0306.13.00.40, HTSUS.

ISSUE:

What is the country of origin of imported shrimp which is processed as described above?

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930 (19 U.S.C. 1304), as amended, provides that unless excepted, every article of foreign origin 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 of 19 U.S.C. 1304. Pursuant to 19 CFR 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 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 this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

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. United States v. Gibson-Thomsen Co., Inc., 27 CCPA 267, C.A.D. 98 (1940).

In National Juice Products Association v. United States, 628 F. Supp. 978 (CIT 1986), the court considered whether foreign manufacturing concentrate processed into frozen concentrated orange juice in the U.S. and reconstituted orange juice was considered substantially transformed. The U.S. processing involved blending the manufacturing concentrate with other ingredients to create the end product; the manufacturing concentrate was mixed with purified and dechlorinated water, orange essences, orange oil, and in some cases, fresh juice. The foreign manufacturing concentrate was blended with domestic concentrate, with ratios of 50/50 or 30/70 (foreign/domestic).

The court considered that the U.S. processing added relatively minor value to the product and that the manufacturing concentrate imparted the essential character to the juice and made it orange juice. The court concluded

that the foreign manufacturing juice concentrate was not substantially transformed in the U.S. when it was processed into retail orange juice products.

In Koru North America v. United States, 701 F. Supp. 229 (CIT 1988), the court considered whether the processing of headed and gutted fish in South Korea by thawing, skinning, boning, trimming, freezing, and packaging constituted a substantial transformation. The court concluded that the processing performed in South Korea into "quick- frozen" fillets substantially transformed the headed fish because there was a change in name and character. The court noted that while the fish arrive in South Korea with the look of a whole fish, when they leave they no longer possess the essential shape of a fish. The fillets are considered discrete commercial goods and are also have a different tariff classification

CBP ruled in Headquarters Ruling Letter ("HRL") 733162, dated November 5, 1990, that frozen Alaskan crab caught by U.S.-flag vessels sent to South Korea to be processed were a product of the U.S. Based on the facts you have presented, the raw shrimp harvested and frozen by a U.S. flag vessel would be considered a product of the U.S.

The second issue presented is whether the processing in China would be considered a substantial transformation. As you noted in your letter, CBP ruled in HRL 731763, dated May 17, 1989, that raw shrimp that was peeled, deveined, cooked, frozen and repackaged was not substantially transformed. Customs distinguished Koru because the processsing of the shrimp was considered a minor change which merely rendered the product more suitable for consumption. The character of the shrimp (i.e., its size and quality) was not changed by the processing. Also see HRL 731472, dated June 23, 1988.

In accordance with HRL 731763, we concur with your conclusion that the shrimp processed in China as described above, would not be substantially transformed. Based on the information that you submitted, the country of origin of the imported shrimp would be the U.S.

HOLDING:

The raw shrimp harvested and frozen by a U.S-flag vessel in U.S. waters would be considered a product of the U.S.

The imported shrimp would not be substantially transformed in China as a result of the processing described above. Based on the information that you submitted, the country of origin of the imported shrimp would be the U.S.

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 Customs officer handling the transaction.

Sincerely,

Myles B. Harmon, Director
Commercial Rulings Division

EXHIBIT 4

N247131

November 8, 2013

CLA-2-03:OT:RR:NC:N2:231

CATEGORY: Classification

TARIFF NO.: 0306.17.0040

Ms. Christine Blanchard
Pearl Inc., d/b/a Indian Ridge Shrimp Co.
P.O. Box 177
Chauvin, LA 70344

RE: The tariff classification and country of origin of U.S. shrimp processed in China.

Dear Ms. Blanchard:

In your letter dated October 22, 2013, you requested a tariff classification and country-of-origin ruling.

You have outlined a scenario in which raw, unprocessed warm-water shrimp of U.S. origin will be shipped to China for processing. The species will be *Litopenaeus setiferus*, *Penaeus aztecus*, and *Xiphopenaeus kroyeri*. The Chinese processing will consist of the removal of the heads and shells, and possibly also deveining. After being processed in China, the shrimp, in raw, frozen condition and packed in 2, 3 or 5 pound boxes, will be imported back into the United States. You seek a determination as to the proper tariff classification and country of origin, for marking purposes, of the returned, processed shrimp.

The applicable subheading for the frozen, processed shrimp will be 0306.17.0040, Harmonized Tariff Schedule of the United States (HTSUS), which provides for crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine … : frozen: other shrimps and prawns: peeled, imported in accordance with Statistical Note 1 to chapter 3. The rate of duty will be Free.

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 World Wide Web at http://www.usitc.gov/tata/hts/.

Some shrimp are currently also subject to antidumping duties or countervailing duties. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at http://www.trade.gov/ia/ (click on “Contact Us”). For your information, you can view a list of current AD/CVD cases at the United States International Trade Commission website at http://www.usitc.gov (click on “Antidumping and countervailing duty investigations”), and you can search AD/CVD deposit and liquidation messages using the AD/CVD Search tool at http://addcvd.cbp.gov/.

This merchandise may be subject to additional requirements administered by the following agencies, whose addresses are provided for your reference:

U.S. Department of State
Bureau of Oceans & Int'l. Environmental & Scientific Affairs
Office of Marine Conservation
2201 C Street, NW
Washington, DC 20520
Telephone: (202) 647-2335

U.S. Food and Drug Administration (FDA)
Division of Import Operations and Policy
5600 Fishers Lane
Rockville, MD 20857
Telephone: (301) 443-6553

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.

With regard to country of origin, 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 an article in another country must effect a substantial transformation in order to render such country the country of origin within the meaning of Part 134 of the regulations.

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).

U.S. Customs and Border Protection (CBP) has previously ruled that the processing of shrimp by means you outline (i.e., beheading, peeling, de-veining) does not effect a substantial transformation. See Headquarters Ruling Letters 731763 (5/17/89), 563033 (7/6/04) and 563063 (7/26/04). Accordingly, we find that even after being processed in China, the shrimp currently under discussion retain their initial country-of-origin status as U.S. products for CBP marking purposes. Therefore, since goods deemed to be products of the United States are not subject to the requirements of 19 U.S.C. 1304, the imported boxes of processed shrimp need not be marked with the country of origin. The question of whether these goods may be marked as products of the United States is under the jurisdiction of the Federal Trade Commission, which may be contacted for information at 6th and Pennsylvania Ave., NW, Washington, D.C. 20580.

You also asked generally about the steps you need to take in order to properly carry out the proposed scenario. In that regard, we would suggest that care be taken to establish strict controls over the tracking of product/inventory to prevent the possibility of any commingling and/or substitution. The ability to unequivocally identify the origin of any given product at any step in the procedure should be maintained. Documentation and photos detailing how this is done, both generally and for specific lots of product, should be generated and made available to CBP upon request.

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 Nathan Rosenstein at (646) 733-3030.

Sincerely,

Gwenn Klein Kirschner
Acting Director,
National Commodity Specialist Division

EXHIBIT 5

N302051

February 1, 2019

MAR-2 OT:RR:NC:N2:231

CATEGORY: MARKING

Ms. Sonia Medina
Flegenheimer International Inc.
227 W Grand Avenue
El Segundo, CA 90745

RE: THE COUNTRY OF ORIGIN MARKING OF PEELED SHRIMP

Dear Ms. Medina:

This is in response to your letter dated December 3, 2018 requesting a country-of-origin ruling on behalf of your client, Eastern Fish Company (Teaneck, NJ).

You have outlined a scenario in which frozen, raw, unprocessed, wild caught Argentine Red shrimp (Pleoticus muelleri) will be shipped to China for further processing. In China, the frozen shrimp will be thawed, graded, beheaded, deveined, washed, soaked in the food additive Carnal 659S and salt. The product is then rinsed, graded by size, arranged on trays, and frozen. You have stated that the end result of the aforementioned processes will be “EZ Peel Shrimp” or “Peeled and Deveined Shrimp.” The frozen trays will be packed into 2-pound plastic bags then shipped to the United States. You seek a determination as to the proper country of origin of the processed shrimp.

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. As provided in section 134.41(b), Customs Regulations (19 CFR 134.41(b)), the country of origin marking is considered conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain. With regard to the permanency of a marking, section 134.41(a), Customs Regulations (19 CFR 134.41(a)), provides that as a general rule marking requirements are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in, or etched. However, section 134.44, Customs Regulations (19 CFR 134.44), generally provides that any marking that is sufficiently permanent so that it will remain on the article’s container until it reaches the ultimate purchaser unless deliberately removed is acceptable.
Part 134, CBP Regulations (19 C.F.R. §134) implements the country of origin marking requirements of 19 U.S.C. §1304. 19 C.F.R. §134.1(b) defines “country of origin” as: [T]he 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 regulations]… 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. United States v. Gibson-Thomsen Co., Inc., 27 CCPA 267, C.A.D. 98 (1940); National Hand Tool Corp. v. United States, 16 CIT 308 (1992), aff’d, 989 F. 2d 1201 (Fed. Cir. 1993). However, if the manufacturing or combining process is merely a minor one that leaves the identity of the article intact, a substantial transformation has not occurred. Uniroyal, Inc. v. United States, 3 CIT 220, 542 F. Supp. 1026, 1029 (1982), aff’d, 702 F.2d 1022 (Fed. Cir. 1983). U.S. Customs and Border Protection (CBP) has previously ruled that the processing of shrimp by means you outline (i.e., beheading, peeling, de-veining) does not effect a substantial transformation. In the case of the “EZ Peel Shrimp” or “Peeled and Deveined Shrimp,” we find that the Argentine Red shrimp is not substantially transformed as a result of the processing in China. Accordingly, we find that the products retain their initial country-of-origin status for CBP marking purposes. Therefore, the packages of processed shrimp entering the United States must be marked to indicate that their contents are products of the original country, e.g., “Product of Argentina.”

Please note that seafood is 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 your scenario. 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 Ekeng Manczuk at ekeng.b.manczuk@cbp.dhs.gov.

Sincerely,

Steven A. Mack
Director
National Commodity Specialist Division

EXHIBIT 6

N289554

September 21, 2017

MAR-2 OT:RR:NC:N2:231

CATEGORY: MARKING

Ms. Sonia Medina
Flegenheimer International
227 W. Grand Avenue
El Segundo, CA 90245

RE: THE COUNTRY OF ORIGIN MARKING OF FROZEN EZ PEEL SHRIMP

Dear Ms. Medina:

This is in response to your letter dated August 22, 2017 on behalf of Eastern Fish Company, LLC (Teaneck, NJ) in which you requested a country of origin ruling for Frozen EZ Peel Shrimp.

You have outlined a scenario in which raw, frozen headless shrimp of the pleoticus muelleri species from Argentina will be shipped to China for processing into easy-to-peel shrimp. The processing will consist of thawing, grading, a knife cut across the back of the shrimp, deveining, washing, soaking in food additive and salt. Subsequently, the product will be rewashed, graded by size, frozen and packed for shipping. The shrimp will be imported into the United States in plastic bags with a total net weight of 2 pounds. Each master case will contain 10 bags which in turn will have a total net weight of 20 pounds per master case. You seek a determination as to the proper country of origin for marking purposes of the processed shrimp.

With regard to country of origin, 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 an article in another country must effect a substantial transformation in order to render such country the country of origin within the meaning of Part 134 of the regulations. 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 the present case, we find that the processing undertaken by the means you outline at the facility in China does not effect a substantial transformation. Accordingly, we find that the Frozen EZ Peel Shrimp retain their initial country of origin status and is a product of Argentina for U.S. Customs and Border Protection marking purposes.

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 Ekeng Manczuk at Ekeng.Manczuk@cbp.dhs.gov.

Sincerely,

Steven A. Mack
Director
National Commodity Specialist Division

EXHIBIT 7

N282063

January 18, 2017

CLA-2-03:OT:RR:NC:N4:231

CATEGORY: Classification

TARIFF NO.: 0306.17.0009

Mr. Juan Rodriguez
Rod International
11445 Paramount Boulevard
Suite A
Downey, CA 90241

RE: The tariff classification, marking and country of origin of Frozen Wild Caught Shrimp from Argentina

Dear Mr. Rodriguez:

In your letter dated December 14, 2016 you requested a tariff classification, marking and country of origin ruling on behalf of Rod International (West Westport, CT).

The subject merchandise is frozen wild caught shrimp of the pleoticus muelleri species. Per the description provided, the shrimp will be purchased from suppliers in Argentina and transported to China for further processing. The processing will consist of defrosting, sorting, removal of the head, deveining and a knife cut along the back side of the shrimp. Upon completion, the shrimp will be individually quick frozen and packaged in a polyethylene bag which will have a total net weight of 2 pounds. Each master case will contain 10 bags which in turn will have a total net weight of 20 pounds per master case. The product will be labeled "Wild Caught Frozen Shrimp IQF Headless Tail on, Shell on" (Size 21/25). The product will be sold to wholesalers and retailers.

The applicable subheading for the Frozen Wild Caught Shrimp will be 0306.17.0009, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine: Frozen: Other shrimps and prawns: Shell-on, imported in accordance with statistical note 1 to this chapter: Count size (headless weight) 46-55 per kg (21-25s). The rate of duty will be Free.

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 World Wide Web at https://hts.usitc.gov/current.

This merchandise may be subject to additional requirements administered by the following agencies, whose addresses are provided for your reference:

U.S. Department of State
Bureau of Oceans & Int'l. Environmental & Scientific Affairs
Office of Marine Conservation
2201 C Street, NW
Washington, DC 20520
Telephone: (202) 647-2335

U.S. Food and Drug Administration (FDA)
Division of Import Operations and Policy
12420 Parklawn Drive (Room 3109)
Rockville, MD 20857
Telephone: (301) 796-0356
Email address: FDAImportsInquiry@FDA.hhs.gov

The imported products may be subject to antidumping duties or countervailing duties. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at http://www.trade.gov/ia/ (click on "Contact Us"). For your information, you can view a list of current AD/CVD cases at the United States International Trade Commission website at http://www.usitc.gov (click on "Antidumping and countervailing duty investigations"), and you can search AD/CVD deposit and liquidation messages using the AD/CVD Search tool at http://addcvd.cbp.gov/.

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.

With regard to country of origin, 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 an article in another country must effect a substantial transformation in order to render such country the country of origin within the meaning of Part 134 of the regulations. 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 the present case, we find that the processing undertaken by the means you outline at the facility in China does not effect a substantial transformation. Accordingly, we find that the frozen wild caught shrimp retain their initial country of origin status and is a product of Argentina for U.S. Customs and Border Protection marking purposes.

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 Ekeng Manczuk at Ekeng.Manczuk@cbp.dhs.gov.

Sincerely,

Steven A. Mack
Director
National Commodity Specialist Division

EXHIBIT 8

N286963

July 5, 2017

MAR-2-03:OT:RR:NC:N2:231

CATEGORY: Country of Origin

Mr. Victor Llarena
Rosy Service Forwarders
8190 NW 21st Street
Miami, FL 33122

RE: The country of origin of Frozen Wild Caught Shrimp from Argentina

Dear Mr. Llarena:

In your letter dated June 2, 2017 you requested a country of origin ruling on behalf of Fine Food Factory (Fort Lauderdale, FL).

The subject merchandise is wild shrimp caught in Argentina where the headless shells are frozen in block form. You state that the product is shipped to Vietnam where it is peeled and deveined while in the frozen state. The shrimp is packaged in 2-pound retail sized bags for shipment to the United States.

With regard to country of origin, 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 an article in another country must effect a substantial transformation in order to render such country the country of origin within the meaning of Part 134 of the regulations. 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 the present case, we find that the processing undertaken by the means you outline at the facility in Vietnam does not effect a substantial transformation. Accordingly, we find that the frozen wild caught shrimp retain their initial country of origin status and is a product of Argentina for U.S. Customs and Border Protection marking purposes.

This merchandise may be subject to additional requirements administered by the following agencies, whose addresses are provided for your reference:

U.S. Department of State
Bureau of Oceans & Int'l. Environmental & Scientific Affairs
Office of Marine Conservation
2201 C Street, NW
Washington, DC 20520
Telephone: (202) 647-2335

U.S. Food and Drug Administration (FDA)
Division of Import Operations and Policy
12420 Parklawn Drive (Room 3109)
Rockville, MD 20857
Telephone: (301) 796-0356
Email address: FDAImportsInquiry@FDA.hhs.gov

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 Ekeng Manczuk at Ekeng.Manczuk@cbp.dhs.gov.

Sincerely,

Steven A. Mack
Director
National Commodity Specialist Division

EXHIBIT 9

N010853

June 5, 2007

MAR-2-03:RR:NC:SP:231

CATEGORY: Classification

TARIFF NO.: 0306.13.0040; 1605.20.1030

Ms. Barbara B. Nguyen
The Gwenn Law Group
12832 Garden Grove Blvd., Ste. 230
Garden Grove, California 92843

RE: The tariff classification and country of origin of U.S. and Mexican shrimp processed in Vietnam.

Dear Ms. Nguyen:

In your letter dated April 21, 2007, you requested a tariff classification and country-of-origin ruling on behalf of Mseafood Corporation.

You have outlined a scenario in which raw, unprocessed frozen shrimp of U.S. or Mexican origin will be shipped to Vietnam for processing. After being processed in Vietnam, the shrimp (again in frozen form) will be imported into the United States for human consumption. You seek a determination as to the proper tariff classification and country of origin, for marking purposes, of the processed shrimp.

The species involved are identified as follows: Peneaus setiferus (Gulf white shrimp), Penaeus duorarum (Gulf pink shrimp), Peneaus merguiensis (Banana shrimp) and Metapenaeus monoceros (Brown shrimp/prawn). The processing in Vietnam will in each instance be one or more of the following: beheading, peeling, removing the tails, de-veining, and/or cooking. Based on your presentation, it appears that any cooked versions of the imported processed shrimp will be in peeled condition.

The applicable subheading for the frozen, processed shrimp, when imported in raw, unpeeled condition (for example, “headless, shell-on”) will be 0306.13.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine, … fit for human consumption: frozen: shrimps and prawns: shell-on, imported in accordance with Statistical Note 1 to chapter 3. The statistical suffix, in

the range of “03” to “27”, will depend on the count size, as specified in the HTSUS. The rate of duty will be Free.

The applicable subheading for the frozen, processed shrimp, when imported in raw, peeled condition (for example, “raw, peeled, tail-on”) will be 0306.13.0040, HTSUS, which provides for crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine, … fit for human consumption: frozen: shrimps and prawns: peeled, imported in accordance with Statistical Note 1 to chapter 3. The rate of duty will be Free.

The applicable subheading for the frozen, processed shrimp, when imported in cooked, peeled condition (for example, “cooked, peeled, deveined”) will be 1605.20.1030, HTSUS, which provides for crustaceans, molluscs and other aquatic invertebrates, prepared or preserved: shrimps and prawns: other: frozen, imported in accordance with Statistical Note 1 to chapter 16: other: other. (Note: If the product is imported in airtight containers, the applicable statistical suffix will be “10”, instead of “30”.) The rate of duty will be Free.

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 World Wide Web at http://www.usitc.gov/tata/hts/.

Certain shrimp from Vietnam may be subject to antidumping duties or countervailing duties. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at http://www.trade.gov/ia/ (click on “Contact Us”). For your information, you can view a list of current AD/CVD cases at the United States International Trade Commission website at http://www.usitc.gov (click on “Antidumping and countervailing duty investigations”), and you can search AD/CVD deposit and liquidation messages using the AD/CVD Search tool at http://www.cbp.gov (click on “Import” and “AD/CVD”).

This merchandise may be subject to additional requirements administered by the following agencies, whose addresses are provided for your reference:

U.S. Department of State
Bureau of Oceans & Int’l. Environmental & Scientific Affairs
Office of Marine Conservation
2201 C Street, NW
Washington, DC 20520
Telephone: (202) 647-2335

U.S. Food and Drug Administration (FDA)

5600 Fishers Lane
Rockville, MD 20857
Telephone: (301) 443-6553

U.S. Department of Agriculture (USDA)
APHIS, VS, NCIE
Products Program
4700 River Road, Unit 40
Riverdale, MD 20737-1231
Telephone: (301) 734-3277

U.S. Department of Agriculture (USDA)
Agricultural Marketing Service (AMS)
1400 Independence Avenue, SW
Washington, D.C. 20250
Telephone: (202) 720-8998

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.

Country of Origin

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 an article in another country must effect a substantial transformation in order to render such country the country of origin within the meaning of Part 134 of the regulations.

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).

U.S. Customs and Border Protection (CBP) has previously ruled that the processing of shrimp by means identical or similar to those you outline (i.e., peeling, de-veining, cooking, etc.) does not effect a substantial transformation. See Headquarters Ruling Letters 731763 (5/17/89), 563033 (7/6/04) and 563063 (7/26/04). Accordingly, we find that even after being processed in Vietnam, the products currently under discussion retain their initial country-of-origin status for CBP marking purposes. Therefore, the containers of processed Mexican shrimp should be marked to indicate that their contents are products of Mexico, and, if applicable, the certification procedures of 19 CFR 134.25 should be followed. However, since the processed U.S. shrimp will not be regarded as "foreign" for marking purposes, their containers will not be required to be marked. (The question of whether those containers may be marked "Product of U.S.A." is under the jurisdiction of the Federal Trade Commission, which may be consulted on that matter.)

With respect to "concerns regarding the integrity and genuineness of the finished product," you also requested guidance as to the preferable/acceptable method of supervision of all stages of your proposed scenario. Although we are not in a position to provide specific instructions, we suggest that care be taken to establish strict controls over the tracking of product/inventory to prevent the possibility of any commingling and/or substitution. The ability to unequivocally identify the origin of any given product at any step in the procedure should be maintained. Documentation and photos detailing how this is done, both generally and for specific lots of product, should be generated and made available to CBP upon request.

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 Nathan Rosenstein at 646-733-3030.

Sincerely,

Robert B. Swierupski
Director,
National Commodity
Specialist Division

EXHIBIT 10

N210398

April 10, 2012

MAR-2-03:OT:RR:NC:N2:231

CATEGORY: Classification

TARIFF NO.: 0306.17.00; 1605.21.1030; 1605.29.1010

Mr. Richard Xiao
Fortune Laurel LLC
38 Billings Road, Ste. # 2
Quincy, MA 02171

RE: The tariff classification and country of origin of frozen shrimp from Ecuador, Thailand or Vietnam after processing in China.

Dear Mr. Xiao:

In your letter dated March 21, 2012, you requested a tariff classification and country-of-origin ruling.

You have outlined a scenario in which raw, whole, unprocessed frozen shrimp from Ecuador, Thailand or Vietnam will be shipped to China for processing. After being processed in China, the shrimp will be imported into the United States. You seek a determination as to the proper tariff classification and country of origin, for marking purposes, of the processed shrimp. For the purposes of this ruling, it is assumed that the shrimp in question are warmwater species, and that they will be imported into the United States in frozen condition.

The processing in China will yield three different versions of shrimp:

(A) Peeled and deveined (P & D), raw
(B) Peeled and deveined (P & D), cooked
(C) Headless, shell-on (HLSO), raw

The applicable subheading for the frozen, processed warmwater shrimp, version "A" (P & D raw) will be 0306.17.0040, Harmonized Tariff Schedule of the United States (HTSUS), which provides for crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine … : frozen: other shrimps and prawns: peeled, imported in accordance with Statistical Note 1 to chapter 3. The rate of duty will be Free.

The applicable subheading for the frozen, processed warmwater shrimp, version "C" (HLSO raw) will be 0306.17.00, HTSUS, which provides for crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine … : frozen: other shrimps and prawns. The applicable statistical suffix, in the range of "03"

to “27” for shell-on products, will depend on the count size, as specified in the HTSUS. The rate of duty will be Free.

The applicable subheading for the frozen, processed warmwater shrimp, version “B” (P & D cooked), if not in airtight containers when imported, will be 1605.21.1030, HTSUS, which provides for crustaceans, molluscs and other aquatic invertebrates, prepared or preserved: shrimps and prawns: not in airtight containers: other: frozen, imported in accordance with Statistical Note 1 to chapter 16: other. The rate of duty will be Free.

The applicable subheading for the frozen, processed warmwater shrimp, version “B” (P & D cooked), if imported in airtight containers, will be 1605.29.1010, HTSUS, which provides for crustaceans, molluscs and other aquatic invertebrates, prepared or preserved: shrimps and prawns: other: other: frozen, imported in accordance with Statistical Note 1 to chapter 16. The rate of duty will be Free.

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 World Wide Web at http://www.usitc.gov/tata/hts/.

Some shrimp may be subject to antidumping duties or countervailing duties. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at http://www.trade.gov/ia/ (click on “Contact Us”). For your information, you can view a list of current AD/CVD cases at the United States International Trade Commission website at http://www.usitc.gov (click on “Antidumping and countervailing duty investigations”), and you can search AD/CVD deposit and liquidation messages using the AD/CVD Search tool at http://addcvd.cbp.gov/.

This merchandise may be subject to additional requirements administered by the following agencies, whose addresses are provided for your reference:

U.S. Department of State
Bureau of Oceans & Int’l. Environmental & Scientific Affairs
Office of Marine Conservation
2201 C Street, NW
Washington, DC 20520
Telephone: (202) 647-2335

U.S. Food and Drug Administration (FDA)
Division of Import Operations and Policy
5600 Fishers Lane
Rockville, MD 20857
Telephone: (301) 443-6553

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.

With regard to country of origin, 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 an article in another country must effect a substantial transformation in order to render such country the country of origin within the meaning of Part 134 of the regulations.

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).

U.S. Customs and Border Protection (CBP) has previously ruled that the processing of shrimp by means you outline (i.e., peeling, de-veining, cooking, etc.) does not effect a substantial transformation. See Headquarters Ruling Letters 731763 (5/17/89), 563033 (7/6/04) and 563063 (7/26/04). Accordingly, we find that even after being processed in China, the products currently under discussion retain their initial country-of-origin status for CBP marking purposes. Therefore, the packages of processed shrimp entering the United States must be marked to indicate that their contents are products of the original country, e.g., "Product of Ecuador," "Product of Thailand," or "Product of Vietnam," as the case may be. Also, if the shrimp will be repackaged after importation, the certification procedures of 19 CFR 134.25 should be followed.

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 Nathan Rosenstein at (646) 733-3030.

Sincerely,

Thomas J. Russo
Director,
National Commodity Specialist Division

EXHIBIT 11

HQ 563033

July 6, 2004

MAR-2 RR:CR:SM 563033 KSG

CATEGORY: Marking

Lizabeth R. Levinson
Garvey Schubert Barer
Fifth Floor
1000 Potomac Street, NW
Washington, D.C. , 20007-3501

RE: Country of origin of imported shrimp; substantial transformation

Dear Ms. Levinson:

This is in response to your letter dated May 6, 2004, on behalf of Hindustan Lever, Ltd., requesting a country of origin ruling regarding imported shrimp from Bangladesh.

FACTS:

Hindustan Lever proposes to purchase shrimp that is grown and harvested in Bangladesh and process the shrimp at its facilities in India. The processing in India will consist of heading, shelling, deveining, cooking, freezing or some combination of these processes. The processed shrimp will then be exported to the U.S.

ISSUE:

What is the country of origin of imported shrimp which is processed as described above?

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930 (19 U.S.C. 1304), as amended, provides that unless excepted, every article of foreign origin 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 of 19 U.S.C. 1304. Pursuant to 19 CFR 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 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 this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

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. United States v. Gibson-Thomsen Co., Inc., 27 CCPA 267, C.A.D. 98 (1940).

In National Juice Products Association v. United States, 628 F. Supp. 978 (CIT 1986), the court considered whether foreign manufacturing concentrate processed into frozen concentrated orange juice in the U.S. and reconstituted orange juice was considered substantially transformed. The U.S. processing involved blending the manufacturing concentrate with other ingredients to create the end product; the manufacturing concentrate was mixed with purified and dechlorinated water, orange essences, orange oil, and in some cases, fresh juice. The foreign manufacturing concentrate was blended with domestic concentrate, with ratios of 50/50 or 30/70 (foreign/ domestic).

The court considered that the U.S. processing added relatively minor value to the product and that the manufacturing concentrate imparted the essential character to the juice and made it orange juice. The court concluded that the foreign manufacturing juice concentrate was not substantially transformed in the U.S. when it was processed into retail orange juice products.

In Koru North America v. United States, 701 F. Supp. 229 (CIT 1988), the Court considered whether the processing of headed and gutted fish in South Korea by thawing, skinning, boning, trimming, freezing, and packaging constituted a substantial transformation. The Court concluded that the processing performed in South Korea into "quick- frozen" fillets substantially transformed the headed fish because there was a change in name and character. The Court noted that while the fish arrive in South Korea with the look of a whole fish, when they leave they no longer possess the essential shape of a fish. The fillets are considered discrete commercial goods and are also have a different tariff classification

As you noted in your letter, CBP ruled in Headquarters Ruling Letter ("HRL") 731763, dated May 17, 1989, that raw shrimp that was peeled, deveined, cooked, frozen and repackaged was not substantially transformed. Customs distinguished Koru because the processsing of the shrimp was considered a minor change which merely rendered the product more suitable for consumption.

The character of the shrimp (i.e., its size and quality) was not changed by the processing. Also see HRL 731472, dated June 23, 1988.

In accordance with HRL 731763, we concur with your conclusion that the shrimp processed in India as described above, would not be substantially transformed. The country of origin of the imported shrimp would be Bangladesh.

HOLDING:

The imported shrimp would not be substantially transformed in India. The country of origin of the imported shrimp would be Bangladesh.

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 Customs officer handling the transaction.

Sincerely,

Myles B. Harmon, Director
Commercial Rulings Division

EXHIBIT 12

N265032

June 5, 2015

MAR-2-03:OT:RR:NC:N2:231

CATEGORY: Classification

TARIFF NO.: 0306.17.0040

Mr. Elon A. Pollack
Stein Shostak Shostak Pollack & O'Hara, LLP
865 South Figueroa Street (Suite 1388)
Los Angeles, CA 90017

RE: The tariff classification and country of origin of frozen Saudi Arabian shrimp after processing in another country.

Dear Mr. Pollack:

In your letters dated April 29 and May 22, 2015, you requested a tariff classification and country-of-origin ruling on behalf of your client, NuStyle Co. (Taipei City, Taiwan).

You have outlined a scenario in which warm-water shrimp (*Penaeus vannamei*) will be farm-raised and harvested in Saudi Arabia. Domestic (Saudi) larvae and feed will be used in that operation. Your client will subsequently purchase the farm-raised Saudi shrimp and import them, in frozen condition, into its own facilities in either Taiwan or Malaysia. At those facilities, the shrimp will undergo the following processing steps:

- Defrosting
- Peeling (removal of the heads and shells)
- Deveining
- Leavening (2-hour soaking, in water mixed with small amounts of trisodium citrate and citric acid, intended to prevent dehydration and other damage to the shrimp meat during the freezing process)
- Rinsing and freezing

After being processed as indicated above in Taiwan or Malaysia, the raw, frozen shrimp will be packed and exported to the United States. You seek a determination as to the proper tariff classification and country of origin, for marking purposes, of the processed shrimp upon entry into the U.S.

The applicable subheading for the frozen, processed shrimp will be 0306.17.0040, Harmonized Tariff Schedule of the United States (HTSUS), which provides for crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine … : frozen: other shrimps and prawns: peeled, imported in accordance with Statistical Note 1 to chapter 3. The rate of duty will be Free.

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 World Wide Web at http://www.usitc.gov/tata/hts/.

This merchandise may be subject to additional requirements administered by the following agencies, whose addresses are provided for your reference:

U.S. Department of State
Bureau of Oceans & Int'l. Environmental & Scientific Affairs
Office of Marine Conservation
2201 C Street, NW
Washington, DC 20520
Telephone: (202) 647-2335

U.S. Food and Drug Administration (FDA)
Division of Import Operations and Policy
12420 Parklawn Drive (Room 3109)
Rockville, MD 20857
Telephone: (301) 796-0356
Email address: FDAImportsInquiry@FDA.hhs.gov

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.

With regard to country of origin, 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 an article in another country must effect a substantial transformation in order to render such country the country of origin within the meaning of Part 134 of the regulations.

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 the present case, we find that the processing of the shrimp in Taiwan or Malaysia by the means you outline does not effect a substantial transformation. Accordingly, we find that even after being processed in your client's facilities, the products retain their initial country-of-origin status for CBP marking purposes. Therefore, the packages of processed shrimp entering the United States must be marked to indicate that their

contents are products of the original country, e.g., “Product of Saudi Arabia.” Also, if the shrimp will be repackaged after importation, the certification procedures of 19 CFR 134.25/134.26 should be followed.

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 Nathan Rosenstein at the email address nathan.rosenstein@cbp.dhs.gov.

Sincerely,

Gwenn Klein Kirschner
Director,
National Commodity Specialist Division

EXHIBIT 13

HQ H028384

February 28, 2012

LIQ-4-01
LIQ-9-01
OT:RR:CTF:ER H028384 TT

Port Director
Port of Savannah
U.S. Customs and Border Protection
1 East Bay Street
Savannah, GA 31401

Attn: Eric Buchanan, Supervisory Import Specialist

Re: Internal Advice on deemed liquidation, duty deposit cap, antidumping duty rates

Dear Port Director:

This letter is in response to your request for internal advice, dated May 8, 2008, regarding whether entries of certain frozen warmwater shrimp from the People's Republic of China, are subject to antidumping duty ("ADD") order A-570-893.

FACTS:

King & Prince Seafood, Corporation ("KP") imports various seafood products into the United States. At issue here are 34 entries of warmwater shrimp. The entry documents declared that the goods originated in Indonesia and no antidumping duty ("ADD") was deposited. Of the entries, 14 were liquidated between July 8 through October 14, 2005, 20 remain unliquidated. The 20 unliquidated entries are: 082-XXXXX62-1, 082-XXXXX73-6, 082-XXXXX31-0, 605-XXXXX69-9, 605-XXXXX43-2, 605-XXXX49-7, 605-XXXX46-3, 605-XXX0339-6, 605-XXXXX17-0, 605-XXXX02-7, 605-XXXXX44-9, 605-XXXXX39-9, 605-XXXXX89-2, 605-XXX1122-5, 605-XXXXX20-9, 605-XXXXX86-1, 605-XXXXX85-3, 605-XXXXX28-9, 605-XXXXX29-7, 605-XXXXX12-1.

By Notice of Action dated, November 15, 2005, Custom and Border Protection ("CBP") notified KP that it was investigating its imports for evasion of the ADD order on frozen warmwater shrimp from China. After receiving this Notice, on January 11, 2006, KP filed what it termed a prior disclosure under 19 U.S.C. § 1592 and it produced information demonstrating that its shrimp supplier, P.T. Ocean Gemindo, had falsely identified Chinese-origin shrimp as having originated in Indonesia.

On June 1, 2007, CBP's Office of Regulatory Audit issued its report of an audit on the origin of KP's warmwater shrimp of the subject entries in Report 431-06-ADD-AU-20940. The audit concluded that KP falsely declared Chinese-origin shrimp on these entries that were actually subject to ADD order A-570-893. The report indicated that the Indonesian-origin shrimp was commingled with Chinese-origin shrimp. CBP instructed KP to pay this lost revenue and on July 2, 2007, KP tendered the lost revenue. CBP liquidated 14 of these entries July through October 2005. The remaining 20 unliquidated entries were first extended on September 24, 2005, but ultimately suspended on various dates between September and October of 2007.

On December 8, 2004, Commerce published its final results in the investigation wherein it directed CBP to continue suspending liquidation of entries within the scope and required CBP to collect security for antidumping duties. Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 Fed. Reg. 70997 (December 8, 2004) (amended by Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China, 70 Fed. Reg. 5149 (February 1, 2005)). On July 31, 2006, Commerce published its notice, which rescinded review for certain exporters. Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China, 71 Fed. Reg. 43107 (July 31, 2006). This Notice included various exporters including Fuqing Dongwei Aquatic Products Industry Co. Ltd. ("Fuqing Dongwei") and Shantou Jinhang Aquatic Industry Co. ("Shantou Jinhang"). Commerce issued Message No. 6212211 dated, July 31, 2006, to CBP instructing liquidation of entries subject to the ADD order that were exported by various companies including Fuqing Dongwei at the cash deposit or bonding rate in effect on the date of entry.

On March 25, 2008, CBP received KP's letter requesting refund of the ADD it deposited for 34 entries and requesting that the Port seek internal advice as to whether it was entitled to a refund. KP added a supplemental letter to CBP dated, June 9, 2009. You forwarded these submissions to our office on May 8, 2008, and requested internal advice pursuant to 19 C.F.R. § 177.11(a). We note that five of KP's entries were protested and are addressed separately in our decision on further review. Thus, those entries will not be addressed in this internal advice.

ISSUE:

Whether KP is entitled to refunds of its paid ADD deposits.

LAW AND ANALYSIS:

KP argues that, it is entitled to a refund pursuant to 19 U.S.C. § 1520(a) and (c) of its antidumping duty ("ADD") deposits for its liquidated entries, because at time of liquidation, antidumping duties were not assessed and in its view, CBP cannot later request this lost revenue. KP further requests a refund for ADD deposited on unliquidated entries because they were in excess of what was owed. However, KP does not demonstrate that these deposits were erroneously or

excessively collected. Thus, KP is not entitled to refunds of these paid amounts.

The statute, 19 U.SC. § 1520(a) provides that refunds may be given for duties or other receipts in the following cases:

(1) Excess deposits. Whenever it is ascertained on liquidation or reliquidation of an entry or reconciliation that more money has been deposited or paid as duties than was required by law to be so deposited or paid.
(2) Fees, charges, and exactions. Whenever it is determined in the manner required by law that any fees, charges, or exactions, other than duties and taxes, have been erroneously or excessively collected.
(3) Fines, penalties, and forfeitures. Whenever money has been deposited in the Treasury on account of a fine, penalty, or forfeiture which did not accrue, or which is finally determined to have accrued in an amount less than that so deposited, or which is mitigated to an amount less than that so deposited or is remitted.
(4) Prior to liquidation. Prior to the liquidation of an entry or reconciliation, whenever an importer of record declares or it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid.

(emphasis added). In seeking refunds on its liquidated entries, KP relies on subsection (2). KP argues that, the duties constitutes fees that were erroneously collected "since the prior liquidation finalized the amount of charges and duties that KP owed on them." See KP's March 20, 2008 Letter. However, Section 1520(a)(2) specifically excludes duties from this subsection and thus, KP may not rely upon it because the subject tenders are for duties owed. Similarly, in HQ 223999 (February 9, 1993) CBP denied a Protest and reliance on Section 1520(a)(2) when the importer requested refunds on its voluntarily tender of ADD deposits post liquidation of its entries. Further, that ruling also explained that the voluntary tender of antidumping duties did not amount to exactions, which would be covered by Section 1520(a)(2). Therefore, KP is not entitled to refunds of duties deposited for its liquidated entries per 19 U.S.C. § 1520(a)(2). Moreover, KP argues that, "Customs had no authority to require a tender on an already liquidated entry." See March 20, 2008 Letter. However, KP cites no legal authority for this claim and moreover, it voluntarily tendered this money to avoid the initiation of a penalty action. See KP's January 11, 2006 Letter to CBP. CBP did not "require" payment, nor was this payment ordered by a penalty action.

KP also requested pursuant to 19 U.S.C. § 1520(a)(4) a refund of the amounts paid to CBP for lost revenue reflecting its twenty unliquidated entries. KP argues that these entries deemed liquidated and thus, duty must be assessed at the rate asserted by the importer upon entry. Since, KP falsely entered these goods as shrimp from Indonesia, with no antidumping duty, it argues these entries deemed liquidated at a rate of zero percent. Therefore, KP argues, its payments were erroneously collected and thus, it is entitled to a refund. However, these entries have not deemed liquidated and KP's argument fails.

KP asserts its right to refunds under 19 U.S.C. § 1520(a)(4) for its deposits for the unliquidated entries as they should have deemed liquidated at a rate of zero by operation of law pursuant to 19 U.S.C § 1504(d). Section 504(d) of the Tariff Act of 1930, codified at 19 U.S.C. § 1504(d) provides:

. . . when a suspension required by statute or court order is removed, the Customs Service shall liquidate the entry, unless liquidation is extended under subsection (b), within 6 months after receiving notice of the removal from the Department of Commerce, other agency, or a court with jurisdiction over the entry. Any entry (other than an entry with respect to which liquidation has been extended under subsection (b) of this section) not liquidated by the Customs Service within 6 months after receiving such notice shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record.

(emphasis added). Therefore, this provision explains that once suspension is removed and there is no extension of liquidation, liquidation must occur with six months after Commerce's notice of suspension removal or the entries will be deemed liquidated at the rate asserted by the importer at entry.

All of these entries properly remain suspended. Commerce published the Partial Rescission of the First Administrative Review, whereby it removed liquidation suspension for certain exporters, including Fuqing Dongwei and Shantou Jinhang. See Certain Frozen Warmwater Shrimp from the People's Republic of China: Partial Rescision of the First Administrative Review, 71 Fed. Reg. 43107 (July 31, 2006); see also, Message No. 6212211 (July 31, 2006) (instructing CBP to liquidate applicable entries for Fuqing Dongwei). However, each of KP's entries at issue include shrimp subject to other ADD orders for which CBP has not yet received notice of the lifting of suspension of liquidation. Entries remain suspended as long as one line item of the entry is subject to an antidumping order in which liquidation is suspended. See HQ 230076 (February 6, 2006) ("liquidation of the protested entry was suspended as long as at least one line item of goods was subject to an antidumping order and in connection with which liquidation was suspended."). For this reason, the entries remain properly suspended as suspension has not yet lifted for all of the line items on each of the entries. Consequently, these entries are not deemed liquidated per 19 U.S.C. § 1504(d). As they have not deemed liquidated, the ADD owed is what was instructed by Commerce and not what was deposited at the time of entry. Therefore, since Section 1520(a)(4) provides refunds for "excess duties, fees, charges, or exactions that have been deposited or paid" prior to liquidation, these deposits should not be refunded as they are not in excess.

In addition to being suspended because the statutory suspension of liquidation has not yet lifted, certain entries are also suspended pursuant to a court injunction. KP relies on Message 5041208 dated, February 10, 2005, in arguing that CBP should not have included in its calculation of duties owed the ADD for entry 605-XXXXX17-0, because it should have been deemed liquidated as entered on January 14, 2005. Commerce issued Message 5041208, on February 10, 2005, which instructed CBP to liquidate entries subject to the ADD order that were entered between January 13 and January 26, 2005. However, this entry remains suspended because one of the entry's exporters, Shantou Red Garden, is involved in litigation where there is a preliminary injunction issued by the Court of International Trade ("CIT"). See Shantou Red Garden Foodstuff, Co, Ltd. v. U.S., Court No. 05-00080. Therefore, this entry remains properly suspended. KP similarly argued that Message 6212211 instructs liquidation for exporter Shantou Jinhang, however, entries 082-XXXXX62-1 and 605-XXXXX17-0, which used Shantou Jinhang, also remain properly suspended by court order as these entries also are subject to preliminary injunctions issued by the CIT for exporters, Shantou Red Garden and Shantou Jinhang. See Shantou Red Garden Foodstuff, Co, Ltd. v. U.S., Court No. 05-00080; and Beihai Zhengwu Industy Co. Ltd. et al, v. U.S., Court No. 05-00182.

In KP's June 9, 2009 letter, it requested a refund of its deposited duties for its unliquidated entries due to ongoing litigation before the CIT. However, KP fails to provide how it is entitled to such refunds under 19 U.S.C. § 1520(a). KP merely states it should receive such refund because "the margins CBP used... are not yet final due to the pendency of litigation at this time in the U.S. Court of International Trade challenging Commerce's final margin calculations in the investigation." See Letter from King & Prince Seafood Corporation (June 9, 2009). Simply because an ADD rate is being litigated does not mean it is "excessive." This claim is outside the scope of CBP's authority. It is well established that Commerce is the administrating authority of the antidumping laws. The role of Customs in the antidumping

process is "simply to follow Commerce's instructions in collecting deposits of estimated duties and in assessing antidumping duties...at the time of liquidation." HQ 228611 (July 31, 2001); HQ 225382 (July 3, 1995); see also, Mitsubishi Electronics America, Inc. v. United States, 44 F. 3d 973 (Fed. Cir. 1994). As further stated in Mitsubishi Electronics America v. U.S., "Customs has a merely ministerial role in liquidating antidumping duties under 19 U.S.C. 1514(a)(5). Customs cannot 'modify [Commerce's] determinations, their underlying facts, or their enforcement."' 44 F.3d at 977. CBP properly followed Commerce's antidumping instructions. Only Commerce or the U.S. courts can determine that a new ADD rate should be applied. We are without authority to address KP's claims in that respect.

KP next argues that 23 of its entries should not have had antidumping duties assessed because they had a zero rate duty cap. The statute, 19 U.S.C. § 1673f(a), provides that:

If the amount of a cash deposit, or the amount of any bond or other security, required as security for an estimated antidumping duty under section 733(d)(1)(B) [19 USCS § 1673b(d)(1)(B)] is different from the amount of the antidumping duty determined under an antidumping duty order published under section 736 [19 USCS § 1673e], then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 735(b) [19 USCS § 1673d(b)] is published shall be--
(1) disregarded, to the extent that the cash deposit, bond, or other security is lower than the duty under the order, or
(2) refunded or released, to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

This statute explains that if the ADD deposited before the final order were lower than the final calculated ADD, then the duties owed will be capped at the amount originally paid.

KP states that because 23 of its entries were made before February 1, 2005, the date of the Antidumping Duty Order, then the antidumping duties for these entries should be capped at that amount, pursuant to 19 U.S.C. § 1673f(a). See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China, 70 Fed. Reg. 5149 (February 1, 2005). Thus, KP argues that since it posted zero duties on those entries, the ADD should be capped at that amount. However, as discussed above, CBP has a ministerial role in liquidating antidumping duties and merely follows Commerce's instructions when assessing and collecting said duties. See Mitsubishi Electronics America, Inc. v. U.S., 44 F.3d 973, 977 (Fed. Cir. 1994) (holding that CBP has a ministerial role in liquidating antidumping duties and "cannot modify Commerce's determinations, their underlying facts, or their enforcement"). CBP applied the ADD rates and instructions issued by Commerce in Message 5041209 (Feburary 10, 2005). CBP has not received any instructions from Commerce implementing 19 U.S.C. § 1673f(a) for the remaining entries. Therefore, CBP has properly applied Commerce's instructions when calculating the amount of ADD owed.

KP further argues that, CBP used the wrong ADD rate in its calculation for unliquidated entry 605-XXXXX22-5, which entered on March 23, 2005, and was exported by Zhanjiang Regal Integrated Marine Resources CO., Ltd. ("ZR"). CBP calculated an antidumping duty rate of 112.81% for ZR. KP argues that because Commerce later published final results of its new shipper review for ZR,1 which established a rate of zero, CBP should have used that rate in calculating the deposits. However, Message Number 8014201 (January 14, 2008) establishes that the zero rate established in the new shipper review for ZR only applies to imports by Transpac Foods Ltd. These instructions also state that for merchandise not imported by Transpac Foods Ltd., the "all others" rate of 112.81% applies. Therefore, since KP, and not Transpac Foods Ltd., imported the subject shrimp, CBP properly followed Commerce's instructions and calculated the ADD owed at 112.81%.

Last, KP argues that, it is entitled to refunds under the now repealed 19 U.S.C. § 1520(c). See 108 Pub. L. No. 429, 118 Stat. 2434 (December 3, 2004). Though that statute is now repealed, it may still be invoked for "merchandise entered, or withdrawn from warehouse for consumption, on or after the 15th day after the enactment of this Act." Since the Act was enacted on December 3, 2004, any merchandise entered up until December 18, 2004, may still use 19 U.S.C § 1520(c). Twenty of KP's entries at issue in this internal advice were entered before December 18, 2004, and thus, Section 1520(c) could be applicable for those entries if its terms are met.

Section 1520(c) provided:

Notwithstanding a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry or reconciliation to correct-(1) a clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in electronic transmission, not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the Customs Service within one year after the date of liquidation or exaction."

(emphasis added). Therefore, any alleged "errors, mistakes, or inadvertence" must be brought to the attention of CBP within one year of liquidation.

Section 1520(c) can only be invoked with respect to five of the twenty above referenced entries because KP failed to raise this claim for fifteen of the entries within a year of liquidation. See HQ 223999 (February 9, 1993) (holding that a request for a voluntary tender of duty is not an "exaction" and therefore, the deadline runs from the date of liquidation). The fifteen entries cannot be the subject of a claim because they were liquidated by October 2005 and any alleged "error, mistake or inadvertence" was brought to the attention of CBP in KP's letter on March 20, 2008, which is more than one year from liquidation. Of the five entries to which Section 1520(c) could apply, one is the protested entry 605-XXXXX66-5, and therefore, is not part of this internal advice. Only the following unliquidated entries will be here discussed: 082XXXXX62-1, 082XXXXX73-6, 082XXXXX31-0, 605XXXXX69-9. However, as applied to these unliquidated entries, KP is requesting relief for which Section 1520(c) does not provide. The remedy provided by Section 1520(c) is reliquidation, which is inapplicable to these unliquidated entries. Moreover, KP has not established any "clerical error, mistake of fact, or other inadvertence" in the calculation of ADD owed. The alleged mistakes that KP argues is that CBP should not have required cash deposits on liquidated entries, should have deemed liquidated the entries, failed to apply the duty rate cap, and it applied the wrong ADD rate. As discussed above, CBP properly followed Commerce's instructions when determining the amount of ADD owed. Therefore, KP's 1520(c) argument also fails.

KP finally argues that, CBP is not authorized to collect lawful duties, taxes, or fees through 19 U.S.C. § 1592(d) because no violation of Section 1592(a) has occurred. KP argues that it did not violate 19 U.S.C. § 1592(a) because it used reasonable care. However, this claim will not be addressed at this time as CBP has yet to initiate a 19 U.S.C. § 1592(a) penalty claim. Since KP's arguments are premature, we refrain from addressing them.

HOLDING:

Under the facts described herein, and in response to the request for internal advice, we find that refunds should not be granted pursuant to 19 U.S.C. § 1520.

You are to mail this decision to counsel for the importer no later than 60 days from the date of this letter. On that date, the Office of International Trade will make the decision available to CBP personnel, and to the public on the Customs Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

1 See Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of the Antidumping Duty New Shipper Review, 71 Fed. Reg. 70362 (December 4, 2006).

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