

[NY R00821](#)

October 19, 2004

CLA-2-03:RR:NC:2:231 R00821

CATEGORY: Classification and Marking

TARIFF NO.: 0306.12.0030

Mr. Steve Homokay PBB Global Logistics 670 Young Street Tonawanda, NY 14150

RE: The classification of raw lobster meat from Canada; The country of origin marking of lobster meat; Article 509 Dear Mr. Homokay:

In your letter dated September 14, 2004, you requested a tariff classification ruling and marking ruling on behalf of your client, Clearwater Seafoods Ltd., of Nova Scotia, Canada.

The facts relating to this merchandise are those indicated below:

1. Live lobsters (*Homarus americanus*) are caught in the coastal waters of Maine.
2. These lobsters are exported live to Canada via truck, in wooden or plastic crates.
3. The lobsters are processed in Canada, as described below:

They are put into a machine that kills them, using hydraulic pressure to release the meat from the shell.

The dead lobsters are separated into different parts, --i.e., separated into knuckles, claws, tails and bodies,--each of which is processed separately.

The raw meat is removed from the leg by using rollers, from the knuckles using compressed air, from the claw by opening with a knife, and from the tail by scoring the shell with a blade and then pulling the meat out.

After removal, the knuckle and claw meat is mixed together, weighed and put through a vacuum packaging machine. The leg meat is weighed and similarly vacuum packaged. Each tail is vacuum packed separately.

After packaging, the lobster meat is quick frozen, then packed for export to the United States. The shells are discarded.

4. Clearwater also processes lobsters that have been caught in the coastal waters of Canada. These Canadian lobsters are commingled with the lobsters of U.S. origin.

The applicable subheading for this frozen, raw lobster meat will be 0306.12.0030, Harmonized Tariff Schedule of the United States (HTS), which provides for Crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine;...frozen, lobsters (*Homarus* spp.), in airtight containers, other. The rate of duty will be Free. Regarding the marking of this product, you reference a Headquarters ruling letter, issued February 25, 1966, which identifies as the country of origin of certain shrimp and spiny lobsters as the country in which the processing occurred (or the country of

the flag of the processing vessel, if the processing were done at sea). Based on that ruling, and on the fact that the above processing occurs in Canada, you believe that the country of origin for the lobster meat to be imported into the U.S. should be Canada. We would disagree.

Section 134 of the Code of Federal Regulations contains the rules governing country of origin marking, (19 CFR 134). Section 134.1 provides definitions for relevant terms and, within that section, paragraph 134.1(b) defines the term "country of origin," as follows:

"134.1 Definitions.

(b) Country of origin. "Country of origin" means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin." [Italics added at relevant text.] The country of origin of the instant lobster meat must be determined, then, under the NAFTA Marking Rules. A Headquarters ruling letter of December 28, 1994, (File Number 558733), ruled on the country of origin of certain frozen guacamole, produced in the U.S. from a mixture of acidified avocado pulp of both U.S. and Mexican origin. The ruling held that "[t]he guacamole made from both Mexican-origin acidified pulp and U.S. origin pulp must be marked to indicate that it is a product of both the U.S. and Mexico pursuant to section 102.11(b) of the interim Marking Rules." In the present case, it is our opinion also that, since the instant lobster meat is produced from both U.S. and Canadian lobsters and retains its identity as goods of both those countries, country of origin marking as a "Product of the U.S.A. and Canada" would provide the clearest information to the consumer as to the origin of the product. It is noted, however, that the marking of goods as products of the U.S.A. is a matter within the jurisdiction of the Federal Trade Commission.

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 Thomas P. Brady at 646-733-3030.

Sincerely,

Robert B. Swierupski

Director,

National

Commodity

Specialist Division