

[N130957](#)

November 12, 2010

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

CATEGORY: Classification

TARIFF NO.: 0306.12.00

Mr. Reginald D. Williams A.N. Deringer, Inc.

48 Customs Loop Houlton, ME 04730

RE: The tariff classification, country of origin, and status under the North American Free Trade Agreement (NAFTA), of U.S.-origin lobsters that have been processed in Canada; Article 509

Dear Mr. Williams:

In your letter dated November 3, 2010, submitted on behalf of Cape Bald Packers Ltd. (Cap-Pele, NB, Canada), you requested a ruling on the status of certain frozen lobster tails to be imported from Canada under the NAFTA.

You have outlined a scenario in which live lobsters, grown and harvested in U.S. waters, will first be shipped from the United States to Canada. (For the purposes of this ruling, it is assumed that the lobsters will be of the genus *Homarus*.) In Canada, the following processing steps will take place:

Lobster tail is removed from live lobster using a knife.

Tails are graded according to size (weight).

Tails are placed in fresh ice water for a few hours.

Tails are then packed in 10-lb trays and frozen.

Once tails are frozen, they are placed into a cardboard box.

Product is then placed into a master case 4 x 10 lb.

Product is labeled "Frozen Raw Lobster Tails."

The master cartons packed with the frozen lobster tails will then be imported into the United States. You seek the tariff classification, NAFTA status and country-of-origin/marketing status of this importation. The applicable tariff provision for the frozen raw lobster tails will be 0306.12.00, 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; ...: frozen: lobsters (*Homarus* spp.). The general 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/>.

General Note 12(b), HTSUS, sets forth the criteria for determining whether a good is originating under the NAFTA. General Note 12(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as "goods originating

in the territory of a NAFTA party” only if--

- (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
- (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that--
 - (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or
 - (B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or
- (iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials; or ...

Based on the facts provided, the frozen lobster tails described above qualify for NAFTA preferential treatment, because they will meet the requirements of HTSUS General Note 12(b)(i). For entry/duty purposes, the goods will therefore be entitled to preferential treatment under NAFTA upon compliance with all applicable laws, regulations, and agreements.

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The country of origin marking requirements for a “good of a NAFTA country” are also determined in accordance with Annex 311 of the North American Free Trade Agreement (“NAFTA”), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines “country of origin” as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Section 134.1(j) of the regulations, provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the regulations, provides that a “good of a NAFTA country” may be marked with the name of the country of origin in English, French or Spanish.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find that the imported frozen lobster tails are goods of the United States for marking purposes. (Note, however, that under the NAFTA Preference Override, 19 CFR 102.19(b), the country of origin for entry/duty purposes will be Canada.) For Customs and Border Protection purposes, the goods (not being

“foreign” within the context of marking policy) are therefore not required to be marked with their country of origin.

Please note that the question of whether the goods may be marked with a phrase such as “Product of U.S.A.” is under the jurisdiction of the Federal Trade Commission, which may be contacted for advice at 6th & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Also, for information about the possible impact of U.S. Department of Agriculture (USDA) country of origin labeling (COOL) regulations, you may contact the Agricultural Marketing Service of the USDA at 1400 Independence Ave., SW, Room 2607-S, Stop 0254, Washington, D.C. 20250.

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 181 of the Customs Regulations (19 C.F.R. 181).

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

<http://rulings.cbp.gov/index.asp?ru=n130957&qu=N130957&vw=detail>