

NY F80572

February 14, 2000

CLA-2-08:RR:NC:2:231 F80572

CATEGORY: Classification and marking

TARIFF NO.: 0802.90.1500

Mr. Michael Roll Katten, Muchin, and Zavis 525 West Monroe Street, Suite 1600 Chicago, IL 60661-3693

RE: The tariff classification and marking under the North American Free Trade Agreement (NAFTA) of in-shell pecans of U.S. origin that are shelled in Mexico and returned to the US; Article 509

Dear Mr. Roll:

In your letter, dated December 9, 1999, on behalf of your client, Southwest Nut Company, Inc., El Paso, TX, you requested a ruling on the classification and marking of in-shell pecans of U.S. origin that are shelled in Mexico and returned to the U.S. under the NAFTA.

The merchandise is comprised of in-shell pecans of U.S. origin that are exported from the United States to Mexico for shelling and then returned to the U.S. In your correspondence you indicate that these U.S. pecans and Mexican in-shell pecans will not be commingled in any lot or batch, and that Southwest Nuts will be able to identify the origin of the pecans used in any batch of pecans, if Customs wishes to verify the country of origin of a shipment.

The applicable subheading for shelled pecans will be 0802.90.1500, Harmonized Tariff Schedule of the United States (HTS), which provides for other nuts, fresh or dried, whether or not shelled or peeled, other, pecans, shelled. The general rate of duty will be 17.6 cents per kilogram.

With regard to the question of eligibility for NAFTA preference, General Note (GN) 12(a), HTSUSA, states that goods imported into the United States from Mexico which are eligible for preferential duty treatment under NAFTA are goods that (1) "originate in the territory of a NAFTA party under the terms of subdivision (b) of this note" and (2) "qualify to be marked as goods of Mexico under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury."

In the instant case, the pecans of U.S. origin are originating goods under GN 12(b)(i), since they are "goods wholly obtained or produced entirely in the territory of...the United States." With regard to the second requirement, we find that, although these pecans have been advanced in value and improved in condition by virtue of the shelling process performed on them in Mexico, nevertheless, this processing fails to meet the marking, country of origin, criteria in Part 102.11, Customs Regulations, to qualify as a product of Mexico. Notwithstanding this failure to qualify for marking as goods of Mexico, Part 102.19(b), CR, the NAFTA preference override, provides that-

(b) If, under any other provision of this part, the country of origin of a good which is originating within the meaning of Part 181.1(q) of this chapter is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States.

Accordingly, the shelled pecans of American origin, when exported from Mexico, remain products of the United States for purposes of marking, country of origin. For Customs duty purposes, these pecans will be eligible for preferential duty treatment under the NAFTA, as if they were goods of Mexican origin.

