



BUREAU OF CUSTOMS

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03 June 2022

CUSTOMS MEMORANDUM CIRCULAR
NO. 76-2022

To: The Assistant Commissioner
All Deputy Commissioners
All Directors and Division Chiefs
All District/ Port Collectors
All Others Concerned

SUBJECT: TARIFF CLASSIFICATION DISPUTE RULING

Pursuant to Commission Order No. 2018-1 (Rules of Procedure on Disputes involving Tariff Classification), attached is the copy of Tariff Classification Circular Dispute Ruling (TCC/DR) No. 22-006 issued on 31 May 2022.

For information and guidance.

For record purposes, please confirm the dissemination of this circular throughout your offices within fifteen (15) days from receipt thereof.


REY LEONARDO B. GUERRERO
Commissioner

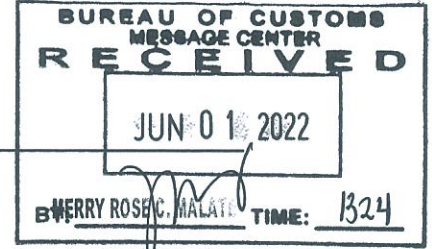


CMC NO. 76-2022



REPUBLIC OF THE PHILIPPINES
TARIFF COMMISSION

MASTER COPY June 02



RE: REQUEST FOR TARIFF CLASSIFICATION
DISPUTE RULING ON "LIVER PATE ST 7055/22"
CONSIGNED TO SUNPRIDE FOODS, INC.

TCC (DR) NO. 22-006

(Import Entry/Customs Reference No. C-29-2022,
Sub-Port of Mactan)



BOC-09-30977

Issued on: 31 May 2022

TARIFF CLASSIFICATION DISPUTE RULING

Before this Commission is a request for tariff classification dispute ruling (TCDR), pursuant to Paragraph 2 of Section 1100 of Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA), on the shipment of LIVER PATE ST 7055/22 imported by Sunpride Foods, Inc. (Importer/Consignee) from Singapore. The request of the Importer/Consignee for TCDR, filed by its Authorized Representative, Ms. Genevie E. Nabong of E.T. Bacolod Customs Brokerage, was accepted by this Commission on 07 March 2022.

The shipment of the said article, declared under ASEAN Harmonized Tariff Nomenclature (AHTN) 2017 subheading 2106.90.98, with a Most Favoured Nation (MFN) rate of duty of 1% *ad valorem*, was processed under Import Entry/Customs Reference No. C-29-2022 at the Bureau of Customs (BOC) Sub-Port of Mactan. The BOC contested the declared heading and reclassified subject article under AHTN 2017 subheading 1602.20.00, with an MFN rate of duty of 40% *ad valorem*.

Hence, this request for tariff classification dispute ruling.

On 22 March 2022, the Commission wrote to the Importer/Consignee requesting for the submission of the following information:

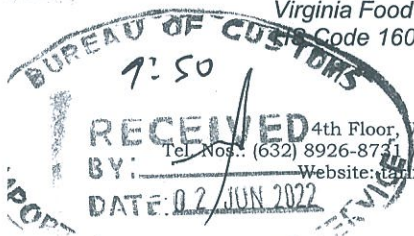
- a) chemical identity of the nature-identical flavouring substances, flavouring preparations, smoke flavourings, and natural flavouring substances in the ingredient listing provided (documents to be submitted should be certified by the manufacturer); and
- b) clarification on the correct Import Entry/Customs Reference No. of the shipment since the Import Entry/Customs Reference No. indicated in the submitted Single Administrative Document (SAD), memorandum from the BOC, and letter of Caburnay Customs Brokerage to BOC are different/not consistent.

The correct Import Entry/Customs Reference No. was clarified by Ms. Nabong through a telephone call while information on the chemical identity of the nature-identical flavouring substances, flavouring preparations, smoke flavourings, and natural flavouring substances in the ingredient listing were submitted to the Commission on 30 March 2022.

With information deemed sufficient to classify the product and pursuant to Section 7.3 of Commission Order No. 2018-01, this Commission requested the concerned BOC District Collector on 13 April 2022 for comments on the request for TCDR on Liver Pate ST 7055/22. In a letter dated 19 April 2022, Mr. Gerardo A. Campo, Port Collector of the BOC Sub-Port of Mactan, submitted BOC's comment through a memorandum prepared by Mr. Jee Ralf C. Sy, Customs Examiner, and Engr. Gil R. Buzon, Customs Appraiser, stating that the subject article was reclassified from the declared AHTN 2017 subheading 2106.90.98 (with MFN rate of duty of 1%) to 1602.20.00 (with MFN rate of duty of 40%). The basis for this decision as stated in the memorandum is as follows:

"The examiner and appraiser believe that the HS Code to be used for this shipment should be HS Code 16022000 – Other Prepared or Preserved Meat, Meat Offal or Blood of Liver of Any Animal (40% Tariff Rate) instead of HS Code 21069098 – Other Flavouring Preparations (1% Tariff Rate).

The supplementary note identifies pate, meat pastes, galantines and rillettes as part of the items to be included in HS Code 16022000. Aside from that, we also had similar importation from Virginia Food Inc. with entry no C 515-2022 (attached) that classifies Sample Chicken Pate under Code 16022000."



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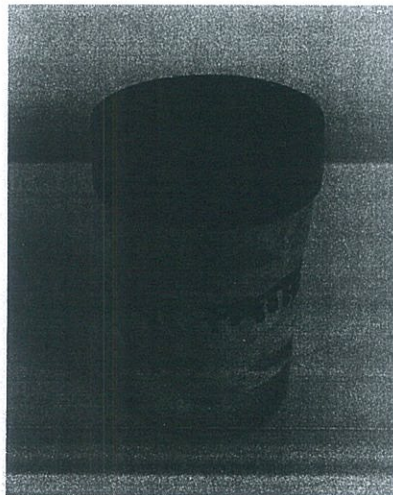
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The attachment indicated in the memorandum classifying the Chicken Pate imported by Virginia Food, Inc. under AHTN 2017 subheading 1602.20.00 (C 515-2022), however, was not included in the files transmitted/mailed to the Commission.

In the evaluation of disputes on tariff classification, Section 8 of Commission Order No. 2018-01 provides that this Commission, if it deems necessary, shall conduct a hearing to clarify the facts necessary to resolve the pending dispute in the tariff classification. In the present case, however, this Commission found that the submissions of the Importer/Consignee and the BOC are sufficient to make a correct determination on the tariff classification of the subject article. A hearing, therefore, is no longer necessary.

After due examination of the submitted ingredient listing, certificate of analysis, manufacturing process flow diagram, technical data sheet, product label, packaging specification, supplementary information, and sample, it is established that subject article is a flavouring preparation composed of odoriferous substances (nutmeg oil and pimento berry oil mixture) with palm oil, nature-identical flavouring substances, BHA 320, and smoke flavourings. It is in the form of a yellowish, oily liquid with a meaty-roasted aroma. Packed in 25-kg high-density polyethylene (HDPE) jerry cans, subject article is used as an ingredient in sauces (pasteurized, sterilized, or UHT) and other savory applications and is added at an inclusion rate of 0.05 to 0.2%.

Below is the photograph of the actual sample submitted by the Importer/Consignee:



The Importer/Consignee classified subject article under heading 21.06 of the AHTN 2017 (*food preparations not elsewhere specified or included*), specifically under subheading 2106.90.98 which covers other flavouring preparations not elsewhere specified or included. The Harmonized System (HS) Explanatory Notes (EN) to heading 21.06 state that:

"Provided that they are not covered by any other heading of the Nomenclature, this heading covers:

- (A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.*
- (B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.) (see the General Explanatory Note to Chapter 38)."*

Moreover, the Supplementary Explanatory Notes (SEN) to AHTN 2017 subheading 2106.90.98 state that:

"Flavouring preparations are mixtures of a single or several flavouring substances or extracts with starch, flour or other food substances acting as a carrier. They are premixed for ease of application to food or beverages and function primarily to impart a characteristic taste."

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On the other hand, the BOC considered the disputed product under heading 16.02 of the AHTN 2017 (other prepared or preserved meat, meat offal or blood), particularly under subheading 1602.20.00 which covers prepared or preserved liver of any animal. The HS EN to heading 16.02 state that:

"This heading covers:

(2) **Pâtés** [emphasis added], meat pastes, galantines and rillettes (potted mince), provided that they do not meet the requirements for classification in heading 16.01 as sausages or similar products."

Though the product name implies that subject article is a food preparation generally made from animal liver, the Commission found that the actual sample of the product, as well as its supporting documents, says otherwise.

The Commission agrees with the Importer/Consignee that heading 21.06 merits consideration as the product is a flavouring preparation. However, as its description explicitly states, said heading should only be selected if the food preparation is not elsewhere specified or included in the Nomenclature. As presented and based on its composition and use, subject article is classifiable under a more specific heading.

Heading 33.02 of the AHTN 2017 covers, among others, mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry. Note 2 to Chapter 33 states that:

"The expression "odoriferous substances" in heading 33.02 refers only to the substances of heading 33.01, to odoriferous constituents isolated from those substances or to synthetic aromatics."

The HS EN to heading 33.02 state that:

"This heading covers the following mixtures **provided** they are of a kind used as raw materials in the perfumery, food or drink industries (e.g., in confectionery, food or drink flavourings) or in other industries (e.g., soap-making):

(6) mixtures of one or more odoriferous substances (essential oils, resinoids, extracted oleoresins or synthetic aromatics) combined with added diluents or carriers such as vegetable oil, dextrose or starch."

Subject article, being a flavouring preparation composed of odoriferous substances (nutmeg oil and pimento berry oil mixture) and with palm oil, nature-identical flavouring substances, BHA 320, and smoke flavourings, falls under heading 33.02 of the AHTN 2017.

Based on the information received from the Importer/Consignee and the BOC, and the clarifications provided by the foregoing HS EN, subject article is classified under AHTN 2017 subheading 3302.10.90 by virtue of Rules 1 and 6 of the General Rules for the Interpretation (GRI) of the HS (Section 1610 of the CMTA).

WHEREFORE, premises considered, subject article is hereby classified as follows:

Product	AHTN 2017 Code	2022 MFN Rate	2022 ATIGA Rate*
Liver Pate ST 7055/22	3302.10.90	1%	Zero

*Subject to submission of Certificate of Origin (CO) Form "D"

This is for compliance by the BOC pursuant to Section 1100 of the CMTA.

So Ordered.

FOR THE COMMISSION

 Digitally signed

MARILOU P. MENDOZA
Chairperson

CMC No. 76-2022

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TCC (DR) NO. 22-006

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