



BUREAU OF CUSTOMS

MAKABAGONG ADUANA, MATATAG NA EKONOMIYA



PROFESSIONALISM

INTEGRITY

ACCOUNTABILITY

22 January 2021

CUSTOMS MEMORANDUM CIRCULAR
NO. 30-2021

To: All Deputy Commissioners
The Assistant Commissioner
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. 20-005 issued on 21 January 2021.

For your 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

16 FEB 01 2021



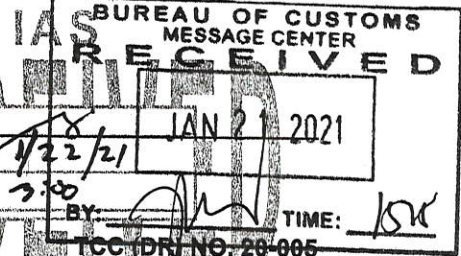
BOC-09-18311

CMC NO. 30 - 2021

MASTER COPY



OFFICE OF THE DIRECTOR



REPUBLIC OF THE PHILIPPINES

TARIFF COMMISSION

RE: REQUEST FOR TARIFF CLASSIFICATION DISPUTE RULING ON "WATERPROOF MEMBRANE" CONSIGNED TO MULTI-LINE STRUCTURES CORPORATION

(Import Entry/Customs Reference No. C-1012016-20, Port of Cebu)



BOC-09-18311A

Issued on: 21 January 2021

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 Waterproof Membrane imported by Multi-line Structures Corporation (Importer/Consignee) from China. The request of the Importer/Consignee for TCDR was received by this Commission on 10 September 2020.

The aforementioned shipment, with Import Entry/Customs Reference No. C-1012016-20, consists of the following goods:

- 1. 1,100 rolls of Building Paper, declared by the Importer/Consignee under ASEAN Harmonized Tariff Nomenclature (AHTN) 2017 subheading 4811.10.90, with a Most Favoured Nation (MFN) rate of duty of 3% ad valorem and ASEAN-China Free Trade Area (ACFTA) rate of duty of 3% ad valorem; and
2. Subject article, 300 rolls of Waterproof Membrane, declared by the Importer/Consignee under AHTN 2017 subheading 6807.10.00, with an MFN rate of duty of 3% ad valorem, and ACFTA rate of duty of zero.

The Bureau of Customs (BOC) Port of Cebu contested the declared heading for the Waterproof Membrane and reclassified it under AHTN 2017 subheading 4811.10.90 with corresponding MFN and ACFTA rates of duty of 3% ad valorem.

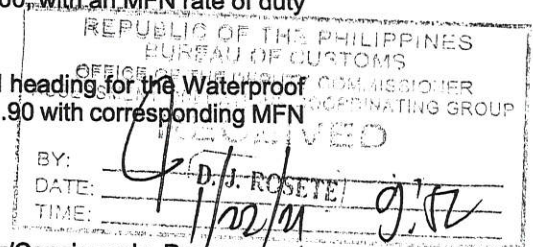
Hence, this request for tariff classification dispute ruling.

On 28 September 2020, this Commission wrote to the Importer/Consignee's Procurement Manager, Mr. Marco Antonio Pedro C. Angeles, requesting for clarification on the content of the submitted Single Administrative Document (SAD) and the Request for Tentative Release. Their response was received by this Commission on 05 October 2020.

With information deemed sufficient to classify subject article and pursuant to Section 7.3 of Commission Order No. 2018-01, this Commission requested the concerned BOC District Collector on 07 October 2020 for comments on the request for TCDR on Waterproof Membrane, providing him with all information received by the Commission. In a letter dated 16 October 2020 (received by this Commission on 26 October 2020), Atty. Charlito Martin R. Mendoza, Acting District Collector of BOC Port of Cebu, submitted a copy of a memorandum from the Customs Examiner concerned stating the basis for BOC's classification, as follows:

"The undersigned conducted a Physical examination together with the representative from District Collector's Office, CIIS, ESS, XIP, Philippine Cost Guard and Broker's Representative on the Entry no. C1012016-20 consigned to Multi-line Structures Corp. containing Building Paper and Waterproof Membrane under HS Code 4811.1090 and 6807.1000.

Examination is conducted to compare the item to the classification declared in the goods declaration. Based on the declaration waterproof membrane is classified as 6807.1000 (rolls under Articles of Asphalt or similar material). Upon examination it was concluded that the waterproof membrane should be classified under 4811.1090 (Others under Tarred, bituminized or asphalt paper and paperboard)."



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A scanned copy of the actual photograph of subject article was attached to the memorandum submitted to the Commission.

Following BOC's submission of their comment, the Commission again wrote to Mr. Angeles (dated 18 November 2020) requesting for the submission of the following: a) picture or layout of the product indicating the material used per layer and the thickness of each layer; b) function of each material used in relation to the final product; c) production process; and d) sample of the actual product, to determine the proper tariff classification of subject article. The information and sample requested were received by this Commission on 26 November and 15 December 2020, respectively.

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 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 all information received from both the BOC and the Importer/Consignee, i.e., submitted brochure, technical information, product composition, material safety data sheet, and sample of the actual product, it is established that subject article is a bitumen-based, self-adhering waterproof membrane. It is in the form of a black sheet consisting of the following:

Material	Layer Thickness (mm)	Percentage to Total Composition (%)	Function
polyethylene (PE) film	0.01	0.05	protective film
bitumen and styrene-butadiene-styrene (SBS) glue	1.10	bitumen – 75.00 SBS glue – 17.37	waterproofing and adhesion
polyester fabric	0.87	7.50	reinforcement material
polyethylene terephthalate (PET) film	0.02	0.08	release film

It is produced by fully impregnating and coating both sides of the polyester fabric with bitumen in a bitumen pool, followed by scraping to make the surfaces smooth, and laminating/covering the sides with plastic film. Imported in rolls of 1 m x 15 m x 2 mm (WxLxT), subject article is designed for use as a waterproofing material in buildings (e.g., roofs, basements, etc.), tunnels, and other surfaces.

The Importer/Consignee declared subject article under AHTN 2017 heading 68.07 which covers articles of asphalt or of similar material (for example, petroleum bitumen or coal tar pitch). The pertinent Harmonized System (HS) Explanatory Notes (EN) state that:

"This heading covers articles made from natural asphalt or bitumen, coal tar pitch, petroleum bitumen, bituminous mixtures, etc. (see heading 27.08, 27.13, 27.14 or 27.15). These articles usually contain fillers such as sand, slag, chalk, plaster, cement, talc, sulphur, asbestos fibre, wood fibre, sawdust, waste cork and natural resins.

The heading includes:

- (1) *Plates, bricks, tiles, flagstones, obtained by pressing or moulding and used for roofing, facing, tiling or paving.*
- (2) *Roofing boards consisting of a substrate (e.g., of paperboard, of web or fabric of glass fibre, of fabric of man-made fibre or jute, or of aluminium foil) completely enveloped in, or covered on both sides by, a layer of asphalt or similar material.*
- (3) *Building board made of one or more layers of textile fabric or paper completely enveloped in asphalt or similar material.*
- (4) *Cast or moulded tubes and containers."*

On the other hand, the BOC Port of Cebu classified subject Waterproof Membrane under AHTN 2017 heading 48.11 which covers paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated, covered, surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 48.03, 48.09 or 48.10. The pertinent HS EN state that:

"Paper and paperboard are classified in this heading only if they are in strips or rolls or in rectangular (including square) sheets, of any size. If they have been cut to any other shape, they fall in later headings of this Chapter (for example, 48.23). Subject to these conditions and the exceptions mentioned in the heading and those referred to at the end of this Explanatory Note, this heading applies to the following in rolls or sheets :

- (A) Paper, paperboard, cellulose wadding and webs of cellulose fibres, to which superficial coatings of materials other than kaolin or other inorganic substances have been applied over the whole or part of one or both surfaces (e.g., thermosensitive paper used, for example, in telefax machines).
- (B) Impregnated paper, paperboard, cellulose wadding and webs of cellulose fibres (see the General Explanatory Note to this Chapter: impregnated paper and paperboard).
- (C) Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated or covered, provided in the case of paper or paperboard coated or covered with plastics, the layer of plastics does not constitute more than half the total thickness (see Note 2 (g) to this Chapter). Paper and paperboard for the manufacture of packagings for beverages and other foodstuffs, printed with texts and illustrations referring to the goods to be packaged therein, covered on both faces with thin transparent sheets of plastics, with or without a lining of metal foil (on the face which will form the inside of the packaging), are also classified in this heading. These products may be creased and marked to identify individual containers to be cut from the rolls.
- (D) Paper, paperboard, cellulose wadding and webs of cellulose fibres, coloured on the surface with a single colour or with different colours, including surface marbled and design printed paper, and those printed with motifs, characters or pictorial representations merely incidental to their primary use and not constituting printed matter of Chapter 49 (see Note 12 and General Explanatory Note to this Chapter: coloured or printed paper and paperboard)."

It should be noted that subject article has no component/material of paper, paperboard, cellulose wadding or webs of cellulose fibres. Hence, classification under Chapter 48, which covers paper and paperboard, and articles of paper pulp, of paper or of paperboard, was not considered by the Commission.

On the other hand, the main materials used in producing subject article are the polyester fabric, SBS glue, and the bitumen. Based on the sample, and technical information provided by the Importer/Consignee, duly certified by the manufacturer, the fabric is used as a reinforcing material while the glue gives the adhesive property of the article. The essential character of subject article (i.e., waterproofing function and bulk of material used) is imparted by the bitumen.

Based on the totality of the information received and the foregoing HS EN, subject article is classified under AHTN 2017 subheading 6807.10.00 by virtue of Rules 1, 3(b) 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	2020 MFN Rate	2020 ACFTA Rate*
Waterproof Membrane	6807.10.00	3%	0%

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

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

So Ordered.

FOR THE COMMISSION

MariLou P. Mendoza
Digitally signed

MARILOU P. MENDOZA
Chairperson

Copy furnished:

The Secretary

Department of Finance (DOF)
DOF Building, BSP Complex
Roxas Boulevard, Metro Manila
Email: secfin@dof.gov.ph

The Commissioner

Bureau of Customs (BOC)
Office of the Commissioner
G/F OCOM Building, 16th Street
South Harbor, Port Area, Manila
Email: boc.ocom@customs.gov.ph

Atty. Charlito Martin Mendoza

District Collector
Bureau of Customs
Port of Cebu
NRA, Cebu City
Email: CharlitoMartin.Mendoza@customs.gov.ph
bocportofcebu@gmail.com

Mr. Marco Antonio Pedro C. Angeles

Procurement Manager
Multi-Line Structures Corporation
4th Flr. Calderon Bldg., 827 EDSA
South Triangle, Diliman, Quezon City
Email: mcangeles@multi-linegroup.com