



# BUREAU OF CUSTOMS

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23 November 2022

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## CUSTOMS MEMORANDUM CIRCULAR NO. 175-2022

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

### SUBJECT: TARIFF CLASSIFICATION DISPUTE RULING

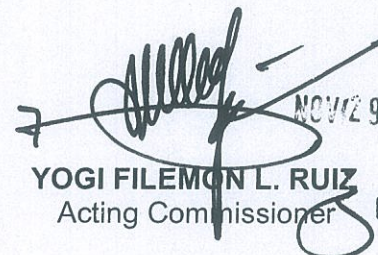
This has reference to the herein attached Tariff Commission Circular Dispute Ruling (TCC DR) No. 22-011 issued on 17 November 2022 pursuant to Commission Order No. 2018-1 (Rules of Procedure on Disputes involving Tariff Classification) on the shipment of "Si-TEC Xtend ADG Turbine H Drive" consigned to Yokogawa Philippines Inc. (Import Entry/ Customs Reference No. C-53790-22, NAIA) the dispositive portion of which states that:

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

Product	AHTN 2017/2022 Code	2022 MFN Rate	2022 AANZFTA Rate
Si-TEC (Smart Integrated Turbine & Engine Control) Xtend ADG (Advance Digital Governor) Turbine H Drive	9032.89.39	1%	Zero

For information and guidance.

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

  
 NOV 29 2022  
**YOGI FILEMON L. RUIZ**  
 Acting Commissioner



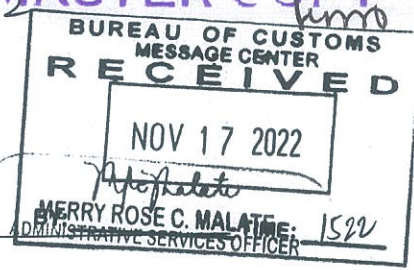
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CMC No. 175-2022 p.2

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RE: REQUEST FOR TARIFF CLASSIFICATION DISPUTE RULING ON "SI-TEC XTEND ADG TURBINE H DRIVE", CONSIGNED TO YOKOGAWA PHILIPPINES INC.

TCC (DR) NO. 22-011



(Import Entry/Customs Reference No. C-53790-22, NAIA)

Issued on: 17 November 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 Si-TEC (Smart Integrated Turbine & Engine Control) Xtend ADG (Advanced Digital Governor) Turbine H Drive imported by Yokogawa Philippines Inc. (Importer/Consignee) from Australia. The request of the Importer/Consignee for a TCDR was accepted by this Commission on 16 June 2022.

The shipment of the said article, declared under ASEAN Harmonized Tariff Nomenclature (AHTN) 2017 subheading 9032.89.39, with a Most Favoured Nation (MFN) rate of duty of 1% ad valorem, was processed under Import Entry/Customs Reference No. C-53790-22 at the Bureau of Customs (BOC), Ninoy Aquino International Airport (NAIA). The BOC contested the declared heading and reclassified subject article under AHTN 2017 subheading 8537.10.19, with an MFN rate of duty of 5% ad valorem.

Hence, this request for Tariff Classification Dispute Ruling.

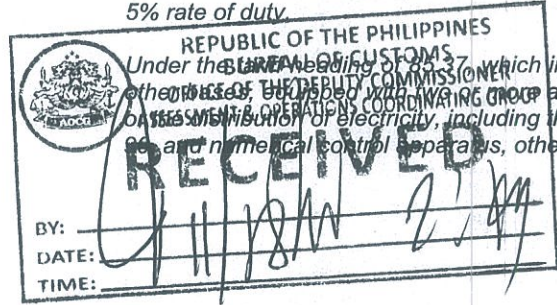
With information deemed sufficient to classify subject article and pursuant to Section 7.3 of Commission Order No. 2018-01, this Commission requested the concerned BOC District Collector on 05 July 2022 for comments on the request for TCDR on Si-TEC (Smart Integrated Turbine & Engine Control) Xtend ADG (Advanced Digital Governor) Turbine H Drive. In a letter dated 21 July 2022, Atty. Halleck A. Valdez, Deputy Collector for Assessment, BOC-NAIA, submitted BOC's comment through a memorandum (with supporting documents) prepared by Mr. Evander Lucky R. Bajar, Acting Customs Operations Officer (COO) III, and Ms. Leabel U. Basa, Acting COO V, stating the reasons why subject article was reclassified from the declared AHTN 2017 subheading 9032.89.39 (with an MFN rate of duty of 1% ad valorem) to 8537.10.19 (with an MFN rate of duty of 5% ad valorem). The reasons for this reclassification decision, as stated in the memorandum, were as follows:

"The article in question is Si-TEC Extend ADG (Advanced Digital Governor) Turbine H Drive was classified at 90328939 (1%).

Based on the data sheet submitted, Si-TEC Xtend ADG Turbine H Drive is a steam turbine control designed for mechanical drive applications. Its key features include process control for variable speed applications, flexible configuration and has a user-friendly tuning software. It can be applied in various process control such as mechanical drives for pumps, compressors, mills, shredders, fans, blowers and the like. Si-TEC Xtend ADG can be used in a wide variety of electrical actuators.

Based from these features, we hereby recommended the tariff reclassification to 85371019 with 5% rate of duty.

Under the current heading of 8537, which includes boards, panels, consoles, desks, cabinets and other parts of the kind used with apparatus of heading 85.35 or 85.36, for electric control or distribution of electricity, including those incorporating instruments or apparatus of Chapter 85 and numerical control apparatus, other than switching apparatus of heading 85.17.



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This heading covers:

(3) "Programmable Controllers"- which are digital apparatus, using a programmable memory for the storage of instruction for implementing specific functions such as logic sequencing, timing, counting and arithmetic, to control, through digital or analog input/output modules, various type of machine.

As stated in the Harmonized Commodity Description and Coding System, Explanatory Notes Fourth Edition (2007) Volume 5 Sections XVI-XXI Chapter 85-97."

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 disputes in tariff classification. In the present case, however, this Commission found that the submissions of the Importer/Consignee and the BOC were 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 brochure of the product, it is established that subject article is an electronic governor. It automatically regulates turbine speed in response to changing load conditions. Via the MPU (magnetic pickup) sensor (not included in the importation), it periodically measures the turbine rotor speed, compares this rotor speed to an internal or external speed set point, then sends electrical signals to the actuator (not included in the importation) to control turbine inlet steam flow, thus maintaining the turbine speed at the desired set point. It allows configurable options enabling multiple starting sequences (for example, preset warm up, shortened warm up, and quick start) as well as contains other features such as process controls, multiple PIDs (proportional-integral-derivative), user selected 4-20 mA inputs and outputs, controlled "over speed" trip testing, and Modbus interface. Subject article is designed to be used for single turbine constant and variable speed governing controls, multiple turbines driving a common shaft (tandem), and mechanical drives such as pumps, compressors, mills, shredders, fans, and blowers.

The BOC considered classification of the product under Chapter 85 of the ASEAN Harmonized Tariff Nomenclature (AHTN) 2017 which covers *electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.*

Heading 85.37 of the AHTN 2017 covers *boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 85.35 or 85.36, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of Chapter 90, and numerical control apparatus, other than switching apparatus of heading 85.17.* The pertinent Harmonized System (HS) Explanatory Notes (EN) for this heading state that:

"These consist of an assembly of apparatus of the kind referred to in the two preceding headings (e.g., switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk, etc. They usually also incorporate meters, and sometimes also subsidiary apparatus such as transformers, valves, voltage regulators, rheostats or luminous circuit diagrams.

The goods of this heading vary from small switchboards with only a few switches, fuses, etc. (e.g., for lighting installations) to complex control panels for machine-tools, rolling mills, power stations, radio stations, etc., including assemblies of several of the articles cited in the text of this heading.

The heading also covers :

- (1) Numerical control panels with built-in automatic data processing machine, which are generally used to control machine-tools.
- (2) Programmed switchboards to control apparatus; these permit variations in the choice of operations to be followed. They are normally used in domestic electrical appliances, such as washing machines and dish washers.
- (3) "Programmable controllers" which are digital apparatus using a programmable memory for the storage of instructions for implementing specific functions such as logic, sequencing, timing, counting and arithmetic, to control, through digital or analog input/output modules, various types of machines.

**The heading does not cover automatic controlling apparatus of heading 90.32 [emphasis added]."**

On the other hand, the Importer/Consignee considered classification of the product under Chapter 90 of the AHTN 2017 which covers *optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof.*

The scope of products covered under heading 90.32 is specifically stated in Note 7 to Chapter 90, as follows:

"7.- Heading 90.32 applies only to :

(a) *Instruments and apparatus for automatically controlling the flow, level, pressure or other variables of liquids or gases, or for automatically controlling temperature, whether or not their operation depends on an electrical phenomenon which varies according to the factor to be automatically controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilised against disturbances, by constantly or periodically measuring its actual value; and*

(b) ***Automatic regulators of electrical quantities, and instruments or apparatus for automatically controlling non-electrical quantities the operation of which depends on an electrical phenomenon varying according to the factor to be controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilised against disturbances, by constantly or periodically measuring its actual value.*** [emphasis added]

Heading 90.32 of the AHTN 2017 covers *automatic regulating or controlling instruments and apparatus.* The pertinent HS EN to this heading state that:

***"(II) AUTOMATIC REGULATORS OF ELECTRICAL QUANTITIES, AND INSTRUMENTS OR APPARATUS FOR AUTOMATICALLY CONTROLLING NON-ELECTRICAL QUANTITIES THE OPERATION OF WHICH DEPENDS ON AN ELECTRICAL PHENOMENON VARYING ACCORDING TO THE FACTOR TO BE CONTROLLED***

*The automatic regulators of this heading are intended for use in complete automatic control systems which are designed to bring a quantity, electrical or non-electrical, to, and maintain it at, a desired value, stabilised against any disturbances, by constantly or periodically measuring its actual value. They consist essentially of the following devices :*

(A) ***A measuring device*** (*sensing device, converter, resistance probe, thermocouple, etc.*) which determines the actual value of the variable to be controlled and converts it into a proportional electrical signal.

(B) ***An electrical control device*** which compares the measured value with the desired value and gives a signal (generally in the form of a modulated current).

(C) ***A starting, stopping or operating device*** (*generally contacts, switches or circuit breakers, reversing switches or, sometimes, relay switches*) which supplies current to an actuator in accordance with the signal received from the control device.

*An automatic regulator within the meaning of Note 7 (b) to this Chapter consists of the devices described in (A), (B) and (C) above, whether assembled together as a single entity or in accordance with Note 3 to this Chapter, a functional unit.*

***If they do not conform to the definitions outlined above, these devices are to be classified as follows :***

(1) *Electrical measuring devices generally fall in heading 90.25, 90.26 or 90.30.*

(2) ***Electrical control devices are to be classified in this heading as incomplete automatically controlling instruments or apparatus.***

(3) *Starting, stopping or operating devices are generally to be classified in heading 85.36 (switches, relays, etc.).*

***Automatic regulators are connected to an electrical, pneumatic or hydraulic actuator, which brings the controlled variable back to the desired value. This actuator may be the clamps which adjust the gap between the electrodes of an arc furnace, the motorised valve which controls the intake of water or steam in a boiler, a furnace, a pulping machine, etc.*** [emphasis added]

x x x

Electronic regulators function on a strictly electrical principle, and not electro-mechanically. Their characteristic features are semiconductors (transistors) or integrated circuits.

These regulators are used not only for electrical quantities, such as voltage, amperage, frequency and power, but also for other quantities such as revolutions per minute, torque, traction force, level, pressure, flow or temperature."

As presented in the product description, subject article has functionalities that are beyond the scope of heading 85.37, specifically when compared to "programmable controllers". Being an electronic control device capable of automatically regulating turbine speed by periodically comparing the turbine speed (measured value) with the internal or external speed set point (desired value) and sending/receiving analog signals in the form of electrical current (4-20 mA) to maintain the turbine speed at the desired set point, subject article is considered as an incomplete automatically controlling device (i.e., to be imported without the sensors and actuators) specifically covered under heading 90.32.

Based on the information received from the Importer/Consignee and the BOC, and the clarifications provided by the foregoing Chapter Note and HS EN, subject article is properly classified under AHTN 2017 subheading 9032.89.39 by virtue of Rules 1 and 6 of the General Rules for the Interpretation (GRI) of the HS (Section 1610 of the CMTA). In view of the Philippines' adoption and implementation of the 2022 version of the AHTN on 01 July 2022, subject article is classifiable under the same subheading in AHTN 2022.

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

Product	AHTN 2017 Code	2022 MFN Rate	2022 AANZFTA Rate
Si-TEC (Smart Integrated Turbine & Engine Control) Xtend ADG (Advanced Digital Governor) Turbine H Drive	9032.89.39	1%	Zero

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

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TCC (DR) NO. 22-011

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