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26 May 2022

CUSTOMS MEMORANDUM CIRCULAR
NO. 74-2022

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. 21-010 issued on 20 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



BOC-09-30751

cmc No. 74-2022

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BOC-09-30751

REPUBLIC OF THE PHILIPPINES

TARIFF COMMISSION

RE: REQUEST FOR TARIFF CLASSIFICATION DISPUTE RULING ON "NOVOSYN® VIOLET (C0068591)" CONSIGNED TO B. BRAUN MEDICAL SUPPLIES INC.

(Import Entry/Customs Reference Nos. C-88637 and C-93466, NAIA)

BUREAU TCC (DR) NO. 21-010
 BUREAU TARIFF CENTER
RECEIVED
 MAY 23 2022
 BY: MERRY ROSE [Signature] TIME: 1457
 Issued on: 20 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 shipments of NOVOSYN® VIOLET (C0068591) imported by B. Braun Medical Supplies Inc. (Importer/Consignee) from Spain. The request of the Importer/Consignee for TCDR was accepted by this Commission on 14 December 2021.

The shipments of said article, declared under ASEAN Harmonized Tariff Nomenclature (AHTN) 2017 subheading 3006.10.90, with a Most Favoured Nation (MFN) rate of duty of 1% ad valorem, was processed under Import Entry/Customs Reference Nos. C-88637 and C-93466 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 3006.10.10C, with an MFN rate of duty of 7% ad valorem.

Hence, this request for tariff classification dispute ruling.

On 27 December 2021, the Commission wrote to the Importer/Consignee requesting for the submission of the following: a) certificate of product registration (CPR) from the Food and Drug Administration (FDA); b) clarification on their definition of "absorbable surgical yarn"; and c) justification/clarification on their classification of the subject good under AHTN 2017 subheading 3006.10.90. The information requested was received by this Commission on 10 January 2022.

Pursuant to Section 7.3 of Commission Order No. 2018-01, this Commission requested the concerned BOC District Collector on 19 January 2022 for comments on the request for TCDR on Novosyn® Violet (C0068591). In a letter dated 15 February 2022, Atty. Halleck A. Valdez, Deputy Collector for Assessment of BOC Port of NAIA, submitted BOC's comment through (i) a memorandum prepared by Mr. Wilchrist R. Rama, Customs Operations Officer III, and Mr. Ramon F. Rodriguez, Acting Customs Operations Officer V, for Import Entry No. C-88637 and (ii) a memorandum prepared by Ms. Gladys Joy C. Obsum, Customs Operations Officer III, and Mr. Ramon F. Rodriguez for Import Entry No. C-93466. Both memoranda stated that the subject article was reclassified from the declared AHTN 2017 subheading 3006.10.90 (with MFN duty of 1%) to 3006.10.10C (with MFN duty of 7%) and the basis for this decision was as follows:

"As per FDA Certificate of Product Registration and brochure submitted, below are the findings for the above-mentioned item:

- Novosyn® - is a mid-term absorbable braided and coated synthetic suture made of polyglactin.

Subheading 3006.10.10 – Sterile absorbable surgical or dental yarn; sterile surgical or dental adhesion barriers, whether or not absorbable, is a specific subheading for sterile absorbable surgical yarns which is a surgical suture. Hence, said item is classifiable to 3006.10.10C as made of other polymers and synthetic polymer fibres."

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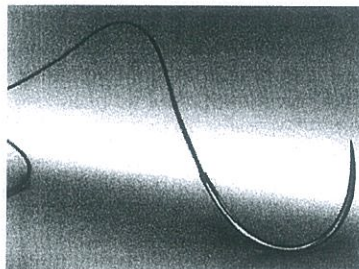


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 BUREAU OF CUSTOMS
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However, upon further examination of the BOC comment, it was noted that the photograph of the examined product attached is of Novosyn® Violet (C0068557), a product with a different model number from that of the subject good requested for Dispute Ruling. Hence, on 11 March 2022, the Commission requested the concerned BOC District Collector to confirm whether the subject article Novosyn® Violet (C0068591) is subject of dispute on tariff classification with the BOC Port of NAIA. In a letter dated 28 March 2022, Deputy Collector Valdez submitted BOC's comment through (i) a memorandum prepared by Messrs. Rama and Rodriguez for Import Entry No. C-88637 and (ii) a memorandum prepared by Ms. Obsum and Mr. Rodriguez for Import Entry No. C-93466. Both memoranda stated that Novosyn® Violet (C0068591) is among the items included in the dispute for tariff classification and reiterated that the subject article was reclassified from the declared AHTN 2017 subheading 3006.10.90 (with MFN duty of 1%) to 3006.10.10C (with MFN duty of 7%).

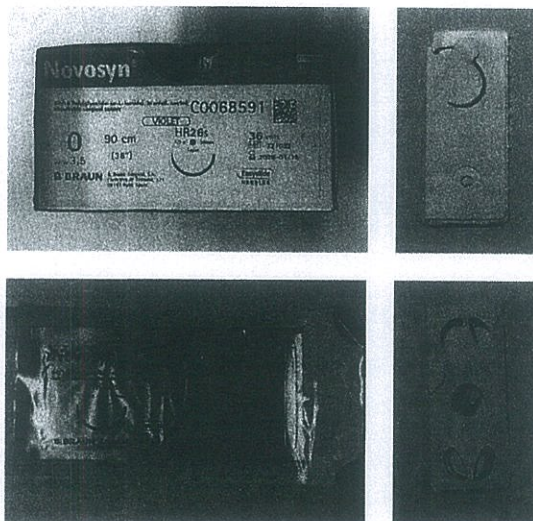
In the evaluation of disputes on tariff classification, Section 8 of Commission Order No. 2018-01 provides that this Commission, if it deems necessary, shall conduct a hearing to clarify the facts necessary to resolve the pending dispute in the tariff classification. In the present case, however, this 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 the submitted technical data sheet, Certificate of Product Registration from the Food and Drug Administration (FDA), product insert, and sample, it is established that subject article is a surgical instrument composed of a sterile, synthetic, mid-term absorbable, and braided surgical suture material made of polyglactin 910 (consisting of 90% glycolide and 10% L-lactide) attached to a half-circle round-bodied stainless steel needle.



The 90-cm long suture is coated with polyglactin 370 and calcium stearate so that it slides easily without causing a sawing effect and is coloured violet with the colouring DetC Violet No. 2 (C. I. 60725) to make it recognizable. Subject article is intended for use in soft tissue approximation and/or ligation such as in gastrointestinal surgery, gynaecology, orthopaedics, ophthalmic surgery, urology, and in general surgery when surgical practice requires the use of synthetic, absorbable, braided suture material. It is packed in a box containing 36 units together with a packaging insert.

Below are photographs of the actual sample submitted:



Heading 30.06 of the AHTN 2017 covers pharmaceutical goods specified in Note 4 to this Chapter. The Harmonized System (HS) Explanatory Notes (EN) to this heading state that:

"This heading covers only the following goods, among others, sterile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure.

This item covers all kinds of ligature for surgical sutures, provided they are sterile. These ligatures are usually put up in antiseptic solutions or in sealed sterile containers.

The materials used for such ligatures include:

- (a) catgut (processed collagen from the intestines of cattle, sheep or other animals);*
- (b) natural fibres (cotton, silk, linen);*
- (c) synthetic polymer fibres, such as polyamides (nylons), polyesters;*
- (d) metals (stainless steel, tantalum, silver, bronze).*

The item also covers tissue adhesives such as those consisting of butyl cyanoacrylate and a dye; after application, the monomer polymerises and the product is therefore used in place of conventional suture materials for closing internal or external wounds of the human body."

Both the Importer/Consignee and the BOC considered classification of subject article under the six-digit AHTN 2017 subheading 3006.10 which covers "sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or dental adhesion barriers, whether or not absorbable".

Their classification differed at the eight-digit subheading level with the Importer/Consignee classifying subject article under AHTN 2017 subheading 3006.10.90 which covers "sterile laminaria and sterile laminaria tents, sterile absorbable surgical or dental haemostatics, and similar sterile suture materials other than sterile absorbable surgical or dental yarns". On the other hand, the BOC considered the disputed product under AHTN 2017 subheading 3006.10.10C which refers to *sterile absorbable surgical or dental yarn and sterile surgical or dental adhesion barriers (whether or not absorbable) made of other acrylic polymers, of polycarbonates, of poly(ethylene terephthalate), of polyesters, of regenerated cellulose, of vulcanized fiber, of cellulose acetate and other cellulose derivatives, of amino-resins other than polyamides, of phenolic resins, or of other plastics, non-cellular and/or non-reinforced; of cellular reinforced polyurethanes, of cellular reinforced regenerated cellulose, or of other plastics, cellular and reinforced.*

The Commission agrees with the Importer/Consignee and BOC that heading 30.06 merits consideration as the product contains a sterile suture. However, as presented, subject article is more than just a sterile suture. Hence, another heading which would cover its use should also be considered.

Heading 90.18 of the AHTN 2017 covers instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments. The HS EN to this heading state that:

"This heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate, etc. The instruments of the heading may be made of any material (including precious metals).

Instruments and appliances for human medicine or surgery includes, among others, instruments which may be used under the same names for several purposes, for example, needles (for sutures, ligatures, vaccination, blood tests, hypodermic needles, etc.)."

Referring to the AHTN 2017 Nomenclature, sterile surgical suture threads and needles for suture are specifically covered under subheadings 3006.10 and 9018.32, respectively.

A suture is the material which closes the wound whereas a suture needle is the instrument used to puncture the skin surrounding a wound and pull the suture material into place. Since subject article is presented as a single product and is intended for use in soft tissue approximation in general surgery, when surgical practice requires the use of synthetic, absorbable, braided suture material, it qualifies as an instrument for medical, surgical, dental or veterinary sciences under AHTN 2017 heading 90.18, specifically subheading 9018.32.00.

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Based on the information received from the Importer/Consignee, the BOC, and the clarifications provided by the foregoing HS EN, subject article is classified under AHTN 2017 subheading 9018.32.00 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	2021 MFN Rate
Novosyn® Violet (C0068591)	9018.32.00	1%

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

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