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21 June 2022

CUSTOMS MEMORANDUM CIRCULAR
NO. 93-2022

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. 22-003 issued on 16 June 2022.

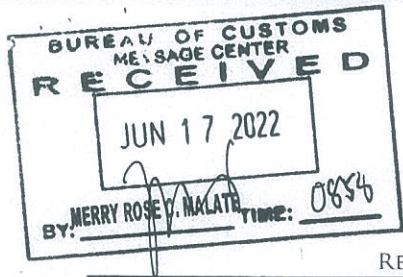
For information and guidance.

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-09-31387



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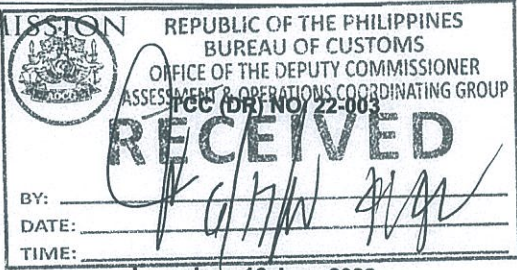
BOC-09-31387

REPUBLIC OF THE PHILIPPINES

TARIFF COMMISSION

RE: REQUEST FOR TARIFF CLASSIFICATION DISPUTE RULING ON "SPECTRA OPTIA® EXCHANGE SET, ITEM CODE: 10220" CONSIGNED TO TERUMO MARKETING PHILIPPINES, INC.

(Import Entry/Customs Reference No. C-158670, NAIA)



Issued on: 16 June 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 Spectra Optia® Exchange Set, Item Code: 10220 imported by Terumo Marketing Philippines, Inc. (Importer/Consignee) from the United States of America. The request of the Importer/Consignee for TCDR was accepted by this Commission on 01 March 2022.

The shipment of the said article, declared under ASEAN Harmonized Tariff Nomenclature (AHTN) 2017 subheading 9018.90.90, with a Most Favoured Nation (MFN) rate of duty of 1% ad valorem, was processed under Import Entry/Customs Reference No. C-158670 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 9033.00.10, with an MFN rate of duty of 3% ad valorem.

Hence, this request for tariff classification dispute ruling.

On 24 March 2022, this Commission wrote to the Importer/Consignee's Logistics Associate, Ms. Annaliza B. Angeles, requesting for the submission of the following additional information:

- 1) correct/exact product name and brand/model of subject article; and
- 2) clear picture of subject article showing its exact product name and brand/model.

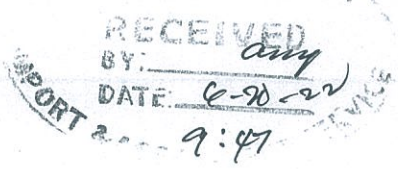
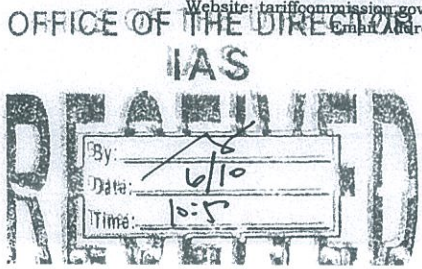
The response, containing all the required information, was received by this Commission on 24 March 2022.

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 06 April 2022 for comments on the request for TCDR on Spectra Optia® Exchange Set, Item Code: 10220. In a letter dated 13 May 2022, Atty. Halleck A. Valdez, Deputy Collector for Assessment, BOC-NAIA, submitted BOC's comment through a memorandum (with supporting documents) prepared by Ms. Maria Sheilla Monina F. Ubay, Customs Operations Officer (COO) III, and Ms. Frieda Corazon S. Malvar, COO V, stating the reasons why subject article was reclassified from the declared AHTN 2017 subheading 9018.90.90 (with MFN rate of duty of 1%) to 9033.00.10 (with MFN rate of duty of 3%). The reasons for this reclassification decision, as stated in the memorandum, were as follows:

"It is our opinion that the Tariff heading for the said commodity should be classified under 90330010 (3%) "Parts and accessories (not specified else or included elsewhere in this chapter) for machines, appliances, instruments, or apparatus of Chapter 90". Rather than 90189090 (1%) "Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphy apparatus, other electro-medical apparatus, and sight-testing instruments" because of the following reasons:

- (1) They have submitted brochure of item and we can clearly see in there where the item will be placed.

4th Floor, West Insula Condominium, 135 West Avenue, Quezon City, 1105 Philippines
Tel. Nos.: (632) 8926-8731 / (632) 8928-8419 / (632) 8936-3315 / (632) 8936-3318 • Telefax Number: (632) 8921-7960
Website: tariffcommission.gov.ph • Philippine Tariff Finder: finder.tariffcommission.gov.ph
E-mail Address: TC.Assist@mail.tariffcommission.gov.ph



- (2) Along with the broker's representative, we conducted an examination and we only found parts / accessories of a machine, which is the "Terumo BCT Spectra Optia Apherens System".
- (3) The item alone can't function as it is when it arrived unless it is connected in the machine. According to the consignee, the item is like an IV set that is why they have put it under Tariff Heading 90189090.
- (4) They have showed Certificate of Medical Device from Federal Agency for Medicines and Health Product (FAMHP). What is written in the product name is Spectra Optia IDL Set. If we try to search it on Google, it is a complete machine. And as per examination, it is only spare parts have arrived.
- (5) As stated on Section notes of Chapter 90 (2)
- (b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument, or apparatus, or with a number of machine, instruments, or apparatus of the same heading (including a machine, instrument or apparatus of heading 90.10, 90.13 Or 90.31) are to be classified with the machines, instruments or apparatus of that kind.
- (c) All other parts and accessories are to be classified in heading 9033."

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 technical specifications and photograph of the product, it is established that subject article is a disposable tubing set designed solely for Spectra Optia® Apheresis System. Said system is a transportable, automated blood component separator that uses centrifugation and optical detection (Automated Interface Management (AIM) system) to perform the following therapeutic apheresis, cell collection, and cell processing procedures:

- a) therapeutic plasma exchange;
- b) therapeutic plasma exchange with a secondary plasma device;
- c) red blood cell exchange, depletion, and depletion/exchange;
- d) mononuclear cell collection from the peripheral blood;
- e) granulocyte collection from the peripheral blood;
- f) white blood cell depletion;
- g) platelet depletion; and
- h) processing of harvested bone marrow.

Subject article, one of the ready-to-use tubing sets designed for the Spectra Optia® Apheresis System, is designed to be used in red blood cell exchange and therapeutic plasma exchange procedures. It consists of the replace line, remove bag, channel and connector, cassette, colored spikes and tubing, anticoagulant (AC) check valve, and colored clamps, among others. It works by handling the patient's collected and filtered anticoagulated blood, the extracted plasma or other targeted blood components during apheresis. Once the said blood components have been removed, processed, and/or replaced adequately, it returns the handled blood back to the patient to reach a therapeutic effect.

Both the Importer/Consignee and the BOC 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; and parts and accessories thereof.

Note 2 to Chapter 90, which governs the classification of parts and accessories for the machines, apparatus, instruments and articles of the Chapter, states that:

"Parts and accessories for machines, apparatus, instruments or articles of this Chapter are to be classified according to the following rules :

- (a) *Parts and accessories which are goods included in any of the headings of this Chapter or of Chapter 84, 85 or 91 (other than heading 84.87, 85.48 or 90.33) are in all cases to be classified in their respective headings;*

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(b) **Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 90.10, 90.13 or 90.31) are to be classified with the machines, instruments or apparatus of that kind [emphasis added];**

(c) **All other parts and accessories are to be classified in heading 90.33."**

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 pertinent Harmonized System (HS) Explanatory Notes (EN) 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. Instruments and appliances for anatomical or autoptic work, dissection, etc., are also included, as are, under certain conditions, instruments and appliances for dental laboratories (see Part (I) below). The instruments of the heading may be made of any material (including precious metals).

X X X

(I) INSTRUMENTS AND APPLIANCES FOR HUMAN MEDICINE OR SURGERY

This group includes :

(L) Portable pneumo-thorax apparatus, transfusion apparatus for whole blood, blood components and blood derivatives, artificial leeches.

The heading also covers sterile hermetically sealed containers of plastics, from which air has been evacuated but containing a small quantity of anti-coagulant and fitted with an integral donor tube and a phlebotomy needle, used for the collection, storage and transfusion of human whole blood. However, special blood storage bottles of glass are excluded (heading 70.10).

X X X

Subject to the provisions of Notes 1 and 2 to this Chapter (see the General Explanatory Note), parts and accessories of apparatus or appliances of this heading remain classified here [emphasis added]."

On the other hand, heading 90.33 of the AHTN 2017 covers parts and accessories (not specified or included elsewhere in this Chapter) for machines, appliances, instruments or apparatus of Chapter 90. The pertinent HS EN state that:

"This heading covers all parts and accessories for machines, appliances, instruments or apparatus of this Chapter, other than:

(3) Those identifiable as suitable for use solely or principally with a particular kind of machine, appliance, instrument or apparatus, or with a number of machines, appliances, instruments or apparatus of the same heading of this Chapter; these are classifiable, by application of Chapter Note 2 (b), in the same heading as the relevant machines, appliances, instruments or apparatus."

Heading 90.33 is a residual heading that is only considered when classifying parts and accessories for the machines, appliances, instruments or apparatus of Chapter 90 which are not mentioned in Chapter Note 1 (i.e., exclusions to Chapter 90) nor covered by Chapter Note 2(a) and 2(b).

Subject article, being an essential component of an automated system that does therapeutic apheresis, cell collection, and cell processing procedures to prevent or treat the illness of a patient, is specifically covered under heading 90.18.

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 9018.90.30A by virtue of Rules 1 and 6 of the General Rules for the Interpretation (GRI) of the HS (Section 1610 of the CMTA).

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

Product	AHTN 2017 Code	2022 MFN Rate
Spectra Optia® Exchange Set, Item Code: 10220	9018.90.30A	Zero

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

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
comm.boc@gmail.com

Ms. Carmelita M. Talusan
District Collector
Bureau of Customs (BOC)
BOC Building, Mendoza Avenue
Ninoy Aquino International Airport (NAIA)
Pasay City
Email: Carmelita.Talusan@customs.gov.ph
Mimel_talusan@yahoo.com

Mr. Zhigang Yang
Managing Director
Terumo Marketing Philippines, Inc.
Unit 3203 A&B, West Tower
Philippine Stock Exchange Centre
Exchange Rd., Ortigas Center, Pasig City
Email: Cristan_Yang@terumo.co.jp

Ms. Annaliza B. Angeles
Logistics Associate
Terumo Marketing Philippines, Inc.
Email: Annalizab_Angeles@terumo.co.jp

Mr. Danilo Tuares
Service Engineer
Terumo Marketing Philippines, Inc.
Email: Danilo_Tuares@terumo.co.jp