



10 March 2023

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CUSTOMS MEMORANDUM CIRCULAR
 NO. 47-2023

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. 22-023 issued on 02 March 2023 pursuant to Commission Order No. 2018-1 (Rules of Procedure on Disputes Involving Tariff Classification) on the shipment of "Calcium Carbonate (FMB) ER-36 and Calcium Carbonate (FMB) ER-37 LM" consigned to Dalisay Philippines Corporation (Import Entry/ Customs Reference No. C-234340-21, MICP) the dispositive portion of which states that:

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

Product	AHTN 2017 Code	2021 MFN Rate	2021 AIFTA Rate
Calcium Carbonate (FMB) ER-36	3809.91.90	3% <i>ad valorem</i>	Zero*
Calcium Carbonate (FMB) ER-37 LM	3809.91.90	3% <i>ad valorem</i>	Zero*

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

For information and guidance.

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



BIENVENIDO Y. RUBIO
 Commissioner

MAR 20 2023



REPUBLIC OF THE PHILIPPINES
TARIFF COMMISSION

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RE: REQUEST FOR TARIFF CLASSIFICATION
DISPUTE RULING ON "CALCIUM CARBONATE
(FMB) ER-36 AND CALCIUM CARBONATE (FMB)
ER-37 LM", CONSIGNED TO DALISAY
PHILIPPINES CORPORATION

TCC (DR) NO. 22-023

(Import Entry/Customs Reference No. C-234340-
21, MICP)

Issued on: 02 March 2023

TARIFF CLASSIFICATION DISPUTE RULING

Before this Commission is a request for a 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 Calcium Carbonate (FMB) ER-36 and Calcium Carbonate (FMB) ER-37 LM imported by Dalisay Philippines Corporation (Importer/Consignee) from India. The request of the Bureau of Customs (BOC) for a TCDR was received by this Commission on 15 September 2022.

Based on the letter request for a TCDR sent by the BOC dated 05 September 2022, the following relevant information were gathered:

- a. The shipment of the said article, declared under ASEAN Harmonized Tariff Nomenclature (AHTN) 2017 subheading 2836.50.90, with Most Favoured Nation (MFN) rate of duty of 3% *ad valorem* and ASEAN-India Free Trade Area rate of duty of zero, was processed under Customs Reference No. C-234340-21 at BOC, Manila International Container Port (MICP).
- b. The assigned Customs Examiner, Ms. Anita G. Astoveza, contested the declared heading and recommended to classify subject articles under AHTN 2017 subheading 3206.49.10, with MFN rates of duty of 5% *ad valorem*, based on the Material Safety Data Sheet (MSDS), General Rules of Interpretation (GIR), and Explanatory Notes. The basis for the BOC classification were as follows:
 - i. "As per AHTN, imported item specifically described as CALCIUM CARBONATES should be classified under AHTN 2836.50.
 - ii. As per AFTA Certificate by way of FORM AI with Reference No. EIC/2021/013/0259633A/00245711, Soltex Petroproducts Ltd., the manufacturer/shipper of Calcium Carbonate has certified as true and correct that subject item should be classified under HS Code No. 2836.5000.
 - iii. The MSDS as well as the Product Data Information, clearly indicates that the subject item has a Chemical Name and Synonyms as "Natural Calcium Carbonate FMB, belonging to Chemical Family as Calcium Carbonate FMB, Trade Name and Synonyms as Calcium Carbonate FMB, and Formula of: Compound of Natural Calcium Carbonate and Polymer.
 - iv. The Examination Report clearly and specifically indicates that the goods "As Found" after it was subjected to examination was CALCIUM CARBONATE, as attested by the Customs Examiner herself, CIIS Representative, ESS Representative and CAIDTF Representative.
 - v. However, based on the Custom's Examiner's physical examination of goods, it was found out that CALCIUM CARBONATE (FMB)- ER36 and (FMB)- ER37 is an Antifiberrlating Masterbatch which is classifiable under specific heading of 3206. It is used for the plastics woven sacks industry which gives an excellent extraction

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resistance, low gas fading and low pigment interaction. It is a solid product in which pigments or additives are optimally dispersed at high concentration in a carrier material. The carrier material is compatible with the main plastic in which it is will be blended during molding, whereby the final plastic product obtains the color or properties from the masterbatch. Masterbatch allows the processor to color raw polymer economically during the plastics process. This masterbatch is used in production of Polypropylene fibers, bags, and jumbo-bags.

- vi. *Therefore, the Customs Examiner reclassified the subject articles under AHTN 2017 subheading 3206.49.10 by virtue of Rules 1 and 6 of the GRI of the HS (Section 1610 of the CMTA)."*

The BOC deemed that the classification dispute involves "difficult or highly technical classification issue". Hence, the endorsement to the Tariff Commission for Tariff Classification Dispute Ruling.

To facilitate the evaluation of the disputed products, the Commission wrote the BOC on 04 October 2022 and requested the submission of the relevant documents pertaining to the importation/s and contact information (i.e., contact person, position, email address, telephone and/or mobile number, and address) of the Importer/Consignee.

In response, the BOC provided the contact information of the Importer/Consignee, which the Commission received via email on 17 October 2022 and via courier on 21 November 2022.

Pursuant to Section 6 of Commission Order No. 2018-01, this Commission requested the Importer/Consignee, Dalisay Philippines Corporation, on 14 November 2022 to submit the following information in relation to BOC's request for a TCDR on Calcium Carbonate (FMB) ER-36 and Calcium Carbonate (FMB) ER-37 LM:

- a. duly certified complete product composition;
- b. function of each component;
- c. detailed manufacturing process;
- d. technical specifications (e.g., color, form, size);
- e. specific product use or application; and
- f. packaging information.

On 24 November 2022, the Commission received the requested information via email from Atty. Rolando T. Diaz, Atty-in-Fact of Dalisay Philippines Corporation. Upon review of the documents submitted, it was determined that the Commission needed more information to enable it to properly classify the disputed shipments. Hence, through a letter sent on 14 December 2022, the Commission requested a meeting/technical discussion with the Importer/Consignee's technical representatives.

On 12 January 2023, the Commission met with representatives of Dalisay Philippines Corporation and the manufacturer (Soltex Petroproducts Ltd.), via the Microsoft Teams platform, and verified/clarified some information on the submitted documents such as the specific products subject to tariff classification dispute (i.e., their submission mentioned three different products), the manufacturing process, and specific use of subject articles.

The Importer/Consignee also submitted on 20 January 2023 copies of BOC Single Administrative Document (SAD) and Certificate of Origin (CO) Form AI issued retroactively by the competent authority in India.

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 duly certified product composition, technical and material safety data sheets, manufacturing process flowchart, and photograph of packaging, and the technical discussion with the Importer/Consignee and the manufacturer, it is established that subject articles are anti-fibrillation masterbatches (FMB) produced by mixing and kneading calcium carbonate and polypropylene (carrier), followed by extrusion process, granulation, and drying. The two grades have the following typical characteristics/properties:

Characteristics/Properties	Calcium Carbonate (FMB) Product Grade	
	ER-36	ER-37 LM
Melt Flow Rate (g/10 min)	4-5	3-4
Bulk Density (g/cm ³)	1.25	1.25
Micronized coated calcium carbonate	80% ± 1%	79% ± 1%
Polypropylene	19% ± 1%	21% ± 1%
Color	milky white	milky white
Moisture	<0.1%	<0.1%
Pellet Geometry	cylindrical	spherical

Packed in 25-kg polypropylene laminated sacks with liners, subject articles are used in the manufacture of raffia tapes as anti-fibrillation agents (*i.e.*, to prevent the raffia fibers from splitting), for excellent processability and higher tenacity of the tape (as compared to conventional alternatives), and to improve the tape's dimensional stability, opacity and whiteness, printability, stack ability, and heat deflection temperature to enable hot filling.

The Importer/Consignee declared the subject articles as inorganic chemicals under Chapter 28 of the AHTN 2017, specifically under 2836.50.90, which covers calcium carbonate other than food or pharmaceutical grade.

Note 1 to Chapter 28 of the AHTN 2017 states that:

"Except where the context otherwise requires, the headings of this Chapter apply only to :

- (a) **Separate chemical elements and separate chemically defined compounds, whether or not containing impurities [emphasis added];**
- (b) *The products mentioned in (a) above dissolved in water;*
- (c) *The products mentioned in (a) above dissolved in other solvents provided that the solution constitutes a normal and necessary method of putting up these products adopted solely for reasons of safety or for transport and that the solvent does not render the product particularly suitable for specific use rather than for general use;*
- (d) *The products mentioned in (a), (b) or (c) above with an added stabiliser (including an anti-caking agent) necessary for their preservation or transport;*
- (e) *The products mentioned in (a), (b), (c) or (d) above with an added anti-dusting agent or a colouring substance added to facilitate their identification or for safety reasons, provided that the additions do not render the product particularly suitable for specific use rather than for general use [emphasis added].*

Thus, subject articles, having a polypropylene component that renders the product for specific use, (particularly as an anti-fibrillation agent in the manufacture of raffia tapes, which is not permitted by virtue of the Legal Note cited above), are not covered under Chapter 28 of the AHTN 2017.

On the other hand, the BOC assessed the products to be appropriately classified under subheading 3206.49.10 based on the justifications provided in their letter. The Bureau considered the products as colour masterbatches; thus, classifying subject articles under heading 32.06 (*Other colouring matter; preparations as specified in Note 3 to this Chapter, other than those of heading 32.03, 32.04 or 32.05; inorganic products of a kind used as luminophores, whether or not chemically defined*).

Chapter 32 of the AHTN 2017 covers *tanning or dyeing extracts; tannins and their derivatives; dyes; pigments and other colouring matter; paints and varnishes; putty and other mastics; inks*. Note 3 to this Chapter states that:

"Headings 32.03, 32.04, 32.05 and 32.06 apply also to preparations based on colouring matter (including, in the case of heading 32.06, colouring pigments of heading 25.30 or Chapter 28, metal flakes and metal powders), of a kind used for colouring any material or used as ingredients in the manufacture of colouring preparations. The headings do not apply, however, to pigments dispersed in non-aqueous media, in liquid or paste form, of a kind used in the manufacture of paints, including enamels (heading 32.12), or to other preparations of heading 32.07, 32.08, 32.09, 32.10, 32.12, 32.13 or 32.15 [emphasis supplied]."

Heading 32.06 of AHTN 2017 covers, among others, "preparations as specified in Note 3 to this Chapter, other than those of heading 32.03, 32.04 or 32.05". If used as colour masterbatches, subject articles could potentially be classified under this heading.

However, subject articles are used as filler masterbatches and not as colour masterbatches. A colour masterbatch (generally in the form of plastic concentrated pellets) is used for the purpose of coloring plastic products. On the other hand, a filler masterbatch is the combination of mineral (such as calcium carbonate), carrier resin, and other special additives in accordance with the customer's demand. This is added to plastic production to cut cost and enhance the properties of the end-products. A common type of filler masterbatch is calcium carbonate filler masterbatch which is used to improve the mechanical properties (tensile strength and elongation) and electrical properties (volume resistivity) of finished products.¹

The subject articles are used to impart anti-fibrillation ability and to improve dimensional and stack abilities, among others, of the end-products; and not for colouring any material, nor as an ingredient in the manufacture of colouring preparations. Hence, classification of subject articles under heading 32.06 is not feasible. Another heading that would cover their use should be considered.

Heading 38.09 of the AHTN 2017 covers "finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included."

The pertinent Harmonized System (HS) Explanatory Notes (EN) to this heading state that:

"This heading covers a wide range of products and preparations, of a kind generally used during processing or finishing of yarns, fabrics, paper, paperboard, leather or similar materials, not specified or included elsewhere in the Nomenclature.

They may be identified as falling in this heading because of their composition and presentation which give them a specific use in the industries cited in the heading and like industries, e.g., the textile floor carpeting industry, the vulcanised fibre manufacturing industry and the fur industry. Such products and preparations (e.g., textile softening agents) destined for domestic rather than industrial use are also covered by the heading.

Included here are :

(A) Products and preparations used in the textile or like industries :

x x x

(2) Agents to produce non-slip and anti-snag finishes. These products are intended to reduce the slipping of fabrics to prevent the formation of snags in hosiery and knitwear. They are generally based on polymers, natural resins or silicic acid.

x x x"

Subject articles, being anti-fibrillation masterbatches used in the manufacture of raffia tapes, are specifically covered under heading 38.09 of the AHTN 2017.

Based on the information received from the Importer/Consignee and the BOC, and the clarifications provided by the foregoing Chapter Notes and HS EN, subject articles are properly classified under AHTN 2017 subheading 3809.91.90 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 articles are classifiable under the same subheading in AHTN 2022.

¹ European Plus Joint Stock Company (EUP). Masterbatch - definition, applications, market trends and more. Retrieved from <https://europlas.com.vn/en-US/blog-1/masterbatch-definition-applications-market-trends-and-more> (Accessed 17 January 2023)

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

Product	AHTN 2017 Code	2021 MFN Rate	2021 AIFTA Rate*
Calcium Carbonate (FMB) ER-36	3809.91.90	3% <i>ad valorem</i>	Zero
Calcium Carbonate (FMB) ER-37 LM	3809.91.90	3% <i>ad valorem</i>	Zero

* Subject to submission of Certificate of Origin (CO) Form "A1"

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

So Ordered.

FOR THE COMMISSION

Digitally signed


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Chairperson

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