



# BUREAU OF CUSTOMS

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12 September 2023

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CUSTOMS MEMORANDUM CIRCULAR  
NO. 156 - 2023

TO : ASSISTANT COMMISSIONER  
ALL DEPUTY COMMISSIONERS  
ALL DIRECTORS AND DIVISION CHIEF  
ALL DISTRICT AND SUB-PORT COLLECTORS  
ALL OTHERS CONCERNED

SUBJECT : TARIFF CLASSIFICATION DISPUTE RULING

This has reference to the herein attached Tariff Commission Circular Dispute Ruling No. 22-013 issued on 31 August 2023 pursuant to Paragraph 2 of Section 1100 of Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act, on the shipment of "INERTEX® SQ-S Gasket Sheet," consigned to Apo Agua Infraestructura, Inc. (Import Entry/ Customs Reference No. C-60634-22, Ninoy Aquino International Airport), the dispositive portion of which states that:

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

Product	AHTN 2022 Code	2022 MFN Rate
INERTEX® SQ-S GASKET SHEET	3920.99.90	7% ad valorem

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

For strict compliance.

BIENVENIDO Y. RUBIO  
Commissioner

*[Handwritten Signature]*



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CMC No. 156-2023 p.2



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REPUBLIC OF THE PHILIPPINES  
TARIFF COMMISSION

RE: REQUEST FOR TARIFF CLASSIFICATION  
DISPUTE RULING ON "INERTEX® SQ-S GASKET  
SHEET" CONSIGNED TO APO AGUA  
INFRASTRUCTURA, INC.

TCC (DR) NO. 22-013

(Import Entry/Customs Reference No. C-60634,  
BOC-NAIA)

Issued on: 31 August 2023

**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 Inertex® SQ-S Gasket Sheet imported by Apo Agua Infraestructura, Inc. (AAIL) from Taiwan. The request of the Importer/Consignee for a TCDR, filed by its Authorized Representative, Mr. Gerald Lyndon Dela Cerna of Fastlink Handlers and Brokerage Corporation, was accepted by this Commission on 17 June 2022.

The shipment of said article, declared as Expanded PTFE (polytetrafluoroethylene) Gasket Sheets and Cut Gaskets, under ASEAN Harmonized Tariff Nomenclature (AHTN) 2017 subheading 3920.99.90, with a Most Favoured Nation (MFN) rate of duty of 7% *ad valorem*, was processed under Import Entry/Customs Reference No. C-60634 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 3926.90.59, with an MFN rate of duty of 15% *ad valorem*.

Hence, this request for Tariff Classification Dispute Ruling.

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 Inertex® SQ-S Gasket Sheet. In a letter dated 29 July 2022, Atty. Halleck A. Valdez, Deputy Collector for Assessment of BOC-NAIA, submitted BOC's comment through a Memorandum prepared by Ms. Arianne D. Durana, Customs Operations Officer (COO) III, and Ms. Ninia P. Beltran, Acting COO V, stating the reasons why subject article was reclassified from the declared AHTN 2017 subheading 3920.99.90 (with an MFN rate of duty of 7% *ad valorem*) to AHTN 2017 subheading 3926.90.59 (with an MFN rate of duty of 15% *ad valorem*). The reasons for this reclassification decision, as stated in the aforesaid Memorandum, were as follow:

*"The consignee/broker classified the above-mentioned goods under HS code 3920.99.90 – 7% (Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials) as reflected on their documents submitted such as Airwaybill and Safety Data Sheet.*



The goods under consideration are pictured and described in the invoice submitted, and upon physical examination it was found to contain **SQS Ring Gaskets, Brand Inertech** made of **PTFE (Polytetrafluoroethylene)**. Therefore, classifiable under HS code 3926.90.59 - 15% (Other articles of plastics and articles of other materials of headings 39.01 to 39.14) as finished goods of ring gaskets made of PTFE. Images of the actual goods were attached herewith as Annex A.

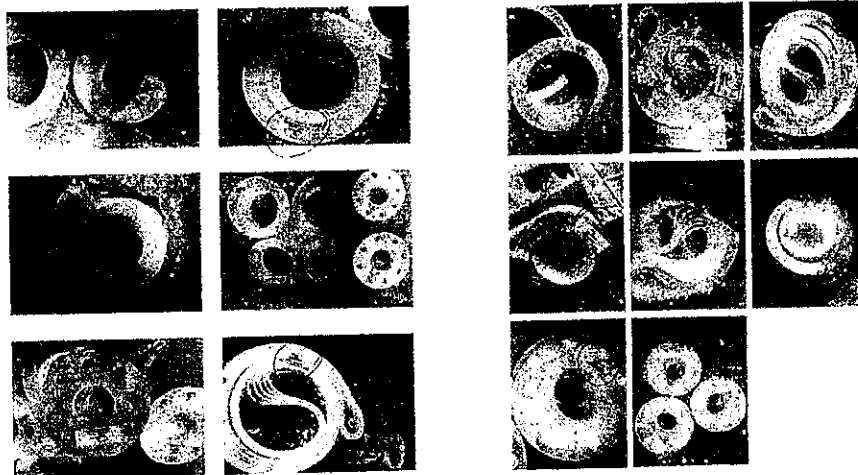
General Explanatory Notes of heading 3920 states that "the expression "plates, sheets, film, foil and strip" applies only to plates, sheets, film foil and strip and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) **BUT NOT FURTHER WORKED**.

Plate, sheets, etc., whether or not surface-worked (including squares and other rectangle cut therefrom), with ground edges, drilled, milled, hemmed, twisted, framed, or otherwise worked or cut into shapes **other than rectangular (including square)** are generally classified as articles of headings 3918, 3919, or 3922 to 3926."

Furthermore, a ruling from Harmonized Tariff Schedule of the United States Annotated (HTSUSA) also states that:

"Heading 3926, HTSUSA, is a basket provision for articles of plastics not elsewhere specified. Since there are no other headings in Chapter 39 that provide for plastic ring gaskets, this heading remains as the residual choice for classification. Thereunder, subheading 3926.90.45 describes "gaskets, washers and other seals." Goods represented by sample # 1 are classifiable under the foregoing provision. Finished ring gaskets in various diameters is classifiable under subheading 3926.90.45, HTSUSA, a provision for other articles of plastics and articles of other materials of headings 3901 to 3914; other; gaskets, washers and other seals, and is dutiable at the column one general rate of 3.5 percent ad valorem. " (Annex B)"

Below are images of the actual good submitted by the BOC (Annex A of its Memorandum):



While evaluating the documents submitted by the Importer/Consignee and the BOC, the Commission determined that additional information was needed to properly classify the subject article. Hence, on 25 August 2022, the Commission wrote to the Importer/Consignee requesting for the submission of the following: (a) confirmation that the gasket sheet, cut and uncut, are both Inertex® SQ-S Isotropic Gasket Sheet made up of 100% expanded polytetrafluoroethylene (ePTFE); (b) detailed application/use, including the processes the subject article will undergo before use (for the sheet); (c) dimension of each product; (d) specific use; and (e) product sample.

In a letter dated 05 September 2022 (received by this Commission on 07 September 2022), the Importer/Consignee requested for extension, until 30 September 2022, to provide the additional requirements. Relative to their request for extension, the importer/Consignee sent another letter dated 13 October 2022 (received by this Commission on 18 October 2022), stating that the importer/Consignee, through its customs broker, Fastlink Handlers and Brokerage Corporation, represented by Mr. Dela Cerna, has submitted requirements (a) and (c) and that they were experiencing difficulty in providing requirements (b), (d), and (e) due to a contract entered upon with the user of the good.

On 15 December 2022, the Commission had a technical discussion with Mr. Dela Cerna and the Importer/Consignee, represented by Mr. Jeffrey Nicol (who was joined by other AAIL personnel via Google Meet). In the said meeting, the Commission verified/clarified the article that is subject of the application for tariff classification dispute ruling (*i.e.*, the photographs submitted included three different products) and the processes the product will undergo prior to its use/application. To further understand the product, the Commission also requested for a sample. Mr. Nicol informed that AAIL cannot provide the sample because it is already with the Contractor. As an alternative, the Commission requested from the manufacturer photographs of the actual product presented separately (*i.e.*, not mounted on top of each other) and/or unfolded. The Commission also advised the Importer/Consignee to submit a letter requesting for extension of time in the submission of the additional requirements.

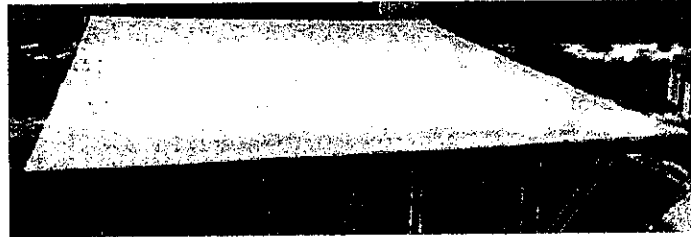
On 27 January 2023, the Commission sent a follow-up Viber message to Mr. Dela Cerna on the submission of the additional information. Mr. Dela Cerna replied that he had sent a letter requesting for extension of time to submit said additional requirements in December 2022. However, upon careful checking and verification, no such communication/email was received by the Commission's Records Unit; hence, Mr. Dela Cerna was requested to forward a copy of his letter/email thread to the Commission. The Commission did not receive any response from AAIL or Mr. Dela Cerna, on the matter.

On 10 March 2023, the Commission sent a letter reiterating the submission of the requested additional information as discussed during the technical discussion held on 15 December 2022, and gave the Importer/Consignee an unextendible period of 10 working days from receipt of the letter to submit the said additional requirements. The information requested was received by this Commission on 24 March 2023.

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 technical specifications, product data sheet, safety data sheet, and photographs of the product submitted, it was established that subject article is a sheet made of 100% expanded polytetrafluoroethylene (PTFE). It is in the form of a white sheet, in roll, with dimension of 80 inches x 80 inches x 1/8 inch (length x width x thickness). Subject article is to be processed by cutting/forming into gaskets of specific sizes and shapes. The resulting gaskets are to be used in the valves and pipes of a water supply system, creating a leak-proof seal or preventing leakage while under pressure or compression.

Below are the photographs of the actual product submitted by the Importer/Consignee:



The Importer/Consignee declared the product under AHTN 2017 heading 39.20 which covers *other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials*. On the other hand, the BOC assessed the product to be appropriately classified under AHTN 2017 heading 39.26 (*other articles of plastics and articles of other materials of headings 39.01 to 39.14*) based on the reasons/justifications stated in its Memorandum.

Chapter 39 of the AHTN 2017 covers *plastics and articles thereof*. Notes 1 and 10 to said Chapter state that:

*“Throughout the Nomenclature the expression “plastics” means those materials of headings 39.01 to 39.14 which are or have been capable, either at the moment of polymerisation or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticiser) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.*

*Throughout the Nomenclature any reference to “plastics” also includes vulcanised fibre. The expression, however, does not apply to materials regarded as textile materials of Section XI.*

x x x

*In headings 39.20 and 39.21, the expression “plates, sheets, film, foil and strip” applies only to plates, sheets, film, foil and strip (other than those of Chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but **not further worked** [emphasis added] (even if when so cut they become articles ready for use).”*

The Commission agrees with the Importer/Consignee and the BOC that subject article can be considered under Chapter 39 as the product is made of 100% plastics, and more specifically since the raw material is an expanded PTFE, a plastic material classified under heading 39.04.

The pertinent HS EN to heading 39.20 (used by the Importer/Consignee in classifying subject article) state that:

*“This heading covers plates, sheets, film, foil and strip of plastics (which are **not** reinforced, laminated, supported or similarly combined with other materials), **other than** those of heading **39.18 or 39.19**.*

x x x

*According to Note 10 to this Chapter, the expression “plates, sheets, film, foil and strip” applies only to plates, sheets, film, foil and strip and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked (for example, polished, embossed, coloured, merely curved or corrugated), uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use, for example, tablecloths).*

Plates, sheets, etc., whether or not surface-worked (including squares and other rectangles cut therefrom), with ground edges, drilled, milled, hemmed, twisted, framed or otherwise worked or cut into shapes other than rectangular (including square) are generally classified as articles of headings 39.18, 39.19 or 39.22 to 39.26."

In accordance with the said HS EN, subject article, being a sheet made of plastics and presented in a roll, is potentially covered by heading 39.20.

On the other hand, heading 39.26 (the heading considered by the BOC) covers other articles of plastics and articles of other materials of headings 39.01 to 39.14.

The HS EN to this heading state that:

"This heading covers articles, **not elsewhere specified or included** [emphasis added], of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14."

It should be noted that heading 39.26 is a residual heading and should only be considered if a product, of plastics, is not specified or included elsewhere in the Nomenclature and in Chapter 39.

Subject article, being a 100% expanded polytetrafluoroethylene (PTFE) sheet with dimension of 80 inches x 80 inches by 1/8 inch (length x width x thickness), presented in a roll and designed to be used in making gaskets for valves and pipes in a water supply system, is more specifically covered by AHTN 2017 heading 39.20 rather than the residual heading 39.26.

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 3920.99.90 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 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
Inertex® SQ-S Gasket Sheet	3920.99.90	7% ad valorem

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

CMC NO. 156 - 2023

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P 7 TCC (DR) NO. 22-013

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