



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS

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19 December 2023

CUSTOMS MEMORANDUM CIRCULAR
NO. 221-2023

TO : ASSISTANT COMMISSIONER
ALL DEPUTY COMMISSIONERS
ALL DIRECTORS AND DIVISION CHIEFS
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. 23-007 issued on 01 December 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 "Super Vitamina B12 5500 [Cyanocobalamin (Vit. B12) + Hydroxocobalamin + Sodium Pangamate (Vit. B15) + Biotin]," consigned to Experto Gamefowl Products, Inc. from Mexico (Import Entry/ Customs Reference No. C-32786 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
SUPER VITAMINA B12 5500 [CYANOCOBALAMIN (VIT. B12) + HYDROXOCOBALAMIN + SODIUM PANGAMATE (VIT. B15) + BIOTIN	3004.50.29	5% 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

DEC 27 2023



CNC No. 221-2023



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REPUBLIC OF THE PHILIPPINES
TARIFF COMMISSION

RE: REQUEST FOR TARIFF CLASSIFICATION DISPUTE RULING ON "SUPER VITAMINA B12 5500 [CYANOCOBALAMIN (VIT. B12) + HYDROXOCOBALAMIN + SODIUM PANGAMATE (VIT. B15) + BIOTIN]", CONSIGNED TO EXPERTO GAMEFOWL PRODUCTS, INC.

TCC (DR) NO. 23-007

(Import Entry/Customs Reference No. C-32786, NAIA)

Issued on: 01 December 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 Super Vitamina B12 5500 [Cyanocobalamin (Vit. B12) + Hydroxocobalamin + Sodium Pangamate (Vit. B15) + Biotin], imported by Experto Gamefowl Products, Inc. (Importer/Consignee) from Mexico. The request of the Bureau of Customs (BOC) for a TCDR was received by this Commission on 14 April 2023.

Based on the BOC's letter request for a TCDR, dated 13 March 2023, signed by Atty. Halleck A. Valdez, Deputy Collector for Assessment of BOC-Ninoy Aquino International Airport (NAIA), and received by this Commission via electronic mail on 14 April 2023, with attached pertinent documents relating to the importation of the product, the following relevant information were gathered:

a. The shipment of the subject article, declared under ASEAN Harmonised Tariff Nomenclature (AHTN) 2022 subheading 2936.26.00, with a Most Favoured Nation (MFN) rate of duty of zero, was processed under Customs Reference No. C-32786 at BOC-NAIA.

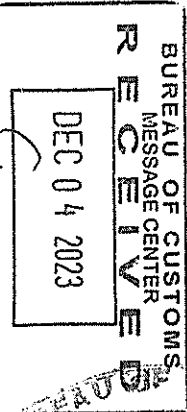
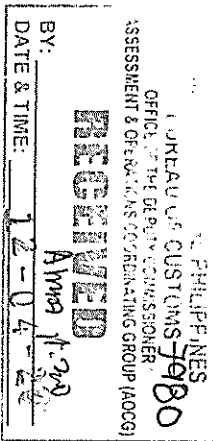
b. The assigned Customs Examiner's findings and recommendation were as follows:

- i. After a physical examination and careful review of the goods declaration, it was found that declared HS code was incorrect subject for re-classification from 29362600 0% to 30045029 5%.
- ii. Based on attached FDA CPR, the goods classification was Prescription Drug (Rx) with pharmacologic category of multivitamins, a finished product/ medicaments put up in measured doses, packing for retail sale.
- iii. Furthermore, Explanatory Notes of Sub-Chapter XI 29.36 excludes Medicaments of Heading 3003 or 3004.
- iv. In view of the foregoing findings and letter request from the consignee dated March 23, 2023 for release under tentative assessment with cash bond, the assigned Examiner and Appraiser respectfully recommend for tentative assessment/tentative release pursuant to Sec. 425, CMTA."

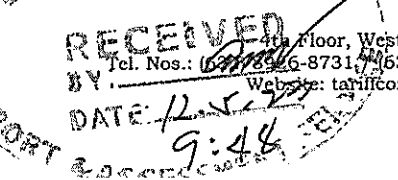
c. In a Letter addressed to Mr. Norsalem Raymond M. Mama-o, Officer-in-Charge (OIC), Paircargo Assessment Composite Division, dated 05 April 2023, Ms. Josefina M. Evangelista, President of Experto Gamefowl Products Inc. registered their objections to the above findings based on the following reasons:

- i. Vitamin B12 and its derivatives are included, and classified under the title, Provitamins and Vitamins, which is TH 2936.26.00, with 0% rate of duty.

As defined by public health journal (Harvard T.H. CHAN, March 2023), vitamins are micronutrients required by the body to carry out a range of normal functions. However,



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these micronutrients are not produced in our bodies and must be derived from the food we eat.

- ii. Whereas Medicaments under Tariff Heading No. 3004.50.10 with 5% rate of duty, are considered drugs to its "therapeutic or prophylactic" uses. This is so, because medicaments are used to diagnose, cure, treat, or prevent disease (National Cancer Institute, 2 February 2011).
 - iii. For medical purposes, Vitamin B12 has no therapeutic or prophylactic effect which can diagnose, cure, treat or prevent disease. It is merely a nutritional agent that aid in the normal growth of body, as contradistinguish from Medicaments, which have therapeutic and prophylactic effect.
 - iv. Chapter 29 of the AHTN on Organic Chemicals, which necessarily include Vitamins, is silent as to its application. It does not distinguish whether the commodity is a raw material or a finish product to fall under this classification. It is, therefore, erroneous for the examiner to say that only raw materials are included in the title. Basic is the rule, what the law does not distinguish, we should not distinguish."
- d. Thus, through a Memorandum addressed to Ms. Carmelita M. Talusan, CESO V, District Collector of BOC-NAIA (through Atty. Valdez, Deputy Collector for Assessment; Mr. Mama-o, OIC, Paircargo Assessment Composite Division; and Ms. Leabel U. Basa, Acting Chief of Paircargo Formal Entry Unit), and dated 12 April 2023, Mr. Johnorel S. Sionillo, Customs Operations Officer III, and Ms. Claire Ann Mojica, Acting COO V, recommended that the BOC request for a tariff classification ruling on subject article. The reasons for BOC's reclassification from the declared AHTN 2022 subheading 2936.26.00 to 3004.50.00 were reiterated and explained, as follows:
- i. *Super Vitamina B12 5500 formula is reinforced with liver extract which gives a direct influence on reproductive and cellular renovating processes. This product has to do with proteins synthesis and acts directly in order to form red corpuscles. It is very useful against classic, pernicious and nourishing anemia. It is a good appetite stimulant and this is the reason why it helps growth. Vitamin B15 presence is a coadjuvant in order to retard tiredness and muscular fatigue due to the fact that it fights muscular toxic hypoxemia by producing more oxygenation.*
 - ii. *It serves to stimulate the formation of red blood cells (hematopoiesis), for treatment of macrocytic, pernicious and anemia; it's a great stimulant of appetite and growth, and delays fatigue, as it fights toxic muscular hypoxemia.*
 - iii. **Nevertheless, Explanatory Notes of Sub-Chapter XI 29.36 excludes medicaments of Heading 30.03 or 30.04."**

To facilitate the evaluation of the disputed product, the Commission wrote the BOC on 17 May 2023 seeking confirmation/clarification on their final classification (specific AHTN 2022 subheading) for subject article since there were four different AHTN 2022 subheadings cited in their submitted documents, as follows:

- a. Subheading 3004.50.29, in the *Position Paper for Misclassification of Goods* submitted by OIC Mama-o, to Deputy Collector Valdez dated 23 March 2023;
- b. Subheading 3004.50.21, in the *Discrepancy Report for Tentative Assessment/Release* submitted by Mr. Sionillo, Ms. Mojica, Ms. Basa, and OIC Mama-o to Deputy Collector Valdez dated 23 March 2023;
- c. Subheading 3004.50.00, in the Memorandum for District Collector Talusan dated 12 April 2023 prepared by Mr. Sionillo and Ms. Mojica; and
- d. Subheading 3004.50.10, in the Letter of Ms. Evangelista (Importer/Consignee) dated 05 April 2023 to OIC Mama-o.

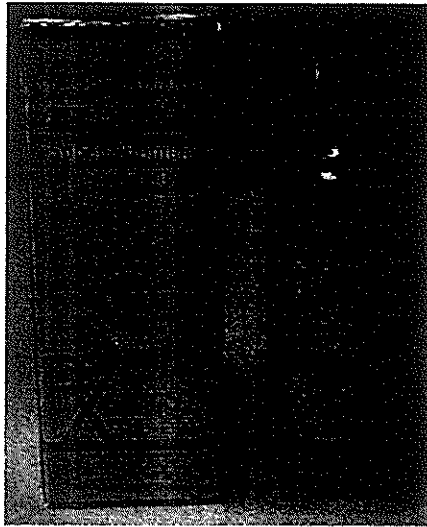
The BOC responded to the Commission through a Letter dated 19 May 2023 and received on 26 May 2023 via electronic mail. The Letter stated that *the Customs Examiner maintained and reiterated their previous findings, that Super Vitamina B12 5500 should be classified under TH 3004.50.29 (5%).*

To further facilitate the Commission's evaluation of the case, the Importer/Consignee voluntarily submitted to the Commission on 03 May 2023 a sample of subject article.

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 BOC and the Importer/Consignee were sufficient to make a correct determination on the tariff classification of subject article. A hearing, therefore, is no longer necessary.

After due examination of the submitted Certificate of Product Registration from the Food and Drug Administration (FDA), product information, photograph of the product, safety sheet, product label, and sample, it is established that subject article is a multivitamin in the form of a purple-red solution for injection, containing 2500 mcg of cyanocobalamin (vitamin B₁₂), 3000 mcg of hydroxocobalamin, 1250 mcg of sodium pangamate (vitamin B₁₅), 50 mcg of biotin (vitamin H), 4% (V/V) synthetic liver extract, and injection-grade water per millilitre solution. It is classified by the FDA as a prescription drug and is marketed for veterinary use only. Available in boxes containing 5-mL, 30-mL, or 100-mL vials, subject article is administered to fighting cocks, ostriches, horses, cattle, sheep, pigs, dogs, and cats via injection at a rate of 0.5 to 5 mL, when vitamin deficiency is suspected, as an appetite stimulant in case of pernicious anemia, for maintaining the correct nervous system functioning under stress conditions, and in case of dramatic environmental changes such as food and temperature changes.

Below is the photograph of the actual product submitted by the Importer/Consignee to this Commission:



The Importer/Consignee classified subject article under Chapter 29 (*organic chemicals*) of the AHTN 2022, specifically under heading 29.36 which covers *provitamins and vitamins, natural or reproduced by synthesis (including natural concentrates), derivatives thereof used primarily as vitamins, and intermixtures of the foregoing, whether or not in any solvent.*

Note 1 to Chapter 29 states:

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

- (a) *Separate chemically defined organic compounds, whether or not containing impurities;*
- (b) *Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (Chapter 27);*
- (c) *The products of headings 29.36 to 29.39 or the sugar ethers, sugar acetals and sugar esters, and their salts, of heading 29.40, or the products of heading 29.41, whether or not chemically defined;*
- (d) *The products mentioned in (a), (b) or (c) above dissolved in water;*
- (e) *The products mentioned in (a), (b) or (c) 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;*

(f) The products mentioned in (a), (b), (c), (d) or (e) above with an added stabiliser (including an anti-caking agent) necessary for their preservation or transport;

(g) The products mentioned in (a), (b), (c), (d), (e) or (f) above with an added anti-dusting agent or a colouring or odoriferous substance or an emetic 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;

(h) The following products, diluted to standard strengths, for the production of azo dyes : diazonium salts, couplers used for these salts and diazotisable amines and their salts."

The Harmonized System (HS) Explanatory Notes (EN) to heading 29.36 further state that:

"The heading excludes :

XXX

(4) Medicaments of heading 30.03 or 30.04 [emphasis added].

XXX"

The Importer/Consignee considered the subject article to be specifically covered under AHTN 2022 subheading 2936.26.00 covering vitamin B₁₂ and its derivatives. Though subject article contains vitamin B₁₂ and its derivative, hydroxocobalamin, it also contains other vitamins (sodium pangamate and biotin) which are not derivatives of vitamin B₁₂. It further contains an ingredient (liver extract) that is not allowed under Chapter 29 by virtue of Note 1 to this Chapter. Thus, classification of subject article under this Chapter and under heading 29.36 should be ruled out.

On the other hand, the BOC assessed the product to be appropriately classified under AHTN 2022 subheading 3004.50.29, as stated in their clarificatory Letter dated 19 May 2023.

It should be noted that both of the headings considered by the Importer/Consignee and the BOC are covered under Section VI (*Products of the chemical or allied industries*) of the AHTN 2022. Note 2 to this Section states:

"2.- Subject to Note 1 above, goods classifiable in heading 30.04, 30.05, 30.06, 32.12, 33.03, 33.04, 33.05, 33.06, 33.07, 35.06, 37.07 or 38.08 by reason of being put up in measured doses or for retail sale are to be classified in those headings and in no other heading of the Nomenclature [emphasis added]."

Heading 30.04 of the AHTN 2022 covers *medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses [emphasis added] (including those in the form of transdermal administration systems) or in forms or packings for retail sale.*

The pertinent HS EN to this heading state that:

"This heading covers medicaments consisting of mixed or unmixed products, **provided they are:**

(a) Put up in measured doses or in forms such as tablets, ampoules (for example, re-distilled water, in ampoules of 1.25 to 10 cm³, for use either for the direct treatment of certain diseases, e.g., alcoholism, diabetic coma or as a solvent for the preparation of injectible medicinal solutions), capsules, cachets, drops or pastilles, medicaments in the form of transdermal administration systems, or small quantities of powder, ready for taking as single doses for therapeutic or prophylactic use.

XXX

The heading applies to such single doses whether in bulk, in packings for retail sale, etc."

Thus, subject article, being a solution for injection, put up in measured dose for retail sale, and indicated for therapeutic or prophylactic use (*i.e.*, used when vitamin deficiency is suspected, as an appetite stimulant in case of pernicious anemia, and for maintaining the correct nervous system functioning under stress conditions and in case of dramatic environmental changes such as food and temperature changes) in fighting cocks, ostriches, horses, cattle, sheep, pigs, dogs, and cats), specifically falls under heading 30.04 of the AHTN 2022.

Based on the information received from the Importer/Consignee and the BOC, and the clarifications provided by the foregoing Section Note, Chapter Note, and HS EN, subject article is

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TCC (DR) NO. 23-007

properly classified under AHTN 2022 subheading 3004.50.29, which specifically covers "medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale, containing vitamins or other products of heading 29.36 and containing more than one vitamin [emphasis added]", by virtue of Rules 1 and 6 of the General Rules for the Interpretation (GRI) of the HS (Section 1610 of the CMTA).

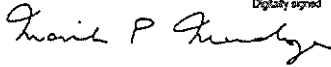
WHEREFORE, premises considered, subject article is hereby classified as follows:

Product	AHTN 2022 Code	2023 MFN Rate
Super Vitamina B12 5500 (Cyanocobalamin (Vit. B12) + Hydroxocobalamin + Sodium Pangamate (Vit. B15) + Biotin)	3004.50.29	5% 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

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