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DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS

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03 April 2024

CUSTOMS MEMORANDUM CIRCULAR
NO. 61-2024

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 (TCC DR) No. 22-019 issued on 27 March 2024 pursuant to Paragraph 2 of Section 1100 of Republic Act No. 10863, otherwise known as Customs Modernization and Tariff Act, on the shipment of "KIT26620 Nexans URC-1 DA (4.2)(5.6MM) End Specific Kit," from United Kingdom consigned to Eastern Telecommunications Philippines Incorporated, (Import Entry/ Customs Reference No. C-69865, Ninoy Aquino International Airport), the dispositive portion of which states that:

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

Product	AHTN 2017 Code	2022 MFN Rate
"KIT26620 NEXANS URC-1 DA (4.2)(5.6MM) END SPECIFIC KIT"	8538.90.19	1% <i>ad valorem</i>

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

For strict compliance.

BIENVENIDO Y. RUBIO
Commissioner



APR 15 2024



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REPUBLIC OF THE PHILIPPINES
TARIFF COMMISSION

REPUBLIC OF THE PHILIPPINES
BUREAU OF CUSTOMS
OFFICE OF THE DISTRICT COLLECTOR
ASSESSMENT & OPERATIONS DIVISION

BY: Almon G. #1798
04-02-24
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George G.

RE: REQUEST FOR TARIFF CLASSIFICATION
DISPUTE RULING ON "KIT26620 NEXANS URC-1
DA (4.2)(5.6MM) END SPECIFIC KIT", CONSIGNED
TO EASTERN TELECOMMUNICATIONS
PHILIPPINES INCORPORATED

TCC (DR) NO. 22-019

(Import Entry/Customs Reference No. C-69865,
NAIA)

Issued on: 27 March 2024

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 KIT26620 Nexans URC-1 DA (4.2)(5.6mm) End Specific Kit imported by Eastern Telecommunications Philippines Incorporated (Importer/Consignee) from the United Kingdom. The request of the Importer/Consignee for a TCDR was accepted by this Commission on 12 August 2022.

The shipment of said subject article, declared under ASEAN Harmonised Tariff Nomenclature (AHTN) 2017 subheading 8536.90.94, with a Most Favoured Nation (MFN) rate of duty of zero, was processed under Import Entry/Customs Reference No. C-69865 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 7326.90.99, with an MFN rate of duty of 15% *ad valorem*.

Hence, this request for a TCDR.

Pursuant to Section 7.3 of Commission Order No. 2018-01, this Commission requested the concerned BOC District Collector on 21 September 2022 for comments on the request for a TCDR on KIT26620 Nexans URC-1 DA (4.2)(5.6mm) End Specific Kit. To date, the Commission has not received any comment from the BOC-NAIA, hence, it proceeded to evaluate the classification of subject article based on the submissions received from the Importer/Consignee.

While evaluating the documents submitted by the Importer/Consignee, the Commission determined that additional information was needed to properly classify the subject article. Hence, on 26 October 2022, the Commission requested the Importer/Consignee to submit the following additional information:

- a) brochure or literature containing subject article's complete material composition and installation guidelines; and
- b) actual sample of the kit, if available.

On 16 November 2022, the Importer/Consignee responded to the request by resubmitting TC Form 2, a product brochure, and a data sheet showing the material, usage, and specification of KIT26620 Nexans URC-1 DA (4.2)(5.6mm) End Specific Kit. After careful review of the said materials, the Commission noted that no new information was provided in compliance with the request for additional information.

Hence, this Commission tried contacting Mr. Rhoel Rojas, the contact person for technical information indicated in the submitted TC Form 2, for discussion/clarification on the additional information. However, the Commission was unable to contact him using the telephone number provided in said Form (*i.e.*, out of service). On 10 November 2023, the Commission sent a letter reiterating the submission of the requested additional information and gave the Importer/Consignee an unextendable period of 10 working days from receipt of the letter to submit the said additional information.

BY: A. VIGARLOS
TIME: 11:57
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On 22 November 2023, the Commission received a letter from Ms. Lilia O. Lopez, the Importer/Consignee's Procurement Supervisor. In the said letter, Ms. Lopez informed that they cannot bring an actual sample of the End Kit. Instead, the Commission was requested to conduct a physical verification/inspection of the kit at a warehouse in Mabini, Batangas, where it is currently stored. The letter also stated that the physical verification will supplement the submitted product brochure and data sheet (on the material, usage, and specifications of the KIT26620 Nexans URC-1 DA (4.2)(5.6mm) End Specific Kit) that will help the Commission in determining the appropriate tariff classification of the product.

Thus, on 05 December 2023, the Commission conducted the physical verification/inspection of subject article. During the verification, the Importer/Consignee and the Commission discussed the parts, components, material composition, and use of subject article. A mock assembly of the item was also carried out by the representatives of the Importer/Consignee to help the Commission visualize the actual installation process. The Importer/Consignee also mentioned that the kit will be used to repair submarine cables throughout the country. It was also agreed that the Importer/Consignee will provide the Commission with supplementary information, such as videos, pictures, product user manuals, and other related documents, if granted permission by their supplier. To date, the Importer/Consignee did not provide said supplementary materials.

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 information gathered during the conduct of physical verification/inspection 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 information and the information obtained from the physical verification/inspection conducted, it is established that subject article is a repair kit and a segment/component of a submarine cable jointing system. It is the second layer of a submarine cable jointing system (capable of operating at a voltage of less than 1,000 V), designed to lock the innermost layer of the jointing kit. Subject article primarily consists of a cast iron collet, armour wire separator, cast iron wedge, wedge insert, split bend limiter, and seal retainer, among others, collectively contributing to provide stability and resilience to the connected submarine cables. It is intended for double armoured cables and is supplied in pairs.

Shown below are photographs of the product taken by the Commission during the aforementioned physical verification/inspection:



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Based on the kit's function, the Importer/Consignee classified subject article under Chapter 85 of the AHTN 2017 which covers *electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles*, and specifically under heading 85.36 which covers, among others, *connectors for optical fibres, optical fibre bundles or cables*.

Note 9 of Chapter 85 of the AHTN 2017 states that:

"9.- For the purpose of heading 85.36, "connectors for optical fibres, optical fibre bundles or cables" means connectors that simply mechanically align optical fibres end to end in a digital line system. They perform no other function, such as the amplification, regeneration or modification of a signal."

This definition/description is also reiterated in the Harmonized System (HS) Explanatory Notes (EN) to heading 85.36, which state that:

"XXX"

(IV) CONNECTORS FOR OPTICAL FIBRES, OPTICAL FIBRE BUNDLES OR CABLES

*For the purpose of heading 85.36, "connectors for optical fibres, optical fibre bundles or cables" means connectors that simply mechanically align optical fibres end to end in a digital line system. They perform no other function, such as the amplification, regeneration or modification of a signal. Connectors for optical fibres, without cables, remain classified in this heading but those connectors for optical fibres with cables are **excluded (heading 85.44 or 90.01)**.*

XXX"

On the other hand, the BOC considered classification of the product, based on its constituent materials, under Chapter 73 of the AHTN 2017, which covers *articles of iron or steel*, particularly under the residual heading of the Chapter, heading 73.26, which covers *other articles of iron or steel*. The pertinent HS EN to this heading state that:

*"This heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating **other than** articles included in the preceding headings of this Chapter or **covered by Note 1 to Section XV or included in Chapter 82 or 83 or more specifically covered elsewhere in the Nomenclature [emphasis added]**.*

XXX"

Note 1 to Section XV (which covers Chapter 73) states that:

"1.- This Section does not cover :

(a) *Prepared paints, inks or other products with a basis of metallic flakes or powder (headings 32.07 to 32.10, 32.12, 32.13 or 32.15);*

(b) *Ferro-cerium or other pyrophoric alloys (heading 36.06);*

(c) *Headgear or parts thereof of heading 65.06 or 65.07;*

(d) *Umbrella frames or other articles of heading 66.03;*

(e) *Goods of Chapter 71 (for example, precious metal alloys, base metal clad with precious metal, imitation jewellery);*

(f) *Articles of Section XVI (machinery, mechanical appliances and electrical goods)[emphasis added];*

XXX"

The above Section Note clearly indicates that the machinery, mechanical appliances and electrical goods of Section XVI (which include articles of Chapter 85) are excluded under Section XV. Since Chapter 73 is part of the latter Section, it follows that products of Chapter 85 are excluded from Chapter 73.

Based on the information provided/gathered on the other components of the submarine cable jointing system, the Commission has determined that the complete (or essentially complete) system, composed of various kits, including subject article, is to be classified under AHTN 2017 subheading 8536.70. Hence, subject article should be evaluated as a part/component of the system and classified as such.

The HS EN for parts of heading 85.36 state that:

“XXX

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the apparatus of this heading are classified in **heading 85.38**.

XXX”

Note 2 to Section XVI of the AHTN 2017, which governs the classification of parts for the products falling in this Section, states that:

“Subject to Note 1 to this Section, Note 1 to Chapter 84 and Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules :

(a) Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.22, 85.29, 85.38 and 85.48) are in all cases to be classified in their respective headings;

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 84.79 or 85.43) are to be classified with the machines of that kind or in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 85.17 and 85.25 to 85.28 are to be classified in heading 85.17, and parts which are suitable for use solely or principally with the goods of heading 85.24 are to be classified in heading 85.29;

(c) **All other parts are to be classified in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate or, failing that, in heading 84.87 or 85.48.**[emphasis added]”

The HS General EN to the Section regarding the classification of parts state that:

“In general, parts which are suitable for use solely or principally with particular machines or apparatus (including those of heading 84.79 or heading 85.43), or with a group of machines or apparatus falling in the same heading, are classified in the same heading as those machines or apparatus subject, of course, to the exclusions mentioned in Part (I) above. Separate headings are, however, provided for :

- (A) Parts of the engines of heading 84.07 or 84.08 (heading 84.09).
- (B) Parts of the machinery of headings 84.25 to 84.30 (heading 84.31).
- (C) Parts of the textile machines of headings 84.44 to 84.47 (heading 84.48).
- (D) Parts of the machines of headings 84.56 to 84.65 (heading 84.66).
- (E) Parts of the office machines of headings 84.70 to 84.72 (heading 84.73).
- (F) Parts of the machines of heading 85.01 or 85.02 (heading 85.03).
- (G) Parts of apparatus of headings 85.19 or 85.21 (heading 85.22).
- (H) Parts of apparatus of headings 85.25 to 85.28 (heading 85.29).
- (I) **Parts of apparatus of heading 85.35, 85.36 or 85.37 (heading 85.38)** [emphasis added].

XXX”

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As stated in the above HS General EN, parts of apparatus of heading 85.36 fall under heading 85.38 of the AHTN 2017 (*parts suitable for use solely or principally with the apparatus of heading 85.35, 85.36 or 85.37*). The pertinent HS EN to this heading state that:

“Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), this heading covers parts of the goods of the three preceding headings [emphasis added].

XXX”

By reference to Note 1 to Section XV, Note 2 to Section XVI, HS General EN to Section XVI, and the HS EN to headings 73.26, 85.36, and 85.38, the Commission has determined that the submarine cable jointing system designed for submarine cables, of which subject article is a part of, is classifiable under heading 85.36. Hence, subject KIT26620 Nexans URC-1 DA (4.2)(5.6mm) End Specific Kit, a part solely designed for the cable jointing system, is specifically covered under heading 85.38 of the AHTN 2017.

Based on the information received/obtained from the Importer/Consignee, and the clarifications provided by the foregoing Section Notes, Chapter Note, HS General EN, and HS EN, subject article is properly classified under AHTN 2017 subheading 8538.90.19 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
KIT26620 Nexans URC-1 DA (4.2)(5.6mm) End Specific Kit	8538.90.19	1% <i>ad valorem</i>

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 91-2024

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