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REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS

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07 May 2024

CUSTOMS MEMORANDUM CIRCULAR
NO. 89-2024

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. 23-017 issued on 02 May 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 "6774281 Conductivity Cell with Two NTCs for 4008B/S," from Germany consigned to Fresenius Medical Care Philippines Incorporated, (Import Entry/ Customs Reference No. C-26216, Ninoy Aquino International Airport), the dispositive portion of which states that:

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

Product	AHTN 2022 Code	2023 MFN Rate
6774281 Conductivity Cell with Two NTCs for 4008B/S	9027.89.90	Zero

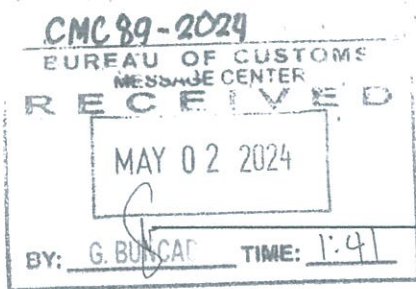
For record purposes, please confirm the dissemination of this circular throughout your offices within fifteen (15) days from receipt thereof.

For strict compliance.

BIENVENIDO Y. RUBIO
Commissioner



MAY 20 2024



REPUBLIC OF THE PHILIPPINES
TARIFF COMMISSION

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RE: REQUEST FOR TARIFF CLASSIFICATION
DISPUTE RULING ON "6774281 CONDUCTIVITY
CELL WITH TWO NTC'S FOR 4008B/S",
CONSIGNED TO FRESENIUS MEDICAL CARE
PHILIPPINES INCORPORATED

TCC (DR) NO. 23-017

(Import Entry/Customs Reference No. C-26216,
BOC-NAIA)

Issued on: 02 May 2024

TARIFF CLASSIFICATION DISPUTE RULING

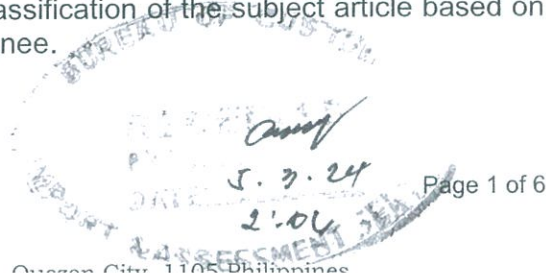
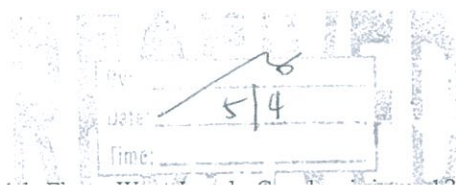
Before this Commission is a request for a Tariff Classification Dispute Ruling (TCDR), pursuant to Paragraph 2 of Section 1100 of Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA), on the shipment of 6774281 Conductivity Cell with Two NTCs for 4008B/S, imported by Fresenius Medical Care Philippines Incorporated (Importer/Consignee) from Germany. The request of the Importer/Consignee for a TCDR was accepted by this Commission on 05 September 2023.

The shipment of said subject article, declared under ASEAN Harmonised Tariff Nomenclature (AHTN) 2022 subheading 9026.90.00, with a Most Favoured Nation (MFN) rate of duty of zero, was processed under Import Entry/Customs Reference No. C-26216 at the Bureau of Customs (BOC) - Ninoy Aquino International Airport (NAIA). The BOC contested the declared heading and reclassified subject article under AHTN 2022 subheading 9033.00.00, with an MFN rate of duty of 3% *ad valorem*.

Hence, this request for a TCDR.

In the initial assessment of the application, the Importer/Consignee committed to provide information about the hemodialysis machine to which the subject article is a part of, including its functionality and exploded parts diagram depicting the machine's parts/components, to determine subject article's position/location. The information was received by this Commission on 11 September 2023.

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 20 December 2023 for comments on the request for TCDR on 6774281 Conductivity Cell with Two NTCs for 4008B/S. Further, Section 7.4 of the same Commission Order states that within 10 working days from the receipt of the notice and the records of the case, the BOC may file a comment or submit any additional explanation or documents to justify its findings. However, to this date, the Commission has not received any response from the BOC-NAIA, hence, it proceeded to evaluate the classification of the subject article based on the submissions received from the Importer/Consignee.



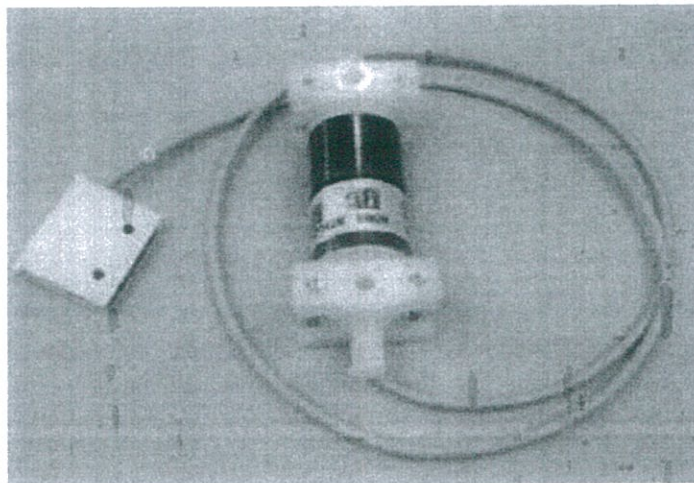
CMC 89-2024

While evaluating further the submissions of the Importer/Consignee, it was determined that clarification/additional information was needed on the terms "NTCs" and "B/S" in subject article's name. Hence, this Commission contacted Ms. Patricia Camille T. Velasco, Supply Inventory Planning Lead of Fresenius Medical Care Philippines, Incorporated and the contact person for technical information indicated in the submitted TC Form 2. On 29 February 2024, the Commission received a communication from Ms. Velasco providing the required additional information.

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 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 product brochure, technical specifications, commercial invoice, photograph of the product, and technical document for 4008S Hemodialysis Machine, it is established that subject article is a conductance transmitter, a component/part of the 4008S and 4008B Hemodialysis Machines. It primarily consists of a conductance-sensing element [with two ports for the connection of the negative temperature coefficient (NTC) sensors] connected to a cable. The conductance-sensing element detects and measures the conductivity of the dialysis fluid during dialysis, then converts it into electrical signals. These signals are transmitted, through the cable/wiring connected to the conductance transmitter, to the monitoring system of the hemodialysis machine, for further processing or analysis such as for determining the correct mixing ratio and/or whether to discharge any incorrect dialysate. Subject article is installed after the DIASAFE® plus filter where it monitors the conductivity of the dialysate during the process of hemodialysis.

Below is the photograph of the subject article submitted by the Importer/Consignee to this Commission:



Both the Importer/Consignee and BOC considered classification of subject article as a part of a machine/apparatus under Chapter 90 of the AHTN 2022 which covers *optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof*. However, their classification differed at the heading level, with the Importer/Consignee selecting heading 90.26 [*instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flowmeters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading 90.14, 90.15, 90.28 or 90.32*] while the BOC considered the residual heading for parts of machines/apparatus of Chapter 90, heading 90.33 [*parts and accessories*

(not specified or included elsewhere in this Chapter) for machines, appliances, instruments or apparatus of Chapter 90].

It should be noted that the classification of parts or components of machines/apparatus generally depend on the classification of the machine/apparatus where these will be used. In the instant case, it is established that subject article is a component or part of a hemodialysis machine. Based on this Commission's evaluation, hemodialysis machines are covered under heading 90.18 of the AHTN 2022 (*instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments*). Therefore, the classification of subject article under Chapter 90 by the Importer/Consignee and the BOC merits consideration.

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:

"2.- Subject to Note 1 above, 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 [emphasis added];**
- (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;*
- (c) **All other parts and accessories are to be classified in heading 90.33 [emphasis added].**

The pertinent Harmonized System (HS) Explanatory Notes (EN) for parts and accessories in heading 90.18, which covers hemodialysis machines, state that:

"PARTS AND ACCESSORIES

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]."

As stated in the above HS EN, parts and accessories of heading 90.18 remain classified in that heading but are bound by the conditions outlined in Notes 1 and 2 of Chapter 90.

Moreover, the pertinent HS EN for heading 90.26 of the AHTN 2022, where the Importer/Consignee classified subject article, state that:

"Apart from instruments or apparatus more specifically covered by other headings of the Nomenclature, such as :

- (a) *Pressure-reducing valves and thermostatically controlled valves (heading 84.81);*
- (b) *Anemometers (wind gauges) and hydrological level gauges (heading 90.15);*
- (c) *Thermometers, pyrometers, barometers, hygrometers and psychrometers (heading 90.25);*

(d) Instruments and apparatus for physical or chemical analysis, etc. (**heading 90.27**),

this heading covers instruments and apparatus for measuring or checking the flow, level, pressure, kinetic energy or other process variables of liquids or gases.

The instruments and apparatus of this heading may be fitted with recording, signalling or optical scale-reading devices or transmitters with an electrical, pneumatic or hydraulic output.

Measuring or checking apparatus generally incorporates an element sensitive to variations in the quantity to be measured (e.g., Bourdon tube, diaphragm, bellows, semiconductors) moving a needle or a pointer. In some devices the variations are converted into electrical signals.

x x x"

On the other hand, the pertinent HS EN to heading 90.33, the residual heading for parts and accessories for the machines, appliances, instruments or apparatus of Chapter 90, and which BOC considered as the more appropriate heading for subject article, state that:

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

(1) Those mentioned in Chapter Note 1, e.g. :

(a) Optical elements of glass, not optically worked (Chapter 70).

(b) Articles of a kind used in machines, appliances, instruments or apparatus, of vulcanised rubber other than hard rubber (e.g., rubber gaskets, washers and the like) (heading 40.16), of leather or of composition leather (e.g., leather diaphragms for gas meters) (heading 42.05) or of textile material (heading 59.11).

(c) Parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV) or similar goods of plastics (Chapter 39).

(2) Those covered by Chapter Note 2 (a), which constitute in themselves machines, appliances, instruments or apparatus of any particular heading of Chapter 90 or of Chapter 84, 85 or 91 (other than the residual headings 84.87, 85.48 or 90.33). It therefore follows that separately presented articles of this type must be classified in their respective headings [emphasis added].

x x x"

The text/description of heading 90.33 [parts and accessories (not specified or included elsewhere in this Chapter) for machines, appliances, instruments or apparatus of Chapter 90] clearly indicates that this heading should be considered only when classifying parts and accessories for the machines, appliances, instruments or apparatus of Chapter 90 which are not mentioned in Note 1 (i.e., exclusions to Chapter 90) nor covered by Notes 2 (a) and 2 (b) of Chapter 90.

Furthermore, based on the Commission's evaluation, subject article is not covered by heading 90.26 as it not an instrument or apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases. Thus, another heading that specifically covers its function should be considered.

Heading 90.27 of the AHTN 2022 covers *instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes*. The HS EN to this heading state that:

"This heading includes :

x x x

(22) **pH meters and rH (redoxpotential) meters.** pH meters are used to measure the factor expressing the acidity or alkalinity of a solution or mixture (pure water being the neutral standard). rH meters are used to measure the oxidising or reducing power of a solution. These instruments operate on a number of different principles; the most common type employs the electrometric system, in which electrodes are used to set up a potential difference which is proportional to the pH or rH of the solution. In addition to measuring, these instruments may also be used for automatic control.

x x x

(27) **Conductivity meters to determine the electrolytic conductivity or the concentration of salts, acids or bases dissolved in a liquid [emphasis added].**

x x x"

Thus, by reference to Note 2 (a) to Chapter 90 and the HS EN to headings 90.18, 90.26, 90.27 and 90.33, the Commission has determined that subject article, being a part specifically for a hemodialysis machine, that is responsible for detecting and measuring the electrolytic conductivity of the dialysate in the 4008S and 4008B Hemodialysis Machines, converting it into electrical signals, and then transmitting them through the cable/wiring to the monitoring system of said Machines for further processing or analysis (such as for determining the correct mixing ratio and/or whether to discharge any incorrect dialysate), is specifically covered under heading 90.27 of the AHTN 2022.

Based on the information received from the Importer/Consignee, and the clarifications provided by the foregoing Chapter Notes and HS EN, subject article is properly classified under AHTN 2022 subheading 9027.89.90 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
6774281 Conductivity Cell with Two NTCs for 4008B/S	9027.89.90	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

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