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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. 90-2024

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. 23-015 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 "M440961 bibag® Connector 5008S," 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
M440961 bibag® Connector 5008S	9018.90.31	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



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REPUBLIC OF THE PHILIPPINES
TARIFF COMMISSION

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REPUBLIC OF THE PHILIPPINES
BUREAU OF CUSTOMS
OFFICE OF THE DEPUTY COMMISSIONER
ASSESSMENT & OPERATIONS COORDINATING GROUP (AOCG)

RECEIVED 2331

BY: *[Signature]*
DATE & TIME: 05-02-24 09:48:22

RE: REQUEST FOR TARIFF CLASSIFICATION
DISPUTE RULING ON "M440961 BIBAG®
CONNECTOR 5008S", CONSIGNED TO
FRESENIUS MEDICAL CARE PHILIPPINES
INCORPORATED

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

TCC (DR) NO. 23-015

BUREAU OF CUSTOMS
MESSAGE CENTER

RECEIVED

MAY 02 2024

BY: A. LIMACLOS TIME: 1:39

Issued on: 02 May 2024

TARIFF CLASSIFICATION DISPUTE RULING

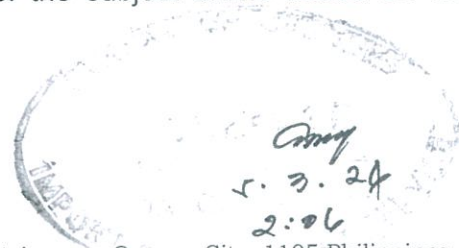
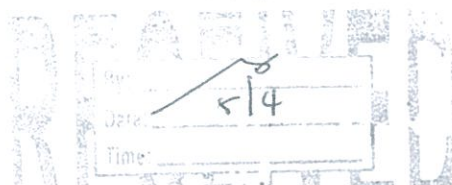
Before this Commission is a request for a Tariff Classification Dispute Ruling (TCDR), pursuant to Paragraph 2 of Section 1100 of Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA), on the shipment of M440961 bibag® Connector 5008S, imported by Fresenius Medical 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 9018.90.90, with a Most Favoured Nation (MFN) rate of duty of 1% *ad valorem*, 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 10 November 2023 for comments on the request for TCDR on M440961 bibag® Connector 5008S. 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.

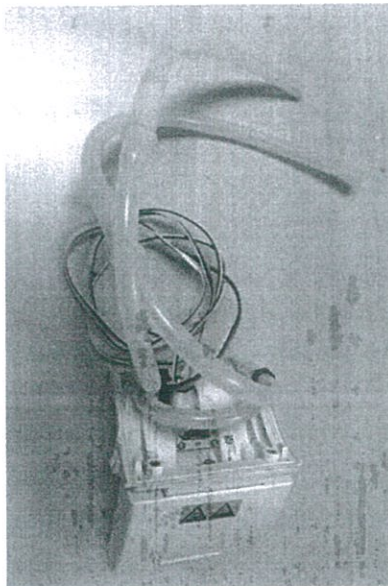


While evaluating further the submissions of the Importer/Consignee, it was determined that additional information about the parts/components, specific usage, and installation process of the M440961 *bibag*[®] Connector 5008S was needed. Hence, this Commission contacted Ms. Patricia Camille T. Velasco, 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 16 January 2024, the Commission received an electronic mail (email) 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, product specifications, commercial invoice, instructions on removing and installing the *bibag*[®] connector, photographs of the product, and technical document for 5008S Hemodialysis Machine, it is established that subject article is a medical connector device consisting of the connector flap, connector ports, silicon tubings/hoses, filters, hall sensor, microswitch, and rubber gasket. It is a part of the 5008S Hemodialysis Machine used to connect the *bibag*[®] solution (a dialysis solution or concentrate intended for bicarbonate dialysis) to the dialysis machine. During use, one of the tubings is connected to the *bibag*[®] fill valve for the supply of heated water and another tubing is connected to the bicarbonate rinse chamber where the tip of the bicarbonate suction tube is connected. At the same time, the microswitch and hall sensor are connected to the PCB LP 1140 sensor board of the 5008S Hemodialysis Machine to detect the *bibag*[®] and position of the flap, respectively. Subject article is intended to be used and operated by a medical professional.

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 90.18 (*instruments and appliances used*

in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments) 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;*
- (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 [emphasis added];***
- (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:

"This heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate, etc. Instruments and appliances for anatomical or autoptic work, dissection, etc., are also included, as are, under certain conditions, instruments and appliances for dental laboratories (see Part (II) below). The instruments of the heading may be made of any material (including precious metals).

x x x

(I) INSTRUMENTS AND APPLIANCES FOR HUMAN MEDICINE OR SURGERY

This group includes :

(A) Instruments which may be used under the same names for several purposes, for example :

(1) Needles (for sutures, ligatures, vaccination, blood tests, hypodermic needles, etc.).

- (2) **Lancets** (for vaccination, blood-letting, etc.).
- (3) **Trocars** (for puncturing) (gall-bladder, general purpose, etc., types).
- (4) **Surgical knives and scalpels** of all kinds.

x x x

- (1J) **Artificial kidney (dialysis) apparatus.**

x x x

"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]."**

On the other hand, the pertinent HS EN to heading 90.33, the residual heading for parts and accessories for 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.

x x x

- (3) **Those identifiable as suitable for use solely or principally with a particular kind of machine, appliance, instrument or apparatus, or with a number of machines, appliances, instruments or apparatus of the same heading of this Chapter; these are classifiable, by application of Chapter Note 2 (b), in the same heading as the relevant machines, appliances, instruments or apparatus [emphasis added]."**

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

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not mentioned in Note 1 (i.e., exclusions to Chapter 90) nor covered by Notes 2 (a) and 2 (b) of Chapter 90.

By reference to Note 2 (b) to Chapter 90 and the HS EN to headings 90.18 and 90.33, the Commission has determined that subject article, being a part specifically for 5008S Hemodialysis Machines and used to connect the bibag® solution (a dialysis solution or concentrate intended for bicarbonate dialysis) to the machine to effect the dialysis process, is specifically covered under heading 90.18 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 9018.90.31 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
M440961 bibag® Connector 5008S	9018.90.31	Zero

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

So Ordered.

FOR THE COMMISSION

MariLou P. Mendoza
Digitally signed

MARILOU P. MENDOZA
Chairperson

Copy furnished:

The Secretary

Department of Finance (DOF)
DOF Building, BSP Complex
Roxas Boulevard, Metro Manila
Email: secfin@dof.gov.ph

The Commissioner

G/F OCOM Building, 16th Street,
South Harbor, Port Area, Manila
Email: boc.ocom@customs.gov.ph
comm.boc@gmail.com

Atty. Maria Yasmin M. Obillos-Mapa

District Collector, BOC NAIA
BOC Bldg., Mendoza Avenue
Pasay City
Email: naia@customs.gov.ph
odcanaiaboc2021@gmail.com

Ms. Patricia Camille T. Velasco

Supply Inventory Planning Lead
Fresenius Medical Care Philippines, Inc.
18F AEON CTR Alabang-Zapote Rd. Cor. North Bridgeway Ave.
FCC Alabang, Muntinlupa City
Email: Patricia.Velasco@fmc-asia.com
PH_MNT_FME_IMPORTS@fmc-asia.com

Ms. Lorrie Mye S. Filio

Brokerage Manager
Brokerage Department
a. hartrodt Philippines, Inc.
2841 Uruguay Street
San Isidro, Makati City
Email: lorriemye.filio@hartrodt.com.ph