



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS

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20 May 2024

CUSTOMS MEMORANDUM CIRCULAR
NO. 103-2024

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 attached Tariff Commission Circular Dispute Ruling No. 23-025 issued on 15 May 2024 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 "MDS Zinc Seed Coating" from the United Kingdom, consigned to East West Seed Company (Import Entry/ Customs Reference No. C-168870-23, Manila International Container Port), the dispositive portion of which states that:

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

PRODUCT	AHTN 2022 CODE	2023 MFN RATE
MDS Zinc Seed Coating	3824.99.99	3% ad valorem

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

For guidance and information.

BIENVENIDO Y. RUBIO
Commissioner



MAY 30 2024



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CMC NO. 103-2024 p-2



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REPUBLIC OF THE PHILIPPINES

TARIFF COMMISSION

RE: REQUEST FOR TARIFF CLASSIFICATION DISPUTE RULING ON "MDS ZINC SEED COATING", CONSIGNED TO EAST WEST SEED COMPANY, INCORPORATED

(Import Entry/Customs Reference No. C-168870-23, BOC, MICP)

TCC (DR) NO. 23-025

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BY: Anna M. 11:15

DATE & TIME: 05-16-24

Issued on: 15 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 MDS Zinc Seed Coating, imported by East West Seed Company, Incorporated (Importer/Consignee) from the United Kingdom. The request of the Bureau of Customs (BOC) for a TCDR was received by this Commission on 23 November 2023.

Based on the BOC's letter request for a TCDR, dated 16 November 2023, signed by District Collector Romeo Allan R. Rosales, with attached Disposition Form from Ms. Meriam B. Avena, Chief of Section 11-Formal Entry Division (FED), the following relevant information were gathered:

- a. The shipment of subject article, declared under ASEAN Harmonised Tariff Nomenclature (AHTN) 2022 subheading 2833.29.40, with a Most Favoured Nation (MFN) rate of duty of 1% *ad valorem*, was processed under Import Entry No. C-168870-23 at the BOC, Manila International Container Port (MICP).
- b. The classification dispute arose from the recommendation of the Customs Examiner for tariff reclassification from the abovementioned declared subheading to AHTN 2022 subheading 2817.00.10, with an MFN rate of duty of 5% *ad valorem*.

The justifications for the BOC reclassification, as stated on the Disposition Form, are reproduced below:

- i. EAST WEST, requested for the tentative release of its subject shipment pursuant to Section 425 of the CMTA or RA 10863 in relation to CMO 45-2009, which was approved by the District Collector, subject to posting of sufficient security equivalent to the disputed amount.
- ii. It must be pointed out that that based on the Disposition Form dated June 15, 2023 of the Customs Examiner, the subject shipment was recommended for tariff classification of H.S. Code from 2833.29.40-1% rate of duty to 2817.00.10-5% rate of duty based on Physical Examination, Material Safety Data Sheet (MSDS), General Rules of Interpretation and Chapter & Explanatory Notes. As a result,

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BY: A. Vazquez TIME: 8:18

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IMPORTS SERVICE



16 MAY 2024

there was a discrepancy assessment by way of duties and taxes on the amount of P34,958.46.

- iii. The Port will now resolve said issue of classification on the subject shipment. Based on the Position Paper dated August 15, 2023, EAST WEST averred that although there is a presence of 47% of zinc oxide in the Zinc Seed Coating, together with other different ingredients, it does not necessarily follow that the end or finished product will become zinc oxide pursuant to Rule 3(a) of the Section 1610 of the CMTA.
- iv. The Port decides on the available information and supporting documents submitted as provided under Chapter 1, Title VII of the CMTA as well as other existing provisions which remains effective and valid pursuant to Section 1802 of the same Act and not mere gut feelings.
- v. **Note 1 (a) to Chapter 28 of the ASEAN Harmonised Tariff Nomenclature (AHTN) 2022** states that except where the context otherwise requires, the headings of this Chapter apply only to separate chemical elements and separate chemically defined organic compounds, whether or not containing impurities.
- vi. **Heading 28.33 of the AHTN 2022 covers, among others, sulphates.** The pertinent Harmonized System (HS) Explanatory Notes (EN) state that this heading includes, among others, zinc sulphate ($ZnSO_4 \cdot 7H_2O$), obtained by the action of dilute sulphuric acid on zinc, zinc oxide, zinc carbonate or roasted blende. It is in the form of white vitreous masses or in needle-shaped crystals and is used for lessening the natural buoyancy of ores in flotation processes; as a mordant in dyeing; for zinc-plating by electrolysis; as an antiseptic; for preserving wood; in the manufacture of driers, of lithopone (heading 32.06) luminophores (zinc sulphate activated by copper) (heading 32.06) and of various other zinc compounds.
- vii. However, based on the conduct of physical examination, it was found that the goods is a Zinc Seed Coating with 47% of Zinc Oxide as provided in the Packaging Goods and Safety Data Sheet/ Certificate of Composition.
- viii. **Heading 28.17 of the ASEAN Harmonised Tariff Nomenclature (AHTN) 2022 covers, among others, zinc oxide.** The pertinent **Harmonized System (HS) Explanatory Notes (EN) for heading 2817** states that zinc oxide (zinc white) (ZnO) is obtained by burning zinc vapour with oxygen from air. The zinc vapour is obtained by vaporising metallic zinc (indirect or French process) or by the reduction of oxidic zinc raw materials like zinc ores (roasted blende, calamine - heading 26.08) with carbon (direct or American process). In these processes, the oxide is collected in bag houses or chambers forming deposits of increasingly pure oxides. In the wet process, zinc is leached from zinc containing raw materials and then precipitated as zinc hydroxide or carbonate. The precipitate is filtered, washed, dried and calcinated to ZnO . Zinc Oxide is a fine white powder which turns yellow on heating. It is of amphoteric nature, soluble in acids and alkalis.
- ix. Pursuant to Section 1610 of the CMTA or RA 10863. General Rules for the Interpretation (GRI). –The classification of goods and its tariff nomenclature as provided pursuant to this Act shall be governed by the following principles:

“(1) The titles of sections, chapters and subchapters are provided for easy reference only. For legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require.

(6) For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

- x. In view thereof, subject article (**OMEX FOLLAR SEED COATINGS/Zinc Seed Coating**) is classified under AHTN 2022 **subheading 2817.00.10**, with a Most Favoured Nation (**MFN**) **rate of duty of 5% ad valorem**.

The BOC deemed that the classification issue involves “a difficult or high technical questions”. Hence, the endorsement to the Commission for a TCDR.

To facilitate the evaluation of the disputed product, the Commission wrote the BOC on 05 January 2024 to request for the contact information of the Importer/Consignee (*i.e.*, contact person, position, email address, telephone and/or mobile number, and address). In response, the BOC provided the contact information of Atty. Rolando Tristan Diaz, Attorney-in-Fact of East West Seed Company, Incorporated, via an electronic mail (email) received by the Commission on 02 February 2024.

Pursuant to Section 6 of Commission Order No. 2018-01, this Commission sent an email to Atty. Diaz on 19 February 2024 requesting for the submission of the following information in relation to BOC’s request for a TCDR on MDS Zinc Seed Coating:

- a. function of each component;
- b. technical specifications (*i.e.*, color, form);
- c. specific product use or application;
- d. packaging information;
- e. photograph of actual product, if available; and
- f. BOC Single Administrative Document (SAD).

The Commission received the requested additional information from Atty. Diaz on 28 February 2024.

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 submitted certificate of composition, certification of analysis and quality, safety data sheet, supplementary certificate of analysis, product label, and certified additional information from the manufacturer, it is established that subject article is a chemical preparation in the form of a white aqueous suspension. It is imported in drums containing 160 liters of aqueous suspension and is to be used as a coating for vegetable seeds to improve the growth, grain yield, and grain biofortification of seeds.¹ Subject article is composed of the following components with their corresponding functions:

¹ Rehman, A., Farooq, M. Zinc seed coating improves the growth, grain yield and grain biofortification of bread wheat. *Acta Physiol Plant* 38, 238 (2016). Retrieved from <https://doi.org/10.1007/s11738-016-2250-3> (Accessed 05 March 2024)

Component	Function
Zinc oxide and inert ingredients	The nutrient to be coated on the seed
Water and monoethylene glycol	Carriers for the nutrient in suspension
Sodium metabisulphite	Preservative
Formulation additives	Enable the solid zinc oxide to remain in suspension and to coat and adhere to the seed

Both the Importer/Consignee and the BOC classified subject article under Chapter 28 of the AHTN 2022 which covers, among others, *inorganic chemicals*. Note 1 to this Chapter states that:

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

- (a) **Separate chemical elements and separate chemically defined compounds, whether or not containing impurities** [emphasis added];
- (b) *The products mentioned in (a) above dissolved in water;*
- (c) *The products mentioned in (a) 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;*
- (d) **The products mentioned in (a), (b) or (c) above with an added stabiliser (including an anti-caking agent) necessary for their preservation or transport** [emphasis added];
- (e) *The products mentioned in (a), (b), (c) or (d) above with an added anti-dusting agent or a colouring substance 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."*

The Harmonized System (HS) General Explanatory Notes (EN) to Chapter 28 state that:

"(A) Chemically defined elements and compounds.

(Note 1)

XXX

*Products added to certain chemicals to keep them in their original physical state are also to be regarded as stabilisers, **provided** that the quantity added in no case exceeds that necessary to achieve the desired result and that the addition does not alter the character of the basic product and **render it particularly suitable for specific use rather than for general use** [emphasis added].*

XXX"

The Importer/Consignee declared the classification of subject article under AHTN 2022 subheading 2833.29.40 which covers *zinc sulphate*. It should be noted that subject article does not contain any zinc sulphate component.

On the other hand, the BOC assessed the product to be appropriately classified under subheading 2817.00.10 which specifically covers *zinc oxide*.

The Commission agrees with the BOC that heading 28.17 merits consideration as the product's main component is zinc oxide. However, mixing zinc oxide with other components, such as inert ingredients, monoethylene glycol, and formulation additives, renders the resulting aqueous suspension as **suitable for specific use, particularly as a seed coating** in the instant case. Thus, by virtue of Note 1 to Chapter 28, subject article is no longer covered by said Chapter and another heading should be considered.

Heading 38.24 of the AHTN 2022 covers, among others, *chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included*. The pertinent HS EN to this heading state that:

“(B) CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS

XXX

*The **chemical products** classified here are therefore products whose composition is not chemically defined, whether they are obtained as by-products of the manufacture of other substances (this applies, for example, to naphthenic acids) or **prepared directly** [emphasis added].*

*The **chemical or other preparations** are either mixtures (of which emulsions and dispersions are special forms) or occasionally solutions. Aqueous solutions of the chemical products of Chapter 28 or 29 remain classified within those Chapters, but solutions of these products in solvents other than water are, apart from a few exceptions, excluded therefrom and accordingly fall to be treated as preparations of this heading.*

*The **preparations classified here may be either wholly or partly of chemical products** [emphasis added] (this is generally the case) or wholly of natural constituents.*

XXX”

Subject article, being an aqueous suspension of zinc oxide with other components, such as inert ingredients, monoethylene glycol, and formulation additives, and used specifically as a seed coating, is more appropriately covered under heading 38.24 of the AHTN 2022.

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 2022 subheading 3824.99.99 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
MDS Zinc Seed Coating	3824.99.99	3% <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

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