



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS
MANILA

09 March 1993

CUSTOMS MEMORANDUM ORDER
NO. 12-93

TO : All Collector of Customs
Service Chiefs/Division Chiefs
All Others Concerned

SUBJECT : Suppletory Guidelines in the
Implementation of CMO 51-92 on
Tentative Release of Shipments.

I. Objectives :

- A. To strengthen the Post-Dated Check (PDC) system in securing government revenue.
- B. To speed up collection on PDCs put up as security in case of BOC-SGS Appeals Committee (The Committee) resolution adverse to the importer.

II. Administrative Provisions :

A. Tentative Release

1. When allowable - Requests for tentative release may be allowed if an importer has a prima facie proof that the CRF finding is either inaccurate or totally wrong. Such proof may include, but is not limited to, any of the following :
 - 1.1 Printed Domestic Price List in the country of origin.
 - 1.2 Value information from the Philippine Commercial Attache in the country of supply.
 - 1.3 Printed schedule of discount.
 - 1.4 Proof that questioned item is not being sold domestically in the country of origin.
 - 1.5 Previous Clean Report of Findings (CRF) on the same or similar article from the same country of origin.
 - 1.6 Customs, DOF, Tariff Commission rulings.
 - 1.7 Court rulings.
 - 1.8 Customs' published value which is not based on export value information.
 - 1.9 Previous Committee decisions.

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Upon filing of the request for tentative release, together with the position paper and supporting proof the case shall be deemed submitted for resolution, without prejudice to submission upon prior permission by the Committee of additional proof at any time before the Committee renders a decision on the case.

The resolution of cases shall be summary in character and the Committee may decide ex parte on the basis of documentary evidence on record without need of the importer being present, except when the Committee would like to raise clarificatory questions.

2. In No-CRF cases, tentative release shall be allowed if upon examination, no other violation of law or regulation is established (other than the lack of CRF) which would warrant seizure and forfeiture of the shipment.
3. When not allowable -
 - 3.1 When importer cannot present any documentary proof whether original or photocopy in support of the issue he raised against the CRF findings.
 - 3.2 Importer presents no issue/explanation as to why he thinks the CRF is either inaccurate or totally wrong.
4. When the importers presents a theory but without any supporting proof or in any other case where doubt exists as to the merit of a given request for tentative release under CMD 51-92, the same shall immediately be referred to the Chairman, ROC-SGS Appeals Committee for appropriate disposition.

B. Sworn Undertaking

In addition to existing requirements in the availment of tentative release under CMD 51-92, the importer thru its president or general manager as the case may be shall be required to submit a sworn undertaking the format of which is hereto attached as Annex "A".

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C. Alternative Security

To secure government revenue, the Cash Division despite the approval of the tentative release by the Chief, Formal Entry Division may require the importer to put up in lieu of the PDC, a Manager's Check or Cash Bond, to be receipted for by the Collecting Officer conformably with the Form indicated in Annex "B".

In the determination of the type of security to be required, the following shall be considered:

1. When importer is a first-timer (with no track record)
2. Financial Position of the importer taking into account its duly audited financial statement and income tax statement in relation to the value of shipment and amount of guaranty being issued.
3. In case of doubt, the matter shall be referred to the Chief, Collection Service for appropriate disposition.

If importer refuses to comply with the alternative security required of him, the approved request for tentative release shall be cancelled and the case shall be referred to the Committee for resolution on the merits without the benefit of tentative release unless importer opts to pay under protest conformably with Section 2308 of the TCCP, as amended.

D. Period to Resolve Appealed Cases.

Cases elevated to the Customs-SGS Appeals Committee (The Committee) shall as far as practicable be resolved within the maturity period of the PDC but not later than six (6) months from date of the check, or date the case was calendared, whichever comes earlier.

E. Extension of PDCs.

PDCs in cases pending resolution with the Committee shall be deemed automatically extended, without need for replacement of the check until the Committee reaches a decision. Provided, that within seven (7) working days before a PDC becomes stale the Committee is mandated to render a judgement on the case one way or the other. In the event of a decision adverse to the the importer, the Cash Division shall immediately take action on the PDC based on the tenor of the resolution and conformably with Section III C hereof.

F. Finality of Committee Resolution

Once issued, the decision of the Committee shall be final and executory. Except in No CRF cases, no motion for reconsideration shall be allowed. The Committee however reserves the right to rectify purely clerical error or vagueness in the wordings of the resolution as written. If importer is not satisfied with the Committee resolution, he may pay under protest subject to existing rules and regulations on protest under Section 2308 of the TCCP, as amended.

G. CRF Amendment

When a case is already elevated to the Committee or at any time thereafter, SGS shall not cause the issuance of an amendment to the CRF in dispute unless upon instruction by the Committee. Any amendment made by SGS within the period contemplated in the foregoing shall have an evidentiary value but will not operate to affect or supersede the Committee resolution on the disputed CRF, unless the Committee itself decides to adopt the amended CRF in its resolution.

III. Operational Provisions

A. To avoid delay in the resolution of cases, the Chief, Formal Entry Division, or equivalent unit shall submit to the Committee for calendaring within twenty-four (24) hours from the approval of the tentative release, a fully accomplished referral form as specified in CMO 51-92 together with a xerox copy of the covering entry and/or CRF and other pertinent import documents, including the importer's sworn undertaking mentioned in Section II B above and copy of the importer's position paper and/or documentary proof submitted. The Chief, FED shall in all cases ensure that all blanks are filled up before forwarding the same to the Committee. Referral Forms with incomplete information sheet and/or attachments shall be returned to the Port of Entry concerned. Referral forms received shall be calendared for the succeeding weekly Committee deliberations.

B. The Committee Secretariat shall furnish the following offices directly with copy of Committee resolutions :

1. District Collector of Customs, Attn :
Chief, FED
2. Cash Division
3. Chief, Collection Service

Handwritten signature
Handwritten initials

C. Upon receipt of the copy of the Committee resolution which is adverse to the importer in whole or in part, or where additional duties and taxes and/or penalty are required to be paid, the Chief, Cash Division, shall immediately forward the working entry to the Formal Entry Division for the assessment of duties and taxes and/or penalty in accordance with the Committee resolution. The Chief, Formal Entry Division shall within twenty four (24) hours from receipt thereof return the working entry together with the final computation to the Cash Division. Upon receipt of final assessment, the Chief, Cash Division shall undertake to notify the importer of the decision and immediately to effect collection thru any of the following :

1. Deposit matured PDC if amount of liability based on decision is equal to the amount of PDC;
2. If amount of PDC is less than the adjudged liability, to require importer thru a written demand to withdraw the PDC upon payment of duties and taxes within a grace period of five (5) days. (Format of the demand letter is hereto as Annex "C".)
3. If the adverse decision was promulgated by the Committee and received by the Cash Division prior to the maturity of the PDC, Cash Division shall likewise require importer thru a written demand to effect payment based on the resolution without awaiting for the maturity of the PDC in accordance with the importer's undertaking. (Format of demand letter same as Annex "C".)
4. In NO CRF Case covered by PDC and where a penalty was imposed, Cash Division shall immediately inform the importer in writing to withdraw the PDC upon payment of the penalty imposed in addition to the duties and taxes due on the shipments if not yet collected.
5. In all cases of adverse decisions, the Cash Division shall put on hold pending or incoming shipments of the importer until such time the obligation is settled by him.
6. If upon presentment the PDC was dishonored for any reason, Cash Division shall make a formal demand for the importer to pay within a period of five (5) days from receipt thereof. If no payment is made

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ANNEX "A"

SWORN UNDERTAKING

I, _____, for and in behalf of _____, of _____, which I am the (PRESIDENT/GENERAL MANAGER), hereby guarantees and undertakes:

(1) Not to issue a "stop payment" order in respect of the following check:

<u>Bank</u>	<u>Check No.</u>	<u>Amount</u>	<u>Maturity Date</u>
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issued to guarantee payment of additional duties and taxes and/or penalties, if any is/are imposed, in connection with our shipment covered by Entry No./CRF No./B/L;AWB No. _____.

(2) That said check was issued and signed by the undersigned.

(3) In the event of an adverse decision (in case other than No-CRF) where the amount of PDC is equal to the liability adjudged, to ensure the PDC is honored upon presentment; in the event the amount of liability adjudicated is less than the amount of the PDC, to immediately withdraw the PDC and pay the corresponding amount of duties and taxes and/or penalties due as resolved; when the adverse decision comes out before maturity of the PDC, to immediately pay the Bureau without awaiting for the maturity period to come; In No CRF Case, to withdraw the PDC upon payment of duties and taxes still due and owing and or penalty imposed, if any.

In the event of non-compliance with the undertaking, I authorize the Bureau of Customs to put our other shipments whether pending or incoming on hold until our obligation is settled.

Manila, Philippines(date _____)

Printed Name and Signature _____
Telephone No. _____

ACKNOWLEDGEMENT

Republic of the Philippines) S.S.
Manila

In the City of Manila, on the _____ day of _____, 1993, personally appeared before me _____, who represents that he is the (President, etc) of the (Corp.) and that he was duly authorized by the board of directors to execute the foregoing document, known to me to be the same person who executed said document on behalf of said corporation, and he acknowledged to me that the same is the free and voluntary act and deed of said corporation. The Residence Certificate of said _____ and the Residence of the (Corporation) were exhibited to me, and the same being No. _____, issued at _____ on _____, 1993, and no. _____ issued at _____ on _____, 1993.

In witness WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 1993.

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within the allotted period, Cash division shall immediately submit a report to the Chief, Legal Service, together with complete certified copies of all pertinent documents, copyfurnished Chief, Collection Service and the Committee Chairman, for appropriate legal action. Format of the demand letter is hereto attached as Annex "D".

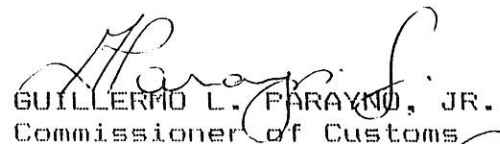
D. To facilitate implementation of Committee resolution, the FED and the Cash Division shall establish a system of coordination in the retrieval of covering entries involved as well as in the final assessment of duties and taxes and/or penalties imposable on protested shipments. The Cash Division shall likewise create a unit that will ensure the smooth implementation of Committee resolutions in accordance with this Order, more particularly in the service of notices to the importer.

IV. Repealing Clause

All Orders, rules and regulations inconsistent herewith are deemed repealed or modified accordingly.

V. Effectivity

This Order shall take effect on 15 March 1993.


GUILLERMO L. PARAYNO, JR.
Commissioner of Customs

/mbt

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ANNEX "B"

ACKNOWLEDGEMENT RECEIPT

This is to acknowledge receipt of Cash Bond/Manager's Check/Post-Dated Check No. _____ in the amount of _____ issued by _____ for and in behalf of _____ to guarantee payment of additional duties and taxes and/or penalty if any, in the event of an adverse BOC-SGS Import Valuation and Classification Committee resolution involving resolution involving a shipment covered by Entry No./SGS CRF No./BL or AWE No. _____.

Collecting Officer
(Full Name & Signature)
(Date received)

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ANNEX "C"

DEMAND LETTER FORM 1

Sir/Madam :

Subject : Check No. _____
 Amount _____
 Maturity Date _____
 Entry/CRF/B/L No. _____

Please be advised that the Committee has already issued a resolution in the case involving a shipment covered by Entry/CRF/RL/AMB No. _____ where you are to pay additional duties and taxes and/or penalties in the amount of P _____. Copy of the Committee resolution is hereto attached.

May we request from you to settle the above amount in order to release subject PDC within five (5) days from your receipt hereof. Otherwise we shall be constrained to institute the necessary civil or criminal action under the Revised Penal Code and Batas Pambansa Blg. 22 as enunciated in the case of Sales vs. C.A. 16450RA 717 to protect the interest of the government. Meanwhile, all your other shipments pending or incoming shall be put on hold in accordance with your undertaking until such time that you settle your obligation.

Very truly yours,

 Chief, Cash Division
 POR/MICP/NAIA/Others

[Handwritten signature]

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ANNEX "D"

DEMAND LETTER FORM 2

S i r/ Madam:

RE : Check No. _____
Amount _____
Maturity Date _____
Entry/CRF/B/L No. _____

Your above-mentioned check was dishonored upon presentment on (date) for the reason "Stopped Payment" (or state other cause of dishonor).

We are demanding payment of P _____, representing the amount of the said check within five (5) days from your receipt of this letter. Otherwise, we shall be constrained to initiate criminal prosecution against you for (1) Estafa and (2) Violation of Batas Pambasa Bilang 22.

Meantime, all other shipments consigned to you shall be put on hold in accordance with your undertaking until such time that the foregoing obligation is settled.

We trust that you will give this matter your immediate attention to avoid further inconvenience.

Very truly yours,

Chief, Cash Division
POB/HICF/NAIA/Others