



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS
MANILA

NOV 22 1994

CUSTOMS MEMORANDUM ORDER

NO. 49-94

TO : ALL BUREAU OFFICIALS AND EMPLOYEES, CUSTOMS BROKERS, IMPORTERS AND ALL OTHERS CONCERNED

SUBJECT : GUIDELINES IN THE IMPLEMENTATION AND APPLICATION OF E.O. 145, MODIFYING THE RATES OF DUTY OF CERTAIN IMPORTED ARTICLES AS PROVIDED FOR UNDER THE TARIFF AND CUSTOMS CODE OF 1978, AS AMENDED, IN ORDER TO IMPLEMENT THE PHILIPPINE SCHEDULE OF TARIFF REDUCTION ON ARTICLES INCLUDED IN THE ACCELERATED AND NORMAL PROGRAMMES OF THE COMMON EFFECTIVE PREFERENTIAL TARIFF (CEPT) SCHEMES FOR THE ASEAN FREE TRADE AREA (AFTA)

I. OBJECTIVES

General:

1.1. To effectively implement the provision of E.O. No. 145.

Specific:

- 1.2. To prevent unqualified shipments from availing of the preferential rate provided for under E.O. 145.
- 1.3. To facilitate the evaluation process for CEPT applications by providing clear guidelines and evaluation procedures.

II. DEFINITION OF TERMS

Definition of terms and codes as used in this guidelines and in the materials needed for implementation of the schemes, such as, Products and Tariff Reduction Program ASEAN (Annex "A"); EO 145 as per CMC 14-94; CEPT Agreement as circularized under CMC 3-93, Rules of Origin (Annex "B"); and the Operational Certification Procedures for the Rules of Origin of the CEPT for the AFTA (Annex "C").

- 2.1. CEPT means the Common Effective Preferential Tariff and it is an agreed effective tariff originating from ASEAN member states, and which have been identified for inclusion in the CEPT Scheme.
- 2.2. AFTA - Asean Free Trade Area
- 2.3. PTA - Preferential Trading Arrangements
- 2.4. Inclusion List means a list containing products that are included for extension of Tariff Preferences under the CEPT Scheme.
- 2.5. Exclusion List means a list containing products that are excluded from the extension of tariff preferences under CEPT Scheme.
- 2.6. C.O. - Certificate of Origin

- 2.7. Products and Tariff reduction Program ASEAN - an integrated listing of products of all ASEAN member states and the corresponding rates of duty which are included in the CEPT Scheme.

Codes used:

- DGT - Digit
- CC - Country Code
- B - Brunei Darrusalam
- I - Indonesia
- M - Malaysia
- P - Philippines
- S - Singapore
- T - Thailand

III. ADMINISTRATIVE PROVISION

- 3.1. A special unit shall be created in the Formal Entry Division in the Principal Port of entry in every collection district. This special unit shall be called Preferential Rate Unit - FED (PRU - FED). Its function shall be to evaluate in accordance with the guidelines set forth in this Customs Memorandum Order, application of ASEAN Free Trade Area (AFTA) member -countries for availment of tariff rate preferences on products exported by said AFTA member-countries to Philippines under the Common Effective Preferential Tariff (CEPT) Scheme.
- 3.2. The PRU - FED shall be composed of customs personnel who are at least COO III in rank. Its head, as well as the members thereof, shall be designated by the District Collector of Customs.
- 3.3. For greenlane qualified shipments, the application for the CEPT rate shall be lodged directly with the PRU - FED as provided for under CMO 40 - 94.
- 3.4. A Committee, to be called, the "Oversight Committee, AFTA CEPT" is also hereby created. It shall be composed of the following:
 - 3.4.1. Director, IAS - Chairman
 - 3.4.2. Deputy Collector for Assessment, POM - Vice-Chairman
 - 3.4.3. Deputy Collector for Assessment, MICP - Member
 - 3.4.4. Deputy Collector for Assessment, NAIA - Member
 - 3.4.5. Head of the Secretariat - Member
 - 3.4.6. Chief of the Export Coordination Division - Member
- 3.5. The Oversight Committee shall perform the following functions:
 - 3.5.1. To see to it that the necessary mechanics for the effective implementation of the CEPT Scheme are immediately put in place.
 - 3.5.2. To formulate plans and policies and submit the necessary recommendations to the Commissioner of Customs on how the operations of the CEPT Scheme may be made more effective and to devise ways of preventing the possible abuse of the Tariff rate privileges accorded under it.

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- 3.5.3. To coordinate with the private sector in the selective/random verification of the existence of businesses of certain suppliers for purposes of determining the origin of particular articles claiming for preference.
- 3.5.4. To computerize the implementation of the CEPT Scheme.

IV. OPERATIONAL PROCEDURES

- 4.1. For shipments availing of the preferential rate under the CEPT -AFTA (E.O. 145), box 37 of the import entry must be marked accordingly and the Certificate of Origin Form D must be a mandatory supporting document.
- 4.2. For Greenlane qualified shipments under CMO 37-94, the entry must be first presented to the PRU - FED in 3.1, which office shall be responsible for forwarding the entry to the EPD after action on the preferential rate application. For yellow and red lane shipments, the entry must be lodged with EPD directly.
- 4.3. Procedures in verifying authority of Certificates of origin
 - 4.3.1. Upon receipt of the Certificates of Origin, the PRU - FED Officer shall match the signature of the issuing official with the specimen\signature submitted.
 - 4.3.2. The official seal\stamp on the C.O. shall also be matched with the sample submitted.
 - 4.3.3. Any discrepancy found in the signatures and seal\stamp of the C.O. shall be subjected to verification with the issuing country.
- 4.4. Procedure in verifying the Certificate of Origin with the issuing authority. (Rule 16, Operational Certification Procedures for the rules of origin).
 - 4.4.1. When there is a reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the products or certain parts thereof, a check with the issuing authority shall be undertaken in the following manner:
 - 4.4.1.1. The PRU - FED officer assigned shall prepare an official written request on a customs letterhead addressed to the CEPT AFTA OVERSIGHT COMMITTEE, specifying the reason\s for the request and any additional information suggesting that the particulars given on the said C.O. maybe inaccurate.
 - 4.4.1.2. The written request shall be signed by the PRU - FED officer assigned duly noted by the Deputy Collector for Assessment and shall be accompanied by the original copy and triplicate of the C.O.
 - 4.4.1.3. The Deputy Collector for Assessment shall cause the transmittal of the request to the CEPT - AFTA Oversight Committee, Port Area, South Harbor, Manila, which in turn shall make the official verification with the issuing authority.

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- 4.5. Procedure for Tentative Grant of CEPT status pending result of verification of the C.O. as provided for in 4.4.
- 4.5.1. Unless there is prima facie evidence or probable cause that the C.O. is spurious or the information therein is false or the shipment itself is attendant with violations, the shipment may be granted provisional release under the terms described in 4.3.3 to 4.3.4.
 - 4.5.2. The PRU - FED officer assigned shall determine the difference of the duties and taxes due on the article/s based on the regular rate of duty and the CEPT rate.
 - 4.5.3. The PRU - FED officer subject to the approval of the Deputy Collector shall require the importer to post a guarantee in the form of either a managers/cashiers check or a company postdated check as provided for in 4.5.5 which is equal to the difference in 4.5.2 before release of the shipment.
 - 4.5.4. The Cash Division shall hold the check in abeyance until an order to deposit or return the MC, Cash Bond, L/C, from the Deputy Collector for Assessment is received.
 - 4.5.5. Determination of the Form - In determining the form of the guarantee, the Chief, Collection Division of the port shall limit acceptance of a company postdated check to the following cases:
 - 4.5.5.1 Companies in the top 3,000 corporations list of the Securities and Exchange Commission.
 - 4.5.5.2 Companies that can prove themselves to be "GOING CONCERNS" because their audited financial statements for the last 5 years shows 5 year continuous operations with assets of at least P 15 million and net profit in percent of asset of at least 5%.
 - 4.5.6. Disqualification from PDCS - The provisions of 4.5.5 notwithstanding, companies with delinquent accountabilities with the Bureau by virtue of their inclusion in a blacklist or Hold Order list to be provided and maintained by the Office of the Commissioner of Customs shall not be allowed to post a postdated company check to secure the tentative release of their shipment.
 - 4.5.7. Issue date of PDC - In cases where PDC's are accepted as the security, the issue date appearing therein must be within 30 days from date of approval of the tentative release in case of NAIA, POM and MICP and within 60 days from date of approval by the Chief, FED or equivalent unit in case of outports.
 - 4.5.8. The Chief, Collection Division shall be responsible for the determination of the nature of the security.
- 4.6. Procedure in evaluating whether or not to grant CEPT rate:

Upon receipt of the entry from the Formal Entry Division or directly from the importer in case of green lane shipments, the PRU - FED shall verify whether or not the shipment qualifies for the Preferential Tariff treatment based on the following criteria.

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- 4.6.1. The article/s indicated in the Certificate of Origin must correspond to the article/s imported. The discovery of minor discrepancies or obvious clerical or typographical errors in the statement made in the certificate of origin and in the other documents supporting the entry shall not render the application for preferential tariff invalid where it is clear and apparent that the certificate of origin of the article refers to the article/s imported.
- 4.6.2. The imported article/s must be included in the Philippine Inclusion List cited in E.O. 145 and circularized under CMC 14-94.
- 4.6.3. The imported article/s must be included in the Product and Tariff Reduction Program ASEAN of the applying member country. If the article/s is in the Product and tariff Reduction Program ASEAN (See Annex "A") of the applicant member country and the rate of duty is 20% and below, the tariff rate preference shall be allowed. If the rate of duty is more than 20%, the application for tariff rate preference shall not be allowed.
- 4.7. The PRU - FED after having determined that the criteria mentioned above have been met, shall verify whether the imported article had complied with the minimum 40% ASEAN content requirement of the rules of origin under the CEPT scheme, before granting the preferential rate of duty under said scheme (see annex B).
- 4.8. If the articles fall under the criteria mentioned above but the rate of duty of said article in the exporting country is not specified, the preferential tariff rate shall not be applied.
- 4.9. In case of Preferential Trading Arrangements (PTA) products which do not fall under sub-paragraphs 4.5.1., 4.5.2., and 4.5.3., the PTA rates shall apply subject to compliance with PTA requirements. In the case of non-PTA products, the regular rates of duty shall be applied.
- 4.10. The Deputy Collector for Assessment, upon receipt of the entry with AFTA-CEPT application from the Chief, Formal Entry Division, shall approve/disapprove the entry for which tariff preferential treatment is applied, based on the evaluation made by the PRU - FED and the recommendation of the Chief, FED. This does not however, preclude him from reversing a recommendation, whether for approval or disapproval, if in his well considered opinion an error or omission of a material fact had been made in the evaluation of a shipment, which otherwise would have resulted in the different recommendation.

The Deputy Collector for Assessment shall then forward the entry to the Chief, Cash Division. (To the EPD in case of greenlane shipments)

- 4.11. The Chief, FED shall submit a monthly report in two copies of all transactions under the CEPT Scheme (thru the Port Deputy Collector for Assessment) to the Chairman, Oversight Committee, AFTA-CEPT with the following data: Tariff Heading, Description of Article/s, Country of Exportation, ASEAN Content, CIA

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Value of Invoice and FOB Value of Invoice.
One copy of which shall be furnished the Director,
Bureau of International Relation (BITR) of the
Department of Trade and Industry.

4.12. Procedure for handling protested cases.

- 4.12.1. In all cases wherein the importer is not amenable to a decision, the PRU - FED officer shall elevate the matter to the Deputy Collector for Assessment.
- 4.12.2. The Deputy Collector for Assessment upon receipt of the protest shall endeavor to resolve the case immediately. However, if the importer is not satisfied with the decision of the Deputy Collector, he/she shall make a protest in writing indicating therein the reason/s for the protest.
- 4.12.3. Upon receipt of a written protest, the case shall be heard by the Deputy Collector in the presence of the importers or his/her duly authorized representative and PRU - FED officer assigned who shall be guided by the terms of the CEPT Agreement. In cases of protest over classification of a particular item, the Deputy Collector may seek the assistance of the Tariff Commission.
- 4.12.4. The decision of the Deputy Collector shall be summary in nature. The case may be elevated to the District Collector under a regular protest case.

V. OTHER PROVISIONS

5.1 The applicable rate of duty of the CEPT Scheme shall be the rate of duty as listed under the 1994 columns (January 1994 and July 1, 1994) of Annex "A" of E.O. 145 as circularized under CMC 14-94. The implementation of the tariff reduction under column numbers seven (7) to twenty (20) of Annex "A" of E.O. 145 shall be subject to the issuance of separate implementing Executive Orders.

In the event that any subsequent changes are made in the basic Philippine rate of duty to a rate lower than the ASEAN CEPT rate, such article shall be automatically accorded the corresponding reduced rate of duty.

5.2 Settlement of Disputes

All disputes concerning the CEPT Scheme such as those in 4.4 and 4.5 shall be resolved by the Deputy Collector for Assessment within 60 days from date of approval of tentative release, subject to the approval of the District Collector. The assistance of the Tariff Commission may be sought for the ruling on tariff classification issues.

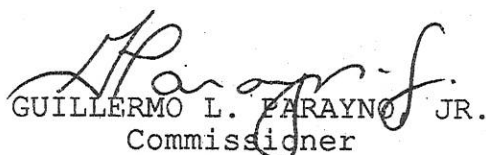
5.3 The Collection Service of each Port shall put up an accounting and monitoring system to insure that there will be no stale checks put up pursuant to 4.5

VI. The preferential rate of duty in this order shall apply to importations from Singapore, Thailand, Indonesia and Malaysia only. Brunei Darrusalam which is awaiting enabling law to implement CEPT shall be held in abeyance pending notification from them.

VII. REPEALING CLAUSES

All Customs Memorandum Orders, rules and regulations or parts thereof inconsistent with this order are hereby repealed, modified or superseded accordingly.

VIII. This Order shall take effect immediately.


GUILLERMO L. FARAYNO JR.
Commissioner