



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS
MANILA

Customs Memorandum Order
No. 2-2002

**To : All Deputy Commissioners, Service Chiefs,
Collectors of Customs, Division Chiefs,
All Others Concerned**

**Subject : Record-keeping and Post Entry Audit
Guidelines**

PURSUANT TO SECTION VII OF CUSTOMS ADMINISTRATIVE
ORDER (CAO) NO. 5-2001, THE FOLLOWING RULES AND
REGULATIONS ARE HEREBY PROMULGATED:

I. Objectives:

- IV. To duly inform concerned Bureau officials/personnel and the importing/transacting public of the principles, purposes, mechanics and methodology of the Post Entry Audit System and the record-keeping requirement provided for in the aforementioned CAO.
- V. To effectively implement compliance audit under a regime of fairness, transparency, efficiency, and accountability.

II. Administrative Provisions

- A. Compliance Audit Philosophy. Compliance audit is essentially a control mechanism done at the back-end of cargo clearance. It aims to facilitate trade by allowing release of low risk imports with minimum customs intervention at the border. Customs, however, retains an option to verify the truthfulness and accuracy of import entry declarations within

three years from date of filing of the import entry, by looking at the pertinent records of the importer-auditee as well as those of their customs brokers, as defined in this Order.

- B. Rationale Behind the Record-keeping Requirement. To enable fast releases at the border, importers and customs brokers shall assure Customs that their entry declarations are in accordance with customs laws, rules, and regulations, particularly with respect to tariff classification, customs value, quantity and country of origin. For the purpose, the law requires them to keep at their respective places of business, for the period specified above, certain records as identified, to be used in conducting the compliance (verification) audit.
- C. To determine who are required by law and this Order to keep records, the term "importer" shall include (a) the importer of record/consignee; (b) the beneficial owner, that is, the real owner as may be established by competent evidence; (c) the agent of the person or persons effecting the importation in question; or (d) any other person or entity who knowingly causes the goods to be imported. For purposes of (d) above, the phrase "knowingly causes the goods to be imported" covers domestic transactions where (1) the terms and conditions of the importation are controlled by the person placing the order and not by the importer or consignee of record (e.g. importer is actually an agent of the person placing the order), or (2) technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with the importer with knowledge that they will be used in the manufacture or production of goods to be imported.
- D. Compliance audit shall be undertaken when: (a) firms are selected by a computer-aided risk management system, the parameters of which are to be based on objective and quantifiable data relating to the relative magnitude of customs revenue from the firm, rate of duties of the firm's imports, firm's compliance track record, relative risk to revenue of the firm's activities, and such other like parameters as may be officially determined; (b) errors in the import declaration are detected which, if uncorrected, would result in substantial revenue loss or grave distortion of relevant statistical data; and (c) firms voluntarily request to be audited, subject to the approval of the Commissioner of Customs. Customs brokers shall be audited only to validate

audits of their importer clients and/or fill in information gaps revealed during an audit of their importer clients.

- E. The importer/customs broker shall allow any customs officer authorized by the Commissioner of Customs to enter during office hours any premises or place, where the records referred to in Section III of this Order are kept to conduct audit examination, inspection, verification and/or investigation of:
1. The document flow;
 2. Financial flow;
 3. Goods inventory flow; and
 4. Other business processes

necessary or relevant in determining the adequacy and integrity of the manual or electronic system or systems by which such records are created and stored and to ensure compliance with customs laws and existing rules and regulations, particularly in relation to customs valuation, tariff classification, quantity and country of origin with the end in view of ensuring that proper duties and taxes have been assessed and paid.

- F. In addition, the authorized customs officer may require the importer and/or broker to make certified copies of any such documents or extracts thereof. Any record taken or borrowed by the authorized customs officer must, within twenty-four (24) working hours be returned to its custodian. A copy of any such document certified by or on behalf of the importer/broker is admissible in evidence in all courts as if it were the original.
- G. Unless otherwise provided herein or in other provisions of law, the Bureau of Customs may, in case of disobedience, invoke the aid of the proper regional trial court within whose jurisdiction the matter falls. The court may punish contumacy or refusal as contempt. In addition, the fact that the importer/broker denies the authorized customs officer full and free access to importation records during the conduct of a post-entry audit shall create a presumption of inaccuracy in the transaction declared for their imported goods and constitute grounds for the Bureau of Customs to conduct a

re-assessment of such goods using the alternate methods of valuation or tariff classification as applicable. This is without prejudice to the other criminal and administrative sanctions referred to in Section V of this Order.

- H. Where a document in a foreign language is presented to a Customs officer in relation to the carrying out of any duty or the exercise of any power of the Bureau of Customs under the Tariff and Customs Code of the Philippines, as amended (TCCP), or any law under enforcement or administration by Customs, or rules or regulations promulgated thereunder, said document must be accompanied with a translation in English or Filipino, certified correct under oath by the translator.

III. Records Required to be Kept

A. By the Importer

All importers are required to keep at their principal place of business, for a period of three (3) years from the date of filing of the import entry, all the records of their importations and/or books of accounts, business and/or computer systems and all other customs commercial data, in whatever form, including payment records relevant for the verification of the accuracy of the transaction value declared by the importers/customs brokers on the import entry. In particular, they are required to keep the following:

1. Company or entity structure including the following to the extent that they are required for submission to the Securities and Exchange Commission or to the Bureau of Domestic Trade, as the case may be:
 - a. Articles of incorporation, articles of partnership and the like;
 - b. List of incorporators, stockholders, partners, members of the board of directors, owners;
 - c. Organizational structure;
 - d. Management and key personnel including authorized declarants and their specimen signatures;

- e. Capital composition, stock and transfer book;
 - f. Principals and/or subsidiaries and their capital composition, if applicable;
 - g. List of exporters/suppliers to which the importer is related pursuant to Section II.B.2.e of Customs Administrative Order No. 5-2001;
2. Ordering and purchase documentation including the following:
- a. Sales and other related agreements, in whatever form, including, whenever applicable, those covering distribution, royalty, agency, warranty, terms of payment, and the like;
 - b. Correspondence or communication relating to the import transaction, in whatever form, including, whenever applicable, purchase orders, vouchers, confirmations, pro-forma invoice, acknowledgment receipts, notices, advisories, and the like;
 - c. Product description or specifications, brochures, manuals, catalogues, pamphlets, fliers, literatures, if applicable;
3. Shipping, importation, exportation, and transportation documentation including the following to the extent that they are required by law or regulation to be produced and/or presented in the course of import clearance processing or for internal revenue taxation purposes, as the case may be:
- a. Import/export entry;
 - b. Invoice/consignment notes;
 - c. Import and export licenses/permits;
 - d. Ocean bill of lading, master air waybill, house air waybill, consolidator bill of lading;
 - e. Shipping instructions, freight forwarders instructions;
 - f. Certificates of Origin, Certificates of Eligibility, Certificates of Inspection and Loading;
 - g. Freight and insurance contracts;
 - h. Packing lists;

- i. Transshipment permits, boatnotes, special permits to transfer;
 - j. Quota Allocation Certificates;
 - k. Customs brokerage agreements, billings, statement of accounts, receipts;
 - l. Receipts for arrastre charges, cargo handling and storage fees;
 - m. Short or over shipped/bad order reports, if applicable;
 - n. Goods tally records, if applicable;
 - o. Correspondence with BOC and Customs decisions.
4. Manufacturing, stock, and resale documentation including the following to the extent that they are required by the internal revenue laws and Bureau of Internal Revenue regulations to be generated/produced and kept:
- a. Inwards goods register/receipts journal;
 - b. Stock register/inventory records;
 - c. Production records;
 - d. Costing records;
 - e. Sales records;
 - f. Customs lists.
5. Banking and accounting information including the following to the extent that they are required by internal revenue laws and Bureau of Internal Revenue regulations to be generated/produced and kept:
- a. Letters of credit, applications for letter of credit, bank details;
 - b. Remittance advice;
 - c. Receipts, cashbooks;
 - d. Schedules of accounts payables and accounts receivables;
 - e. Credit card transactions;
 - f. Telegraphic money transfers;

- g. Offshore monetary transactions;
 - h. Cheque records;
 - i. Debit/Credit Notes or Memos;
 - j. Evidence of payments by any other means, including information detailing non-cash compensation transactions.
6. To the extent required by internal revenue law and Bureau of Internal Revenue regulations to be produced/generated and kept, charts and codes of accounts, ledgers, financial statements, accounting instruction manuals, and systems and program documentation that describes the accounting system used by the importer.
7. Whenever applicable, papers, books, registers, discs, films, tapes, sound tracks, and other devices or things in or on which information contained in the records described in Section III.A. sub-sections 1 to 6 of this regulation are recorded or stored.

B. By the Customs Broker

All customs brokers are required to keep at their principal place of business, for a period of three (3) years from the date of importation copies of the importation records in whatever form covering transactions that they handle including records enumerated in Section III.A sub-sections 3, 6 and 7 of this Order.

IV. Compliance Audit Operations

Pending the creation of the Post Entry Audit Office (PEAO), the post entry audit system of BOC shall be initially handled by the interim Post Entry Audit Unit (PEAU) whose organizational set up and functions are defined under Customs Special Order No. 50-2001.

The PEA process shall involve the following operational concerns:

A. Selecting Firms for Audit Using a Risk Management Approach

The selection of firms shall be undertaken using a risk management system. There shall be two types of audit: audits for voluntary compliance and those for enforced compliance.

1. Voluntary Compliance Audit

These audits shall be conducted under the BOC's Compliance Program which shall be developed to make compliant those firms that contribute up to 80% of customs revenue. The program shall be voluntary. Successful applicant firms shall be chosen using criteria that determine their respective risk levels. The Voluntary Compliance Audit shall focus on determining whether the firm's systems and procedures, particularly its inventory, financial and record-keeping systems, all lead to the generation of compliant customs declarations. The objective of the audit shall be to assist the firm in becoming compliant. Part of the audit results shall therefore be a set of recommendations that would lead to higher compliance levels for the firm, as well as a time frame for acting on these recommendations. The audit shall also result in a risk rating for each firm, with the most compliant receiving the lowest risk rating. Those firms found to be highly compliant shall be given SGL (Super Green Lane) treatment and such other facility benefits to be provided in the Compliance Program.

2. Enforced Compliance Audit

These audits shall be conducted on firms that are not included in the Compliance Program and have been found to have compliance issues. The firms to be audited shall be chosen from among those tagged for audit:

- a. By the Collectors of Customs as a result of VCRC review;
- b. By the TIRAU created under CSO 50-2001 as a result of its periodic analysis of the ACOS database;
- c. As a result of enforcement operations.

The audit shall focus on the compliance issues identified and may result in the application of the administrative and penal provisions of R.A. 9135.

B. Profiling and Information Analysis

This involves the process of (a) gathering information by downloading customs data on the targeted importer and collating information from other sources both internally and externally; (b) profiling the company's activities on the basis of the captured data; (c) identifying risk shipments according to issues involved for verification purposes; (d) sampling of exception reports according to nature of variances, e.g. unit FOB value, tariff heading, freight, and the like, (e) reviewing of past decisions of BOC vis-a-vis the selected shipments; and (f) preparing a report for the Commissioner to serve as basis for the grant of authority to conduct field audit; and other similar activities.

C. Audit Notification

Upon approval of Commissioner to commence audit, an Audit Notification Letter (ANL) shall be issued and sent to the company identified for audit. The ANL shall state the following:

1. Statutory basis and purpose of the audit
2. Date and time of pre-audit conference and commencement of audit
3. Members of the customs audit team
4. Documents or records to be readied for audit verification
5. Request for company tour or walk-through to familiarize the audit team with the company's operations (e.g., warehousing, manufacturing) involving imported articles

To be attached to the ANL are a General Customs Questionnaire and a form requiring a brief description of the processes relating to the company's import purchasing (ordering) payment, and inventory systems to be filled out and sent back to BOC prior to the pre-audit conference.

D. Audit Preparation / Audit Plan

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Upon receipt of additional information, the Post Entry Audit Unit will make the necessary customization of a general audit plan to fit the circumstances of the auditee company with the end view of achieving the specific audit objectives in the most expeditious and transparent manner. In particular, the Audit Plan will aim at (a) getting information on goods flow, financial flow, order process flow and tracing, testing of sample entries to ensure that such flows operate as explained; and (b) validating the completeness and correctness of the information provided by the importer in the import entry declaration relative to the risks or issues identified in the profiling stage.

E. Pre-Audit Conference with Auditee

In the pre-audit conference, the customs audit team will formally introduce themselves to the receiving officers of the auditee-company and present their written authority to conduct the audit. The audit team shall brief the company personnel on, among others, the purpose of audit, the specific date of audit commencement, the estimated length of time to perform and complete the audit, the types of documentation for review and examination, and to identify individual(s) in the company to serve as liaison for the audit team and those to be interviewed in the course of the audit. The conference shall include the factory/office tour as may be requested by BOC.

F. Conduct of Audit Proper - Field Audit

1. A field audit involves the examination and review of the auditees' records and documents based on the audit plan. It also includes interviewing of responsible personnel in order for auditors to gain an understanding of the firm's activities which impact on the information provided in the import entry declaration.
2. The extent of field audit will depend on the nature of the company's operations and the level of reliance auditors will have on the internal controls of the company relative to the storage and retrieval of information needed by the auditors in attaining their specific audit objectives.

3. The field audit will aim to verify, among others, that in all the firm's import transactions—
 - a. Imported goods are valued using the appropriate customs valuation method
 - b. Such values are correct and complete as to the price paid or payable and the dutiable adjustments thereto
 - c. Goods are properly described and the correct tariff classifications are used
 - d. Quantity of goods, as reported are correct
 - e. Declarations are correct as to country of origin
 - f. Special or preferential tariff rates are correctly applied and importer is qualified to avail of special/preferential rates
4. The company's brokers may be subject to a verification exercise to validate audit findings on the auditee.
5. The auditee shall extend necessary assistance to the audit team and the audit team shall exert every effort to complete the task without unnecessarily disrupting the daily operations of the company. The PEAU shall, with the approval of the Commissioner of Customs, draw up an audit manual to serve as internal guidelines in the conduct of field audit. The manual shall include audit techniques, handling of information obtained, auditor's decorum, and their general conduct.

G. Exit Conference

Prior to issuing a final report, auditors will meet with company representatives to discuss the following:

1. Audit findings where the company will be provided the chance to check accuracy of facts as established.
2. Areas identified by the audit team as needing improvement to make the company more compliant with Customs regulations.
3. A calculation of underpayment of duties and taxes, plus possible administrative penalties, if any.

4. Any comment or observation by the company on audit conduct and audit findings which shall be incorporated in the audit report.

H. Audit Reporting

Upon completion of the audit and the Exit Conference, the PEA Unit will prepare a Final Audit Report and Recommendation (FARR) to be submitted to the Commissioner of Customs for approval and/or appropriate action/instruction. Once the FARR is approved, the BOC shall furnish the auditee(s) with an official copy thereof.

I. Audit Monitoring and Implementation

1. The PEAU shall come up with a secure system of maintaining audit reports and records including internal and external communications.
2. The PEAU shall develop an internal audit system to ensure that all tasks related to audit operations are completed and on time and that approved audit recommendation are properly implemented.

V. Administrative Fines and Penalties

A. Failure to keep records

Any person who fails to keep and maintain all the records required to be kept and maintained under Section IVA of Customs Administrative Order No. 5-2001 in relation to Section III of this Order shall be subject to the following:

1. Administrative fine equivalent to twenty percent (20%) ad valorem on the article/s subject of the importations for which no records were kept and maintained as prescribed in Section 2504 of the TCCP.
2. Hold delivery or release of subsequent imported articles to answer for the fine and any revised assessment.
3. Criminal prosecution punishable with a fine of not less than one hundred thousand pesos (PhP100,000) but not more than two hundred thousand pesos (PhP200,000)

and/or imprisonment of not less than two (2) years and one (1) day but not more than six (6) years.

B. Failure and/or refusal to give full and free access

Any importer and/or broker who denies an authorized officer full and free access, under Section IV.B of Customs Administrative Order No. 5-2001 in relation to Section II.E and F hereof, to the records required to be kept and maintained as specified in Section IV.A of CAO No. 5-2001 in relation to Section III of this Order shall be subject to the following:

1. Punishment for contempt, for contumacy or refusal from the proper court having criminal jurisdiction.
2. Re-assessment of the importations subject to audit applying the correct valuation method, tariff classification, quantity and/or country of origin, as applicable, based on available data, the declared transaction value being presumed inaccurate.
3. Administrative fine equivalent to twenty percent (20%) ad valorem on the article/s subject of the importations for which no records were kept and maintained as prescribed in Section 2504 of the TCCP.
4. Hold delivery or release of subsequent imported articles to answer for the fine and any revised assessment.
5. Criminal prosecution punishable with a fine of not less than one hundred thousand pesos (PhP100,000) but not more than two hundred thousand pesos (PhP200,000) and/or imprisonment of not less than two (2) years and one (1) day but not more than six (6) years.

C. Failure to pay correct duties and taxes on imported goods

1. Any person who, after being subjected to post-entry audit and examination as provided in Sections IV B and C of Customs Administrative Order No. 5-2001, is found to have incurred deficiencies in duties and taxes paid for imported goods, shall be penalized according to three (3) degrees of culpability subject to any mitigating,

aggravating or extraordinary factors that are clearly established by the available evidence:

- a. **Negligence.** When a deficiency results from an offender's failure, through an act or acts of omission or commission, to exercise reasonable care and competence to ensure that a statement made is correct, it shall be determined to be negligent and punishable by an administrative fine equivalent to not less than one-half (1/2) but not more than two (2) times the revenue loss.
 - b. **Gross Negligence.** When a deficiency results from an act or acts of omission or commission done with actual knowledge or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligation under these rules or the Customs Code, it shall be determined to be grossly negligent and punishable by an administrative fine equivalent to not less than two and a half (2-1/2) but not more than four (4) times the revenue loss.
 - c. **Fraud.** When the material false statement or act in connection with the transaction was committed or omitted knowingly, voluntarily and intentionally, as established by clear and convincing evidence, it shall be determined to be fraudulent and be punishable by an administrative fine equivalent to not less than five (5) times but not more than eight (8) times the revenue loss.
 - d. Criminal prosecution under Section 3611 of the TCCP.
2. However, except in cases of fraud, the Commissioner of Customs may, pursuant to Section 2316 of the TCCP and subject to the approval of the Secretary of Finance, exercise his power to compromise the imposition of the fine prescribed in Section VI.C of CAO No. 5-2001 in relation to Section V.C of this Order, when the importer makes a voluntary and full disclosure of the deficiency prior to the commencement of the audit on a date fixed by the Commissioner, provided that the compromise shall only be to the extent of the voluntary disclosure made.

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VI. Appeals Provisions

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The decision of the Commissioner of Customs, upon proper hearing, to impose the penalties prescribed in Section V of this Order may be appealed in accordance with Section 2402 of the TCCP. The procedure in the determination of administrative sanctions provided for in said Section V shall be governed by Customs Memorandum Order No. 1-2002.

VII. Repealing Clause

All Orders, Memoranda, Circulars or parts thereof which are inconsistent with this Order are hereby deemed superseded or amended accordingly.

VIII. Effectivity

This Order shall take effect immediately upon signing hereof.



TIFUS B. VILLANDEVA
Commissioner

Date signed 2 Jan. 2002