



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS

CUSTOMS ADMINISTRATIVE ORDER (CAO)

NO. 2-2017

SUBJECT: RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT (R.A.) NO. 10845 OTHERWISE KNOWN AS ANTI-AGRICULTURAL SMUGGLING ACT OF 2016

Introduction. This CAO implements the provisions of R.A. No. 10845, also known as the Anti-Agricultural Smuggling Act of 2016, pursuant to Section 6 thereof, in relation to related provisions of R.A. No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA).

Section 1. Scope. This CAO covers all importations involving Sugar, corn, pork, poultry, garlic, onion, carrots, fish, and Cruciferous Vegetables, in its raw state, or which have undergone the simple processes of preparation or preservation for the market, with a Fair Market Value of one million pesos (P1,000,000.00) or ten million pesos (P10,000,000.00), in case of rice.

Section 2. Objectives.

- 2.1. To set-up administrative guidelines in the handling and disposition of goods involved in Large Scale Agricultural Smuggling;
- 2.2. To provide a support mechanism and enhance coordination with various government regulatory agencies issuing Import Permits for Agricultural Products; and
- 2.3. To protect farmers from unscrupulous traders and importers, who by their illegal importation of Agricultural Products, especially rice, significantly affect the production, availability of supply and stability of prices, and the food security of the State.¹
- 2.4. To provide guidelines in detecting large-scale smuggling of agricultural products, as a self-preservation measure to shield itself from the manipulative scheme of economic saboteurs, and to protect the livelihood of our farmers and to ensure their economic well-being².

¹cf. R.A. 10845 Section 2 Paragraph 1

²cf. R.A. 10845 Section 2 Paragraph 2

amp

Section 3. Definition of Terms. For purposes of this CAO, the following terms are defined accordingly:

- 3.1. Acting as Broker**—refers to any person whose services consist any of the following such as consultation, preparation of customs requisite document for imports, declaration of customs duties and taxes, preparation signing, filing, lodging and processing of import entries; representing importers before any government agency and private entities and rendering of other services in matters relating to customs and tariff laws, its procedures and practices.³
- 3.2. Agricultural Products** — refers to sugar, corn, pork, poultry, garlic, onion, carrots, fish, and Cruciferous Vegetables, in its raw state, or which have undergone the simple processes of preparation or preservation for the market such as freezing, drying, salting, broiling, roasting, smoking or stripping, including rice.⁴
- 3.3. Cruciferous Vegetables** —refers to any part of the Brassica genus of plants which includes cabbage, broccoli, brussels sprouts, kale, kohlrabi, napa cabbage, turnip, and rutabaga, horseradish, radish and white mustard⁵ provided they are domestically produced in commercial quantities.
- 3.4. Fair Market Value or Fair Value** —refers to the suggested retail prices of Agricultural Products at the time of the commission of the crime, issued by the Department of Agriculture pursuant to the Implementing Rules and Regulations of Republic Act No. 7581⁶, otherwise known as the Price Act of 1992.
- 3.5. Importation** - refers to the act of bringing in of goods from a foreign territory into Philippine territory, whether for consumption, warehousing, or admission as defined in the CMTA.⁷
- 3.6. Import Permit** —refers to a written certificate issued by the concerned authority stating the volume of consignment. This includes the minimum access volume (MAV) import certificate⁸, Sanitary and Phytosanitary (SPS) Import Clearance, Clearance for the Release of Imported Sugar⁹ or any other equivalent document issued for the importation of Agricultural Products.

³cf. R.A. 9280 Section 6

⁴cf. R.A. 10845 in relation to National Internal Revenue Code of 1997, as amended, Section 109 (c)

⁵ cf. Encyclopedia Britannica

⁶ cf. Joint Administrative Order (JAO) No. 1 s. 1993, as amended by JAO 13-1 s 2013

⁷cf., R.A. 10863 Section 102 (z)

⁸ cf. Department of Agriculture (DA) Administrative Order (AO) No. 9 s. 2010, Section I, A. 21

⁹ cf. Sugar Order No. 10 s. 2009-2010, Section 1.12

U

3.7. Large Scale Agricultural Smuggling —refers to the commission of any of the prohibited acts under Section 4.1. of this CAO involving Agricultural Products with a minimum Fair Market Value of one million pesos (P1,000,000.00) or a minimum Fair Market Value of ten million pesos (P10,000,000.00) in case of rice.

3.8. Sanitary and Phytosanitary (SPS) Import Clearance —refers to a document issued prior to importation by the relevant government bureau or agency to ensure that the products being imported meet standards to protect human, animal or plant life or health, ensuring that the agricultural and fishery products are safe for consumers and to prevent the spread of pests or diseases among animals or plants. Such document also prescribes the conditions to be complied with by the importer for the maintenance of quality and suitability of the product for the intended purpose.¹⁰

3.9. Sugar —refers to sugar with sucrose content, by weight and in the dry state which corresponds to a polarimeter reading of 99.5° and above, and raw sugar which means sugar whose content of sucrose by weight, in dry state, corresponds to a polarimeter reading of less than 99.5°.¹¹

Section 4. General Provisions.

4.1. Large-scale agricultural smuggling is committed through any of the following acts:

4.1.1. Importing or bringing into the Philippines without the required Import Permit from regulatory agencies; such as Sugar Regulatory Administration (SRA), Bureau of Plant Industry (BPI), Bureau of Animal Industry (BAI), Bureau of Fisheries and Aquatic Resources (BFAR), National Food Authority (NFA) or any other agencies having jurisdiction over the Agricultural Products;

4.1.2. Using Import Permits of persons, natural or juridical, other than those specifically named in the permit;

4.1.3. Using fake, fictitious or fraudulent Import Permits or shipping documents;

4.1.4. Selling, lending, leasing, assigning, consenting or allowing the use of Import Permits of corporations, non-government organizations, associations, cooperatives, or single proprietorships by other persons;

4.1.5. Misclassification, undervaluation or misdeclaration upon the lodgement of goods declaration or filing of import entry and

¹⁰cf. DA AO No. 9 s. 2010

¹¹cf. RA No. 10659 Section 10, Paragraph 2 series of 2015

revenue declaration with the BOC in order to evade the payment of rightful taxes and duties due to the government;

- 4.1.6.** Organizing or using dummy corporations, non-government organizations, associations, cooperatives, or single proprietorships for the purpose of acquiring Import Permits;
 - 4.1.7.** Transporting or storing the agricultural product subject to economic sabotage regardless of quantity; or
 - 4.1.8.** Acting as Broker of the violating importer.
- 4.2.** The basis of valuation of Large-scale Smuggling of Agricultural Products shall be the Fair Market Value of the shipment as computed by the Bureau.
- The Bureau shall determine in aggregate the value of agricultural products and rice imported under multiple shipments by the same consignee when there is an apparent intent to evade the threshold provided under Section 1 of the CAO as evidenced by the manner and pattern of shipments.
- 4.3.** Mere possession of rice or any agricultural product which has been the subject of smuggling, entered into the Philippines other than the Bureau controlled ports or without the necessary permits shall be prima facie evidence of smuggling.
 - 4.4.** The Bureau shall initiate seizure proceedings in all smuggled Agricultural Products and the property used in agricultural smuggling, consistent with Title XI, Chapter 4, Section 1113 and without prejudice to Section 1114 of the CMTA¹², and shall be forfeited in favor of the government.
 - 4.5.** The seized smuggled Agricultural Products, shall be disposed of in a manner to be determined by the appropriate regulatory agency. In the event that the regulatory agency allows the disposition of the regulated goods with commercial value and capable of legitimate use, these shall be disposed of in accordance with Section 1141 of the CMTA.¹³ In case of public auction, the importer-on-record and his broker shall not be allowed to participate as bidders.
 - 4.6.** The Bureau shall, after due investigation, file appropriate criminal charges against those who committed any of the prohibited acts under Section 4.1 of this CAO. When the offender is a juridical person, criminal liability shall

¹²cf. CMTA, Title XVII, Section 1803 repealing sections 2530 and 2531 of the Tariff and Customs Code of the Philippines (TCCP).

¹³cf. CMTA, Title XI, Chapter 10, Section 1148

attach to its president, chief operating officer or manager or any responsible officer who consents to or knowingly tolerates the commission of the prohibited acts.

- 4.7.** To the extent practicable, the regulatory agencies and the Bureau shall maintain the integrity, authenticity and validity of Import Permits by timely coordination and information-sharing through full utilization of the National Single Window (NSW) or its equivalent ICT-enabled system. Towards this end, the regulatory agencies shall furnish the Bureau updated copies of the Import Permits prior to the arrival of the goods *vis-à-vis* the Bureau shall verify that such permits were duly issued prior to release of the goods.

Section 5. Penalties.

- 5.1.** The penalty of life imprisonment and a fine of twice the Fair Value of the smuggled agricultural product and the aggregate amount of the taxes, duties and other charges avoided shall be imposed on any person who commits any of the acts enumerated under Section 4.1. of this CAO.
- 5.2.** The penalty of imprisonment of not less than seventeen (17) years but not more than twenty (20) years, and a fine of twice the Fair Value of the smuggled agricultural product and the aggregate amount of the taxes, duties and other charges avoided shall be imposed on the officers of dummy corporations, nongovernment organizations, associations, cooperatives, or single proprietorships who knowingly sell, lend, lease, assign, consent or allow the unauthorized use of their Import Permits for purposes of smuggling.
- 5.3.** The penalty of imprisonment of not less than fourteen (14) years but not more than seventeen (17) years and a fine equal to the Fair Value of the smuggled agricultural product and the aggregate amount of the taxes, duties and other charges avoided shall be imposed on the following:
- 5.3.1.** The registered owner and its lessee or charterer, in case of lease, of a chartered boat, motorized commercial vessel of more than three (3) gross tonnage¹⁴, who knowingly transports the agricultural product subject to economic sabotage, regardless of quantity;
- 5.3.2.** The registered owner and its lessee, in case of lease of six (6) or more wheeler trucks, vans and other means of transportation, who knowingly transports the agricultural product subject to economic sabotage, regardless of quantity;

¹⁴ Gross Tonnage - means the measure of the overall size of the ship determined in accordance with the provisions of the International Convention on Tonnage Measurement of Ships, 1969 in relation to MC No. 04 s. 2007 by MARINA.

- 5.3.3. The registered owner and lessee of a warehouse, or any property, who knowingly stores the smuggled agricultural product subject to economic sabotage; or
- 5.3.4. The registered owner, lessee, president or chief executive officer of the private port, fish port, fish landing sites, resorts, and airports who knowingly allows the agricultural product to be smuggled into the country.
- 5.4. The penalty of imprisonment of not less than twelve (12) years but not more than fourteen (14) years and a fine equal to the Fair Value of the smuggled agricultural product subject to economic sabotage and the aggregate amount of the taxes, duties and other charges avoided shall be imposed on the following:
 - 5.4.1. The registered owner and its lessee or charterer, in case of lease; of a chartered boat, motorized commercial vessel of three (3) gross tonnage or less, who knowingly transports the agricultural product subject to economic sabotage, regardless of quantity; or
 - 5.4.2. The registered owner and its lessee, in case of lease, of less than six (6) wheeler trucks, vans and other means of transportation, who knowingly transports the agricultural product subject to economic sabotage, regardless of quantity.
- 5.5. Any person, natural or juridical, found guilty under this Act shall also suffer the penalty of perpetual absolute disqualification to engage in any business involving importation.
- 5.6. In applying the abovementioned penalties, if the offender is an alien and the prescribed penalty is not life imprisonment, he/she shall be deported after serving the sentence without further proceedings for deportation.
- 5.7. If the offender is a government official or employee, the penalty shall be the maximum as hereinabove prescribed and the offender shall suffer an additional penalty of perpetual disqualification from public office, to vote and to participate in any public election.

Section 6. Periodic Review. Unless otherwise provided, this CAO shall be reviewed every three (3) years and be amended or revised if necessary.

Section 7. Separability Clause. If any part of this CAO is declared unconstitutional or contrary to existing laws, the other parts not so declared shall remain in full force and effect.

Section 8. Repealing Clause. This CAO specifically amends or repeals previously issued CAOs and CMOs which are inconsistent with the provisions here stated.

Section 9. Effectivity. This CAO shall take effect within 15 days from publication at the Official Gazette or a newspaper of national circulation.

The Office of the National Administrative Register (ONAR) of the UP Law Center shall be provided three (3) certified copies of this CAO.

[Handwritten Signature]
NICANOR E. FAELDON
Commissioner



Approved:

[Handwritten Signature]
CARLOS G. DOMINGUEZ III
Secretary



Informational Section. As the title denotes this section only provides information and does not give rise to any substantive or formal rights or obligations.

1. History. This CAO is issued to provide guidelines in the implementation of higher sanctions for large-scale smuggling of Agricultural Products, as a self-preservation measure to shield itself from the manipulative scheme of economic saboteurs, and to protect the livelihood of our farmers and to ensure their economic well-being.

2. Related Policies.

- R.A. No. 10845 – An Act Declaring Large-Scale Agricultural Smuggling as Economic Sabotage, prescribing penalties therefor and for other purposes
- NIRC Code of 1997 as amended
- Encyclopedia Britannica
- Senate Bill No. 2765 – An Act Declaring certain acts of Agricultural Smuggling as Economic Sabotage, prescribing penalties therefor and for other purposes
- DA AO No. 9 s. 2010
- Sugar Order No. 10 s. 2009-2010
- International Convention on Tonnage Measurement of Ships, 1969
- MARINA Circular No. 04 s. 2007
- JAO No. 1, s.1993
- JAO No. 13-1 – Amendments to the DTI, DA, DOH, DENR Joint Administrative Order No. 1 series of 1993 (JAO 1, s.1993) otherwise known as the Implementing Rules and Regulations of Republic Act no. 7581 (Price Act)
- RA No. 10659 - An Act Promoting and Supporting the Competitiveness Of The Sugarcane Industry And For Other Purposes
- CMO No. 001-04 - Treatment of Reefer Shipments
- CMO No. 005-05 - Special Safeguard Duty on Onions Under H.S. 0703.10.00
- CMO No. 018-05 - Special Safeguard Duty on Onions Under ATHN 0703.10
- CMO No. 027-05 - Amendment to CMO 23-2005 re: Mandatory 100% Examination of All Reefer Importations of Meat/Poultry/Fish Products Except PEZA and SGL Accredited Companies
- CMO No. 004-07 - Implementation of Memorandum of Agreement (MOA) between the Department of Finance and the Department of Agriculture on Anti-Smuggling
- CMO No. 12-2011 - Requiring The Submission of the Results of Laboratory Analysis by the Sugar Regulatory Administration of all Food Preparations Declared as Pre-Mixed Sugar Concentrates
- CMO No. 9-2015 - On Strict Enforcement of Rules Concerning Regulated Imports
- R.A. No. 9280 – An Act Regulating the Practices of Customs Brokers Profession in the Philippines, creating for the purpose a Professional regulatory Board for Customs Brokers, and Appropriating Funds therefor

MASTER COPY *afj*

3. Webpage, Forms, Handbooks and other References.

MEMO-ADM-2016-Nov-002 – Comments from Sugar Regulatory Administration (SRA) on the definition of sugar as used in R.A. No. 10845.

afj