



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS
MANILA 1099

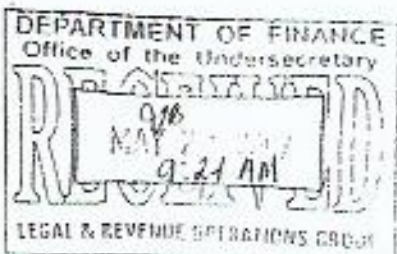
CUSTOMS ADMINISTRATIVE ORDER
NO. 5-2007

Subject: Voluntary Disclosure Program (VDP)

By Authority of Sections 608 and 2316 of the Tariff and Customs Code of the Philippines (TCCP), amending for this purpose Customs Administrative Order (CAO) 4-2004, the following rules and regulations are hereby promulgated:

SEC. I OBJECTIVES

- A. To provide a clear set of policies and guidelines in the application and availment of the Voluntary Disclosure Program on fine/penalties for deficiencies in the payment of taxes and duties.
- B. To promote compliance with customs laws and regulations by providing a non-punitive facility for importers to voluntarily disclose or report to customs plain errors or innocent mistakes in the import entry declarations and in the payment of duties and taxes and other charges.
- C. To generate instant additional customs revenue with least administrative cost to both the government and the concerned importer.
- D. To demonstrate and emphasize to the import sector and other customs stakeholders the statutory obligations of the trading community and the adverse consequences of customs non-compliance or lack of due diligence in conducting business with customs at the border.



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SEC. II STATEMENT OF POLICY

- A. The adoption of the Transaction Value System under the WTO Agreement on Customs Valuation has resulted in the shift from the customs-imposed to the so-called self-assessment system. Under the self-assessment regime, an importer is directly responsible for the complete and accurate import entry declaration, principally, as to customs value, tariff classification, and is duty-bound to provide any other relevant information necessary for customs to properly assess the correct duties and taxes due on the imported article.
- B. The Voluntary Disclosure Program provides importers the remedy to correct, under certain conditions specified herein, any erroneous, inaccurate, or insufficient information declared to customs arising from sheer mistake, inadvertence, or negligence without the imposition of any fine or penalty in appropriate cases. The Program shall not apply when the wrong entry declaration was attended with fraud, as defined in Section 3611 of the TCCP, as amended.
- C. The Program shall be available (a) prior to the receipt of an Audit Notification Letter (ANL) or (b) upon receipt of the ANL but prior to the scheduled date of field audit.

SEC. III BENEFITS OF THE PROGRAM

- A. An importer filing a valid and timely voluntary disclosure together with a tender of payment shall not be subject to fines or penalties under existing regulations but only insofar as the import entries and customs issues disclosed are concerned but without prejudice to the provisions of Section IV and VI. C of CAO 5-01.
- B. The disclosing party shall also be accorded the status of "last priority" in the customs audit selection process for future importations subject to the following conditions:
 - 1. Submission of a customs compliance program that directly addresses the cause or causes of the mistakes or errors in the entry declaration and other necessary measures to the company's level of compliance with customs laws, rules and regulations.

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2. Compliant behavior established based on random profiling and review of the company's succeeding import activities.
3. The amount of duties and taxes to be collected from any single disclosure shall not be less than One Million Pesos (PhP1,000,000.00).

SEC. IV TREATMENT OF INCOMPLETE DISCLOSURE

- A. When additional duty and tax deficiencies or adverse customs issues are uncovered during the verification of the import entries disclosed, the graduated rules on penalties under the foregoing CAO shall apply to those that are not part of the disclosure.
- B. When fraud in the importation or bad faith in the non-disclosure is established during the verification process, the application for voluntary disclosure shall be denied, and a full formal audit shall be commenced without prejudice to the conduct of formal enforcement investigation as the Commissioner of Customs may see fit. Any money that may have been tendered by the importer and received by customs at the time of application for voluntary disclosure shall be applied to the deficiency in duties and taxes as disclosed.

SEC. V WHO ARE QUALIFIED FOR THE PROGRAM

- A. All importers may submit to a voluntary disclosure subject to the following conditions:
 1. Preparation and submission of a verified application for voluntary disclosure identifying the transactions being disclosed with specific reference to the import entry number, type of article imported, nature of the error or mistake (e.g., undeclared adjustment to the price paid or payable, such as assists, royalty or license fee, proceeds from subsequent resale; error in the tariff heading or duty rate used; undue avilment of preferential duty rate; and the like) resulting in the underpayment of duties and taxes, year of importation, and port or ports of entry. For the purpose, a standard user-friendly disclosure format, including a checklist of documents required shall be provided in an appropriate order by customs.

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2. Tender of payment of the duty and tax deficiency on the disclosed transactions, with the undertaking that the importer shall honor the tender of payment regardless of whether he is found qualified or not to avail of the Program at the time of application or at any time during the verification process.
- B. The Program shall not include importers or import transactions subject of the following:
1. Those covered by a final assessment issued by the Commissioner of Customs or subject of pending ruling requests with the CVCRRRC or any other customs office;
 2. Those covered by cases already filed and pending in courts;
 3. Those who have already been issued Audit Notification Letters (ANL) and is currently undergoing enforced compliance audit;
 4. Those involving FRAUD cases, including those covered by Section 3611 of the TCCP, as amended.

SEC. VI VERIFICATION AND PROCESSING OF THE APPLICATION

- A. The verified application for disclosure shall be filed with the Post Entry Audit Group (PEAG) under the Office of the Commissioner of Customs together with the tender of payment and the required undertaking together with the supporting documents relating to the disclosure being made.
- B. The PEAG shall verify if the application is complete and valid as to form and substance. If the application is valid, PEAG shall accept the application and conduct verification on the disclosure.
- C. In relation to the specific import entries subject of the voluntary disclosure application, when there is a finding of fraud or that there are other material inaccuracies mistakes or errors in the entry declaration or outright violations committed that were not the subject of the disclosure but impact adversely on government revenue, PEAG shall recommend the conduct of formal and full audit and the initiation of fraud investigation.

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D. In all cases, the tender of payment shall be accepted by Customs to be applied to the deficiencies in duties and taxes as voluntarily disclosed regardless of whether the voluntary disclosure application is ultimately given due course or not.

SEC. VII IMPLEMENTING RULES AND REGULATIONS

The Commissioner of Customs shall issue procedural rules to define and outline in detail the process of documentation, application, evaluation, availment, and disposition of voluntary disclosures under the Voluntary Disclosure Program.

SEC. VIII REPEALING CLAUSE

All Orders, Memoranda, Circulars or parts thereof which are inconsistent with this Order are hereby deemed repealed and/or modified accordingly.

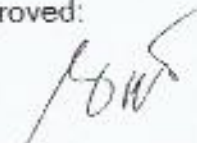
SEC. IX SEPARABILITY CLAUSE

If any part of this Order is declared by the Courts as unconstitutional or contrary to existing laws, the other parts so declared shall remain in full force and effect.

SEC. X EFFECTIVITY CLAUSE

This Order shall take effect fifteen (15) days after publication in any newspaper of general circulation and filing of copies with the UP Law Center pursuant to E.O. No. 292 (Administrative Code of 1997).

Approved:


ROBERIO B. TAN
(Undersecretary)
Officer - in - Charge



NAPOLEON L. MORALES
Commissioner



24 MAY 2007