



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS
MANILA

Customs Memorandum Order
No. 1-2002

To: All Collectors of Customs/Service Chiefs
Division Chiefs/ others Concerned

Subject: Procedure in the determination of administrative liability and the imposition of administrative fines provided for in Section VI subsections A, B, and C of Customs Administrative Order (CAO) No. 5-2001.

Pursuant to Section VI D of CAO No. 5-2001, the following procedural rules and regulations are hereby promulgated.

I. Objectives

1. To prescribe the procedure in establishing the administrative liability of importers/customs brokers in case of failure to keep post entry audit records, refusal to grant free and full access to such records, and non-payment of correct duties and taxes as uncovered during audit, as well as in the imposition of the corresponding administrative fines and penalties therefore pursuant to the above-mentioned CAO.
2. To afford importers/customs brokers the opportunity to be heard and to present evidence to rebut the foregoing administrative charges and/or the imposition of such administrative fines and penalties.

II. Administrative Provisions

1. This Order shall cover administrative complaints (a) against importers and customs brokers for failure to keep certain records and documents as required and as defined in the law and the existing implementing rules and regulations, or for refusal to grant free and full access to such records and documents for official audit purposes; and (b) against importers for failure to pay the correct duties and taxes with negligence or fraud, as uncovered during the official audit.

Complaints shall be filed under oath before a notary public or any customs officer authorized by law to administer oaths.

2. Pending the creation of the Post Entry Audit Office, the foregoing complaints shall be lodged by the interim Post Entry Audit Unit in connection with the discharge of its functions as laid down in Customs Special Order No 50-2001 upon prior approval by the Commissioner of Customs only as to form and substance.
3. The administrative complaint shall be heard at the Legal Service with due notice to the complainant office and the concerned respondents. The complainant office shall be represented by a prosecutor or team of prosecutors as shall be specifically designated by the Commissioner of Customs. The administrative case shall be heard by the Director of the Legal Service.


III. Operational Provisions

1. The PEAU shall prepare the administrative complaint to be signed under oath by the auditor or auditors concerned and approved by the Section Head and the Unit Head. The complaint shall state clearly the basis thereof and shall attach thereto all pertinent documents and records in support thereof. In case the complaint proceeds from the audit findings, the audit report shall be attached.
2. Once accomplished, the complaint, including all enclosures, shall be forwarded to the Commissioner of Customs for approval of the filing of the complaint. After approval of the filing, the same shall be forwarded to the Legal Service which shall assign an individual docket number for all the complaints lodged under this Order.
3. Upon receipt of the complaint, the Legal Service shall immediately send a copy of the complaint, including attachments pertinent to the complaint, to the importer and/ or customs broker, as the case may be, who shall be given a period of fifteen (15) days from receipt of the complaint, to answer said complaint. Upon receipt of the answer, the complainant office shall be given a period of five (5) days to make an optional reply copy-furnished the respondents, after which the case shall be scheduled for hearing with notice to all concerned parties.
4. The proceedings at the Legal Service shall be summary in character. To expedite the hearing, unnecessary postponements are discouraged, while marathon hearings are enjoined.

5. In lieu of a formal hearing, the parties may opt for the submission of memoranda with optional time to file rebuttal and sur-rebuttal, after which the case shall be deemed submitted for resolution.
6. When the case is submitted for resolution after hearing or through the filing of memoranda, the Legal Service shall, within fifteen (15) days thereafter, prepare a decision for the signature of the Commissioner of Customs. The decision shall be without prejudice to the criminal or any other administrative action the Bureau may take against the erring respondent/s.
7. If the Commissioner of Customs does not agree with the proposed decision or needs further information to act thereon, he may remand the case to the Legal Service stating the matter or issues that still have to be clarified, or may come up with his own decision on the basis of the arguments and evidence presented and forming part of the record.
8. Within thirty (30) days from receipt of the decision of the Commissioner of Customs, the respondents may appeal the same to the Court of Tax Appeals in the manner prescribed by law and existing rules and regulation.

IV. Effectivity Clause

This Order shall take effect immediately upon signing hereof.



TITUS B. VILLANUEVA
Commissioner

Date signed: 2 Jan. 2002