



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

CUSTOMS MEMORANDUM ORDER

No. 41 - 4004

**TO: ALL DEPUTY COMMISSIONERS
ALL DISTRICT COLLECTORS
ALL SERVICE/ DIVISION CHIEFS
AND ALL OTHERS CONCERNED**

**SUBJECT: ACCREDITATION OF CUSTOMS BROKERAGE
CORPORATIONS**

In view of the non-issuance to date of the Implementing Rules & Regulations on RA 9280 and the continuing debate regarding the provision limiting the customs brokerage practice to licensed customs brokers only, all District Collectors are hereby directed to maintain and observe the status quo with respect to the accreditation of customs brokerage corporations which shall in the meantime be allowed to continue to engage in customs brokerage until the issuance of a contrary directive from this Office or of the pertinent IRR on RA 9280 whichever comes earlier.

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

This Order shall take effect immediately.


GEORGE M. JEREOS
Commissioner

Date Signed DEC 28 2004

Fax to Atty Cortina
527 4574

Subject: UPDATE ON RA 9280
CC: <port_users@uno.net.ph>, <rsu@go2uli.com.ph>, <marivic_damondon@mydestiny.net>
Date: Sun, 12 Dec 2004 08:21:48 GMT
Status: 3
From: "Atty. Romeo R. Sto. Tomas" <go2rsu@pacific.net.ph>
Reply-to: "Atty. Romeo R. Sto. Tomas" <go2rsu@pacific.net.ph>

2

enc - 41 - 04

Email message

UPDATE ON RA 9280

First off, in a letter dated November 25, 2004 signed by Avelina De La Rea, Commissioner-in-charge of Customs Brokers, to Undersecretary Catherine W. Bello of the Presidential Legislative Liaison Office, Senate of the Philippines, Comm. De La Rea stated that:

"With the removal of the December 31 deadline for customs brokerage firms from the original IRR which we requested the Board in one of the public hearings of RA 9280, noting that it was not in the law, and with the additional revisions requested by Sen. Pimentel, we believe that there is no more threat to the industry stakeholders."

From the foregoing, there is no longer any December 31, 2004 deadline!

Last December 1, 2004, Senator Ramon Magsaysay called a meeting at the Senate to discuss the implementation of RA 9280. The PRC and PRB were there, together with representatives from DPI, DOP and the Office of the President. Likewise, there were representatives from PhilExport, PUC and PCCT.

Senator Magsaysay opened the meeting with the statement that he knows that the RA 9280 was passed without the proper representation and consultation from all affected parties. He further stated that when deliberations were conducted in one short hearing, the brokers who were there were asked whether other parties or sectors need to be invited to the hearing. They all said that there was no longer any need for others to be there, as only customs brokers would be affected by the law.

Senator Magsaysay continued that later, he found out after the law has been passed that provisions were inserted that were not in his draft bill, and that contrary to the allegations of the brokers who were in the short single public hearing, other sectors, namely business, exporters and importers, as well as customs brokerage corporations were all to be negatively affected by the law without properly hearing their side. In effect, there was no due process accorded to these sectors to be prejudiced by the implementation of the law.

He said that it was for those reasons that he called for the meeting, and in order to find ways and means to head off the harm that would be caused by the strict implementation of the law. He proposed that some provision in the IRR could be included to prevent the following:

1. The loss of jobs and the closure of companies; and
2. The continuation of the current trade processes that enables exporters and importers to ship as well as bring in their goods in the fastest and least costly manner, without having to resort to the hiring of customs brokers.

A representative from the Department of Trade and Industry, Dr. Juliano, concisely emphasized the need for trade facilitation in the export and import sectors in the face of the ever-growing global competition, especially in the coming year when quota restrictions would no longer be available as the world inexorably proceeds towards free trade. Dr. Juliano then advised the PRB that what businesses want is to be able to make the choice on whether or not to hire customs brokers to export or customs clear their shipments.

eno-41-04

He also asked as an example whether the new law would allow two (2) executives from Procter and Gamble to release their own shipments, numbering 10 a month, without having to hire a customs broker? He said that present practice allows said executives to do so, and thus, business would oppose a regulation rammng down their throat the requirement of having to hire a customs broker.

Many suggestions were made, but in the end, the consensus was that the provisions of the law that businesses oppose would be suspended for a period of three (3) years, within which period Congress would amend the law to properly protect all sectors. In the meantime during the three-year period, the status quo would be observed.

The undersigned was requested by the Chairperson of the Professional Regulation Commission, Dr. Alcestis M. Guiang, to submit a proposal on how the transitory provision would be worded.

On December 7, the undersigned faxed and e-mailed to the PRC the PUC proposal on the wording of the transitory provision, as follows:

The implementation of the provisions contained in Section 6, Subsection (b) of Section 16, the 2nd sentence of Section 27, and Section 29, of R. A. 9280 shall be suspended for a period of three (3) years, and during such period, the status quo prior to the passage of the law shall remain in full force and effect.

Likewise, an additional provision to Section 39, Repealing Clause, was also suggested:

It is to understood, however, that in order to avoid conflict of laws and in consonance with the doctrine of harmonization of laws, there shall not be any repeal or amendment by implication of legal provisions of other laws, such as, but not limited to, Section 1201, 1204, 1301, 1504, 1801 and 1904 of the Tariff and Customs Code of the Philippines, Section 12 of Republic Act 7844 or the Export Development Act, Republic Act No. 8792 otherwise known as the Electronic Commerce Act, and R. A. 9135, establishing the Post-Entry Audit System.

Then last September 9, 2004, the PRC called the undersigned to attend the meeting scheduled the next day, December 10, 2004, to discuss the wordings of the transitory provision to be contained in the TRR.

In a meeting lasting more than two (2) hours, with lots of suggestions, proposals, amendments, restatements, objections, and further rewordings, Chairperson Guiang ended the meeting after having written on the whiteboard the following:

"Firms and corporations which have been authorized to engage in customs brokerage under the Tariff and Customs Code of the Philippines shall continue their business, current practices and operations for a period of two (2) years upon approval of these Rules. Thereafter, no firm, company or association shall be licensed to practice the customs brokers profession."

There was no unanimous agreement by the DTI, PhilExport, PMA, CCBI and PRB on the above provision. DTI, PhilExport and PUC wanted three (3) years while PRB and CCBI were thinking of a shorter term, perhaps one (1) year. But evayody just kept their silence at the end of the meeting past noon.

The issue on the non-brokers continuing their work of processing documents at the Bureau of Customs was not discussed, as Chairperson Guiang emphatically announced at the beginning of the meeting that she was only willing to discuss one (1) item on the transitory provision, and that was the issue of customs brokerage corporations.

Likewise, the issue of exporters and their importations doing their own processing was not lengthily taken up, but both the CCBI and PRB committed to join a meeting with the BOC, and support the issuance of a CMO/CAO authorizing the exporters to continue their own documentation for their exports and imports without having to hire customs brokers, as both CCBI and PRB emphatically stated that they agree that current rules and regulations granting to exporters trade facilitation should continue. In other words, CCBI and PRB agree that the status quo should remain for the exports and imports of exporters.

By Atty. Romeo R. Sto. Tomas