



Date **MAR 18 2011**

CUSTOMS MEMORANDUM ORDER
NO. 16-2011

TO : ALL BUREAU OFFICIALS AND EMPLOYEES, CUSTOMS BROKERS, IMPORTERS AND ALL OTHER CONCERNED

SUBJECT : Guidelines in the Implementation and Application of Executive Orders Modifying the Rates of Duty of Certain Imported Articles as Provided for Under the Tariff and Customs Code of 1978, as Amended in Order to Implement the Philippine Schedule of Tariff reduction on Articles Included in Free Trade Agreements such as the ASEAN Trade In Goods Agreement, ASEAN-China Free Trade Agreement; ASEAN-Korea Free Trade Agreement ; ASEAN-Japan Comprehensive Economic Partnership Agreement; ASEAN Australia New Zealand Free Trade Agreement; Japan-Philippines Economic Partnership Agreement; and ASEAN-India Free Trade Agreement.

I. OBJECTIVES

General :

- 1.1. To effectively implement the provision of Executive Orders: Nos. 895; 894; 852; 851; 850; 814; 812; 767; 703; 639; 638; 618; 313; 487 and 485.

Specific:

- 1.2. To prevent unqualified shipments from availing of the preferential rate provided for in the above-cited executive orders.
- 1.3 To facilitate the evaluation process for Preferential Tariff application by providing clear guidelines and evaluation procedures.

II. DEFINITION OF TERMS

- 2.1. FTA- Free Trade Agreement
 ATIGA- Asean Trade In Goods Agreement
 ACFTA – Asean China Free Trade Agreement
 AKFTA- Asean Korea Free Trade Agreement
 AJCEP – Asean Japan Comprehensive Economic Partnership Agreement
 AANZFFTA-Asean Australia New Zealand Free Trade Agreement
 AIFTA-Asean India Free Trade Agreement
 PJEPA-Philippines Japan Economic Partnership Agreement.
- 2.2. Inclusion List means a list containing products that are included for extension of Tariff Preferences under a Free Trade Agreement.

- 2.3. Exclusion List means a list containing products that are excluded for extension of Tariff Preferences under a Free Trade Agreement.
- 2.4. C.O. – Certificate of Origin

III. ADMINISTRATIVE PROVISION

- 3.1. A special unit shall be created in the Formal Entry Division in the Principal Port of entry in every collection district. This special unit shall be called Preferential Rate Unit – FED (PRU-FED). Its function shall be to evaluate in accordance with the guidelines set forth in this Customs Memorandum Order, application of FTA member – countries for availment of tariff rate preferences on products exported by said member –countries to Philippines under a particular Free Trade Agreement.
- 3.2. The PRU – FED Shall be composed of customs personnel who are at least COO II in rank. Its head, as well as the members thereof, shall be designated by the District Collector of Customs.
- 3.3. A Committee, to be called., the FTA Oversight Committee, is also hereby created. It shall be composed of the following:
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|---|----------------|
| 3.3.1. Director, IAS | - Chairman |
| 3.4.2. Deputy Collector for, Assessment, POM | -Vice-Chairman |
| 3.4.3 Deputy Collector for, Assessment, MICP | -Member |
| 3.4.4. Deputy Collector for Assessment, NAIA | -Member |
| 3.4.5. Chief of the Export Coordination Division (Head Secretariat) | -Member |
- 3.4. The FTA Oversight Committee shall perform the following functions:
- 3.4.1 To see to it that the necessary mechanics for the effective implementation of the FTA Preferential Tariff Scheme are immediately put in place.
- 3.4.2. To formulate plans and policies and submit the necessary recommendations to the Commissioner of Customs on how the operations of the FTA Preferential Tariff Scheme may be made more effective and to devise ways preventing the possible abuse of the Tariff rate privileges accorded under it.
- 3.4.3. To coordinate with the private sector in the selective/random verification of the existence of businesses of certain suppliers for purposes of determining the origin of particular articles claiming for preference.

- 3.4.4. To computerized the implementation of the FTA Preferential Tariff Scheme.
- 3.5. The Export Coordination Division, Port Operations Service, Assessment and Operation Group, shall act as the Secretariat of the FTA Oversight Committee.
- 3.5.1. It shall provide administrative support and technical assistance to the Committee.
- 3.5.2. The Head of the Secretariat shall be the Chief of the Export Coordination Division.

IV. OPERATIONAL PROCEDURES

- 4.1. For shipments availing of the preferential rate under a particular FTA, box 36 of the import entry must be marked accordingly and the specific Certificate of Origin Form must be a mandatory supporting document.
- 4.2. As a risk management protocol, all import entries availing of Preferential tariff under an FTA shall be routed to either Yellowlane or Redlane depending on the parameters in the selectivity module.
- 4.3. Procedures in verifying authority of Certificate of origin
- 4.3.1. Upon receipt of the Certificates of Origin, the PRU-FED Officer shall match the signature of the issuing official with specimen\signature submitted.,
- 4.3.2. The official seal\stamp on the C.O. shall also be matched with the sample submitted.
- 4.3.3. Any discrepancy found in the signatures and seal\stamp of the C.O. including the format, shall be subjected to verification with the issuing country.
- 4.4. Procedure in verifying the Certificate of Origin with the issuing country.
- 4.4.1. When there is a reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the products or certain parts thereof, a check with the issuing authority shall be undertaken in the following manner:
- 4.4.1.1. The PRU-FED officer assigned shall prepare an official written request on a customs letterhead addressed to the FTA OVERSIGHT COMMITTEE, specifying the reason\s for the request and any additional information suggesting that the particulars given on the said C.O. maybe inaccurate.
- 4.4.1.2. The written request shall be signed by the PRU-FED officer duly noted by the Deputy Collector for Assessment and shall be accompanied by the original copy and triplicate of the C.O.
- 4.4.1.3. The Deputy Collector for Assessment shall cause the transmittal of the request to the FTA Oversight Committee, Port Area, South Harbor, Manila, which in turn shall make the official verification with the issuing authority

- 4.5. Procedure for Tentative, Grant of Preferential status pending result of verification of the C.O. as provided for in 4.4.
- 4.5.1. Unless there is a prima facie evidence or probable cause that the C.O. is spurious or, the information therein is false or the shipment itself is attendant with violations, the shipment may be granted provisional release: under the terms described in 4.3.3 to 4.3.4.
- 4.5.2. The PRU-FED officer assigned shall determine the difference of the duties and taxes due on the article/s based on the regular rate of duty and the FTA Preferential rate.
- 4.5.3. The PRU-FED officer subject to the approval of the Deputy Collector for Assessment shall require the importer to post a guarantee in the form of either a managers or cashiers check which is equal to the difference in 4.5.2 before release of the shipment.
- 4.5.4. The Cash Division shall hold the check in abeyance until an order to deposit or return the MC, Cash Bond, from the Deputy Collector for Assessment is received.
- 4.6. Procedure in evaluating whether or not to grant FTA Preferential rate:

Upon receipt of the entry from the Formal Entry. The PRU-FED shall verify whether or not the shipment qualifies for the Preferential Tariff treatment based on the following criteria.

- 4.6.1. The article/s indicated in the Certificate of Origin must correspond to article/s imported. The discovery of minor discrepancies or obvious clerical or typographical errors' in the statement made in the certificate of origin and in the other, documents supporting the entry shall not render the application for preferential tariff invalid where it is clear and apparent that the certificate of origin of the article refers to the article/s imported.
- 4.6.2. The imported article/s must be included in the Philippine Inclusion List cited in specific executive order and circularized under particular CMC.
- 4.6.3. The imported article/s must be included in the Product and Tariff Reduction Schedule of the applying FTA member country. If the article/s is in the Product and tariff Reduction Schedule of the applicant member country and the rate of duty is 20% and below, the tariff rate preference shall be allowed the rate of duty is more than 20%, the application for tariff rate preference shall not be allowed.,
- 4.7. The PRU-FED after having determined that the criteria mentioned above have been met, shall verify whether the imported article had complied with the origin criteria of the rules of origin of a particular Free Trade Agreement, before granting the preferential rate of duty under said FTA.

4.8. The Deputy Collector for Assessment, upon receipt of the entry with an FTA Preferential Tariff application from the Chief, Formal Entry Division shall approve/disapprove the entry for which tariff preferential treatment is applied, based on the evaluation made by the PRU-FED and the recommendation, whether for approval or disapproval, if in his well considered opinion an error or omission of a material fact had been made in the evaluation of a shipment, which otherwise would have resulted in the different recommendation.

The Deputy Collector for Assessment shall then forward the entry to the Chief, Cash Division.

4.9. The Chief, FED shall submit a monthly report in two copies of all transactions under the FTA Preferential Scheme (thru the Port Deputy Collector for Assessment) to the Chairman, FTA Oversight Committee, with the following data: Tariff Heading, Description of Article/s, Country of Exportation, Origin Criteria and FOB Value. One copy of which shall be furnish the Chief, Export Coordination Division, Port Operations Service, Assessment & Operations Coordination Group who will then prepare a consolidated report for transmittal to the Director, Bureau of International Trade Relations (BITR), Department of Trade & Industry.

4.10. Procedure for handling protested cases.

4.11.1. In all cases wherein the importer is not amenable to a decision, the PRU-FED officer shall elevate the matter to the Deputy Collector for Assessment.

4.12.2. The Deputy Collector for Assessment upon receipt of the protest shall endeavor to resolve the case immediately. However, if the importer is not satisfied with the decision of the Deputy Collector, he/she shall make a protest in writing indicating therein the reason/s for the protest.

4.12.3. Upon receipt of a writing protest, the case shall be heard by the Deputy Collector in the presence of the importer or his/her duly authorized representative and PRU-FED officer assigned who shall be guided by the terms, of the Free Trade Agreement. In cases of protest over classification of a particular item, the Deputy Collector may seek the assistance of the Tariff Commission.

4.12.4. The decision of the Deputy Collector shall be summary in nature. The case may be elevated to the District Collector under a regular protest case.

5. OTHER PROVISIONS

In the event that any subsequent changes are made in the basic Philippine rate of duty to a rate lower than the FTA rate, such article shall be automatically accorded the corresponding reduced rate of duty.

5.1 **Settlement of Disputes**

All disputes concerning the FTA Preferential Tariff Scheme such as those in 4.4 and 4.5 shall be resolved by the Deputy Collector for Assessment within 60 days from date of approval of tentative release, subject to the approval of the District Collector. The assistance of the Tariff Commission may be sought for the ruling on tariff classification issues.

5.2. The Collection Service of each Port shall put up an accounting and monitoring system to insure that there will be no stale checks put up pursuant to 4.5.

6. **REPEALING CLAUSES**

All Customs Memorandum Orders, rules and regulations or part thereof inconsistent with this order are hereby repealed, modified or superseded accordingly.

7. **This Order shall take effect immediately.**


ANGELITO A. ALVAREZ
Commissioner
 BUREAU OF CUSTOMS AND EXCISE
ANGELITO A. ALVAREZ
Commissioner

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