



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

CUSTOMS ADMINISTRATIVE ORDER (CAO)
NO. DI-2019

SUBJECT: POST CLEARANCE AUDIT AND PRIOR DISCLOSURE PROGRAM

Introduction. This Order implements (a) the post clearance audit functions of the Bureau, found in Sections 1000 to 1006, Title X; and (b) other related provisions of Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA).

Section 1. Scope. This Order covers:

- 1.1. The post clearance audit of all records required to be kept by all Importers, beneficial or true owners of imported goods, Customs Brokers, agents and Locators as provided for in Section 1003 (a), (b), and (c), Title X of the CMTA; and
- 1.2. The Prior Disclosure Program (PDP) as a compliance and revenue measure.

Section 2. Objectives.

- 2.1. To prescribe the principles, purposes and methodology of the post clearance audit system, recordkeeping requirement and the period covered by the conduct of audit;
- 2.2. To provide guidance for record-keeping, document retention and other legal obligations of Importers and other customs stakeholders and the adverse consequences of non-compliance with customs rules and regulations;
- 2.3. To facilitate trade by strengthening customs controls from the border to the back-end of the cargo clearance process under a regime of informed compliance;
- 2.4. To promote compliance with customs laws and regulations by providing a non-punitive facility for Importers to voluntarily disclose or report to customs authorities the errors in goods declarations and in the payment of duties, taxes and other charges;

- 2.5. To provide a clear set of policies and guidelines in the application and availment of the PDP; and
- 2.6. To generate additional customs revenues with least administrative cost to both the government and the Importer.

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

- 3.1. **Customs Broker** – shall refer to any person who is a *bona fide* holder of a valid Certificate of Registration or Professional Identification Card issued by the Professional Regulatory Board and Professional Regulation Commission pursuant to Republic Act No. 9280, as amended, otherwise known as the "Customs Brokers Act of 2004"¹.
- 3.2. **Customs Clearance** – shall refer to the completion of customs and other government formalities necessary to allow goods to enter for consumption, warehousing, transit or transshipment, or to be exported or placed under another customs procedure under the following Customs regimes:²
 - 3.2.1. **Customs Clearance for Consumption Entries** – shall refer to the procedure of making the final payment of duties and taxes and other charges at the port of entry and the legal permit for withdrawal has been granted.³
 - 3.2.2. **Customs Clearance for Warehousing Entries** – shall refer to the procedure of filing of goods declaration and the duties and taxes has been secured to be paid at the point of entry and the legal permit for withdrawal has been granted.⁴
 - 3.2.3. **Customs Clearance for Transit Entries** – shall refer to the customs procedure under which goods, in its original form, are given permit to be transported under customs control from one customs office to another, or to a free zone.⁵
 - 3.2.4. **Customs Clearance for Transshipment Entries** – shall refer to the customs procedure under which goods are given permit to be transferred under customs control from the importing means of transport to the exporting means of transport within the area of one customs office, which is the office of both importation and exportation.⁶

¹ cf. CMTA, Title I, Chapter 2, Section 102 (n).

² cf. CMTA, Title I, Chapter 2, Section 102 (k).

³ cf. CMTA, Title I, Chapter 2, Section 103 (a).

⁴ cf. CMTA, Title I, Chapter 2, Section 103 (a).

⁵ cf. CMTA, Title I, Chapter 2, Section 102 (rr).

⁶ cf. CMTA, Title I, Chapter 2, Section 102 (ss).

3.3. Fraud – shall refer to the commission or omission of any act resulting in material false statements such as, but not limited to, the submission of false or altered documents in connection with any importation knowingly, voluntarily and intentionally done to reduce the taxes and duties paid or to avoid compliance with government regulations related to the entry of Regulated⁷, Prohibited⁸ or Restricted⁹ goods into Philippine customs territory through Misdeclaration, Misclassification or Undervaluation.¹⁰

3.4. Free Zones – shall refer to special economic zones registered with the Philippine Economic Zone Authority (PEZA) under Republic Act No. 7916, as amended, duly chartered or legislated special economic zones and freeports such as Clark Freeport Zone; Poro Point Freeport Zone; John Hay Special Economic Zone and Subic Bay Freeport Zone under Republic Act No. 7227, as amended by Republic Act No. 9400; the Aurora Special Economic Zone under Republic Act No. 9490, as amended; the Cagayan Special Economic Zone and Freeport under Republic Act No. 7922; the Zamboanga City Special Economic Zone under Republic Act No. 7903; the Freeport Area of Bataan under Republic Act No. 9728; and such other freeports as established or may be created by law.¹¹

3.5. Importer – shall refer to the following:

3.5.1. Importer-of-record or consignee, owner or declarant, or a party who:

- a. imports goods into the Philippines or withdraws admitted goods from the Free Zones into the customs territory for consumption or warehousing; files a claim for refund or drawback; or transports or stores such goods carried or held under security; or
- b. knowingly causes the importation or transportation or storage of imported goods referred to above, or the filing of refund or drawback claim.

⁷ cf. CMTA, Title I, Chapter 3, Section 117.

⁸ cf. CMTA, Title I, Chapter 3, Section 118.

⁹ cf. CMTA, Title I, Chapter 3, Section 119.

¹⁰ cf. CMTA, Title X, Section 1005 (b).

¹¹ CMTA, Title II, Chapter 2, Section 102 (w).

3.5.2. A person ordering imported goods from a local importer or supplier in a domestic transaction if:¹²

- a. the person placing the order controls the material terms and conditions of the importation;
- b. the person placing the order and the Importer or supplier are related in such a way that the former may be considered as the beneficial or true owner of the imported goods, as may be exemplified by the following circumstances:
 - i. the person placing the order is the sole buyer of the goods imported by the Importer-of-record;
 - ii. the Importer-of-record is an affiliate of the juridical entity which placed the order; or
 - iii. the Importer-of-record and the entity which placed the order are owned by the same set of majority stockholders, whether nominal or beneficial, in both corporations;
- c. the person or entity placing the order furnished the Importer or the exporter with technical data, molds, equipment, other production assistance, material, components, or parts with knowledge that these will be used in the manufacture or production of imported goods or the goods to be imported.

3.5.3. A person whose activities require the filing of a goods declaration;¹³ or

3.5.4. An agent of the Importer as described in Section 3.5.1. of this CAO.¹⁴

3.6. Inadvertent Error – shall refer to a mechanical, electronic or clerical error committed unintentionally by the Importer and occurred notwithstanding the maintenance of internal controls necessary to avoid such errors.¹⁵ Inadvertent Error as used in this CAO amounts to simple Negligence.

¹² cf. CMTA, Title X, Chapter 2, Section 1003.

¹³ cf. CMTA, Title X, Section 1003.

¹⁴ cf. CMTA, Title X, Section 1003.

¹⁵ cf. U.S.C.S. Appx 12 CFR § 202.2 and CMTA, Title X, Chapter 2, Sections 1002 and 1005 (a).

- 3.7. Locators** – shall refer to persons authorized to bring imported goods into Free Zones, such as the special economic zones and free ports.¹⁶
- 3.8. Misclassification** – shall refer to the use of insufficient or wrong description of the goods or the use of erroneous tariff headings resulting in deficiency between the duty and tax that should have been paid and the duty and tax actually paid and/or to avoid compliance with government regulations related to the entry of Regulated, Prohibited or Restricted goods into Philippine Customs territory.¹⁷
- 3.9. Misdeclaration** – shall refer to a false, untruthful, erroneous or inaccurate declaration as to quantity, quality, description, weight or measurement of the goods resulting in deficiency between the duty and tax that should have been paid and the duty and tax actually paid and/or to avoid compliance with government regulations related to the entry of Regulated, Prohibited or Restricted goods into Philippine customs territory.¹⁸
- 3.10. Negligence** – shall refer to failure to exercise reasonable care and competence, through act or acts of omission or commission, in ensuring that a statement made is correct resulting in a deficiency in taxes and duties paid.¹⁹
- 3.11. Principal Place of Business** – shall refer to the headquarters that holds the senior executive of a firm and is usually the center from where other locations are controlled.²⁰ It likewise refers to the place where a corporation's officers direct, control and coordinate the corporation's activities²¹ and where the books and records are kept.²²
- 3.12. Prior Disclosure Program** – shall refer to a program based on international best customs practice, authorizing the Commissioner of Customs to accept, as a potential mitigating factor, prior disclosure by Importers of errors and omissions in goods declaration resulting in deficiency in duties and taxes on past importations.²³ It may also include disclosures on royalties and other proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

¹⁶ cf. CMTA, Title X, Section 1003 (c).

¹⁷ cf. CMTA, Title XIV, Chapter 1, Section 1400.

¹⁸ cf. CMTA, Title XIV, Chapter 1, Section 1400.

¹⁹ cf. CMTA, Title X, Section 1005 (a).

²⁰ Black's Law Dictionary.

²¹ "U.S. Supreme Court Defines "Principal Place of Business" For Diversity Jurisdiction" Bland. February 23, 2010. Accessed June 05, 2017. <http://www.robinskaplan.com/resources/articles/u-s-supreme-court-defines-principal-place-of-business-for-diversity-jurisdiction>.

²² "Principal Place of Business Law and Legal Definition." US Legal Inc. Accessed June 05, 2017. <https://definitions.uslegal.com/p/principal-place-of-business/>.

²³ cf. U.S. Customs 1592 and WTO Agreement on Trade Facilitation Article 6: 3.6.



3.13. Post Clearance Audit Group (PCAG) – shall refer to an office created under Executive Order No. 160 s. 2003, as amended by Executive Order No. 46, s. 2017, mandated to conduct audit of importers, locators, and all parties engaged in customs clearance and processing.

3.14. Reconsideration of Audit Findings – shall refer to a plea for the re-evaluation of the audit findings on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.²⁴

3.15. Reinvestigation of Audit Findings – shall refer to a plea for the re-evaluation of the audit findings on the basis of newly discovered or additional evidence intended to be presented in the reinvestigation. It may also involve a question of fact or of law or both.²⁵

3.16. Undervaluation – shall refer to situation when the declared value fails to disclose in full the price actually paid or payable or any dutiable adjustment to the price actually paid or payable, or when an incorrect valuation method is used or the valuation rules are not properly observed, resulting in a discrepancy in duty and tax to be paid between what is legally determined as the correct value against the declared value.²⁶

Section 4. Requirement to Keep Records.

4.1. Audit and Examination of Records.

4.1.1. Within three (3) years from the date of final payment of duties and taxes or Customs Clearance, as the case may be, the Bureau may conduct an audit examination, inspection, verification, and investigation of records pertaining to any goods declaration, which shall include statements, declarations, documents and electronically generated or machine readable data, for the purpose of ascertaining the correctness of the goods declaration and determining the liability of the Importer for duties, taxes and other charges, including any fine or penalty.²⁷

4.1.2. Period of Limitation. In the absence of fraud and when the goods have been finally assessed and released, the assessment shall be conclusive upon all parties three (3) years

²⁴ cf. RR No. 18-2013, Section 3.1.4.i.

²⁵ cf. RR No. 18-2013, Section 3.1.4.ii.

²⁶ CMTA, Title XIV, Chapter 1, Section 1400.

²⁷ CMTA, Title X, Section 1000.

from the date of final payment of duties and taxes, or upon completion of the post clearance audit.²⁸

4.2. Entities Required to Maintain and Keep Records.²⁹

4.2.1. Importers – All Importers, including those mentioned in the definition of Importers insofar as the application of post clearance audit and Section 1005, Title X of the CMTA are concerned, are required to maintain and keep all records of their importations, books of accounts, business and computer systems and all customs commercial data including payment records.

4.2.2. Customs Brokers and Other Parties – All Customs Brokers and other parties engaged in Customs Clearance and processing are required to keep manual and/or electronic copies of the records covering transactions that they handle.³⁰ Should electronic copies of records be maintained, the recordkeeping must be compliant with the applicable laws, rules and regulations on electronic data.

4.2.3. Locators – Locators are required to keep records of all transactions and activities relating to the admission and withdrawal of goods from the Free Zones into the customs territory.³¹

4.3. Purposes of Keeping Records. The records shall be kept for the following purposes:

4.3.1. To confirm the truthfulness and accuracy of the goods declaration and the transaction value of the imported goods;

4.3.2. To check the adequacy and integrity of the manual or electronic system or systems by which the required records are filed, maintained and stored, whether specific transaction-based or account-based;

4.3.3. To determine the level of compliance of Importers, Customs Brokers, Locators, and other parties required to keep records herein with laws and regulations which are enforced by the Bureau whether or not such regulations were issued by the Bureau; and

4.3.4. To serve as basis for the imposition of sanctions for non-

²⁸ CMTA, Title IV, Chapter 3, Section 430.

²⁹ cf. CMTA, Title X, Section 1003.

³⁰ cf. CMTA, Title I, Chapter 2, Section 109.

³¹ cf. CMTA, Title X, Section 1003 (c).

compliance on recordkeeping and non-compliance of regulatory obligations of the Importer and other entities required to keep records, subject to applicable laws, rules and regulations.

- 4.4. Period and Place to Keep Records.** Importers, as defined herein and in Section 1003 of the CMTA, are required to keep all records pertaining to the ordinary course of business and to any activity or information contained in the records required by this CAO and by the CMTA at their Principal Place of Business for a period of three (3) years from the date of final payment of duties and taxes or Customs Clearance, whichever is later, as the case may be.³²

All parties engaged in Customs Clearance and processing as well as locators or persons authorized to bring imported goods into Free Zones are required to keep records related to such Customs Clearance and processing at their Principal Place of Business for a period of three (3) years from the date of filing of the goods declaration.³³

- 4.5. Records Required to be Kept.** The following records, or their equivalent document, are required to be kept for the purpose of post clearance audit:³⁴

4.5.1. Documentation on the entity organization and structure, which includes:

- a. Articles of incorporation, articles of partnership, registration certificate with the Department of Trade and Industry and the like;
- b. List of incorporators, stockholders, partners, board of directors and owners;
- c. Organizational structure;
- d. Management and key personnel involved in import processing including authorized declarants and their specimen signatures;
- e. Capital composition;
- f. Stock and transfer book;
- g. General Information Sheet;
- h. Information on the Parent Company, subsidiaries and affiliates and their capital composition;
- i. List of exporters/suppliers and nature of relationship with Importer pursuant to Section 701 (c), Chapter 1, Title VII of the CMTA;

³² CMTA, Title X, Section 1003 (a).

³³ CMTA, Title X, Section 1003 (b) & (c).

³⁴ cf. CAO No. 4-2004, Section IV.A.2.

- j.** Audited financial statements and tax returns for income tax, withholding tax, value added taxes, excise taxes, documentary stamp tax and capital gains tax;
- k.** General contracts and agreements with regular or principal suppliers;
- l.** Company profile/history and description of operations;
- m.** Relevant Board Resolutions; and
- n.** Permits and licenses.

4.5.2. Documentation on orders and purchases, which includes:

- a.** Sales and other related agreements, in whatever form, including those covering distribution, royalty, agency, warranty, terms of payment and the like;
- b.** Correspondence or communication relating to the import transaction, in whatever form, including purchase orders, vouchers, confirmations, pro-forma invoices, acknowledgement receipts, notices, advisories and the like; and
- c.** Product description or specifications, such as brochures, manuals, catalogues, pamphlets, fliers, literatures.

4.5.3. Documentation on shipping, importation, exportation and transport, which includes:

- a.** Goods declarations and proofs of payment of duties and taxes;
- b.** Commercial invoices, non-commercial invoices, and/or consignment agreements;
- c.** Import and/or export licenses or permits;
- d.** Bills of lading, master air waybills, house air waybills, and/or consolidator bills of lading;
- e.** Shipping instructions and/or freight forwarders instructions;
- f.** Certificates of origin, certificates of eligibility, certificates of inspection and loading and/or certificates of identification;
- g.** Freight and insurance contracts;
- h.** Packing lists;
- i.** Transshipment permits, boat notes and/or special permits to transfer goods from one customs territory to another or from one vessel to another;
- j.** Quota allocation and/or certificates;
- k.** Customs brokerage, logistics or freight forwarding agreements, billings, statements of accounts and/or receipts;
- l.** Receipts for arrastre charges, cargo handling and storage fees;



- m.** Short shipped and/or bad order reports;
- n.** Goods tally records or its equivalent;
- o.** Letters of credit and applications for letter of credit;
- p.** Offshore monetary transactions or remittance advice;
- q.** Credit card transactions;
- r.** Telegraphic money transfers;
- s.** Evidence of payments by any other means, including information detailing non-cash compensation transactions;
- t.** Permit to operate Customs Bonded Warehouses, Customs Facilities and Warehouses and Free Zones;
- u.** Formula of conversion/manufacturing;
- v.** List of monthly importable materials/quota;
- w.** List of imported purchases;
- x.** Summary of export/local sales;
- y.** Summary of liquidated and unliquidated entries;
- z.** List of sub-contractors;
- aa.** List of inventory;
- bb.** Production report; and
- cc.** Evidence of incentives enjoyed by the Board of Investments registered Importers and Free Zone Locators.

4.5.4. Documentation on manufacturing, stock and resale, which includes:

- a.** Inward goods register/receipts journal;
- b.** Stock register/inventory record;
- c.** Production record;
- d.** Costing record;
- e.** Purchases book; and
- f.** Sales book.

4.5.5. Financial documents such as financial statements and other accounting information, which include:

- a.** Cash receipts and disbursements books;
- b.** Subsidiary ledgers of accounts payable and accounts receivable;
- c.** Check records; and
- d.** Bank reconciliation records.

4.5.6. Charts and codes of accounts, general and subsidiary ledgers, general journal, accounting instruction manuals, and systems and program documentation that describes the accounting system used by the Importer; and



4.5.7. Whenever applicable, information or records as described in Sections 4.5.1. to 4.5.6. of this Order that are electronically recorded or stored.³⁵

Section 5. Post Clearance Audit.

5.1. Composition of PCAG.³⁶ The PCAG is headed by an Assistant Commissioner who shall exercise direct supervision and control in the management of the following operating units of PCAG:

- a. Trade Information and Risk Analysis Office (PCAG-TIRAO); and
- b. Compliance Assessment Office (PCAG-CAO).

PCAG-TIRAO and PCAG-CAO shall each be headed by a Director.

5.2. Authority of the Commissioner to Reorganize PCAG.³⁷ The Commissioner, with the approval of the Secretary of Finance, is hereby authorized to determine the number of personnel requirements of PCAG and issue the necessary order to reassign the required organic personnel of BOC to the Group.

Subject to the principles of economy, efficiency and effectiveness, the Commissioner is likewise authorized to further recommend necessary changes to the personnel and staffing pattern of the PCAG and, with the approval of the Secretary of Finance, submit the same for evaluation of the Department of Budget and Management (DBM).

5.3. Functions of PCAG.³⁸ The PCAG is mandated to conduct, within three (3) years from the date of final payment of duties and taxes or customs clearance, an audit examination, inspection, verification, and investigation of records pertaining to any goods declaration, which shall include statements, declarations, documents and electronically generated or machine readable data, for the purpose of ascertaining the correctness of the goods declaration and determining the liability of the importer for duties, taxes and other charges, including any fine or penalty.

The PCAG-TIRAO shall perform the following functions:

- a. Review available trade data to determine compliance markers of industry (or other means of data groupings) and set benchmarks for the purpose of developing an audit program for the Commissioner's approval;

³⁵ cf. CMTA, Title I, Chapter 2, Section 109.

³⁶ Executive Order No. 46, Series 2017, Section 3.

³⁷ cf. Executive Order No. 46, Series 2017, Section 2.

³⁸ Executive Order No. 46, Series 2017, Section 3.

- b. In coordination with the Management Information System and Technology Group (MISTG), develop a computer-aided risk-based management system, the parameters of which are to be based on objective and quantifiable data, subject to the approval of the Secretary of Finance upon recommendation of the Commissioner, for use in the profiling and identification of potential priority audit candidates based on the approved audit program;
- c. Recommend for approval of the Commissioner of Customs the potential priority audit candidates;
- d. Develop policies, guidelines, manuals and standard operating procedures relating to the audit process; and
- e. Perform such other functions as may be necessary or incidental in carrying into effect the provisions of this Order, and as may be provided by law.

The PCAG-CAO shall perform the following functions:

- a. Prepare the audit work plan, scope and approach for the approved priority audit candidates;
- b. Conduct the audit examination, inspection, verification or investigation of records subject to applicable laws, approved policies, guidelines, manuals and standard operating procedures;
- c. Prepare and submit the required reports on audit findings and recommendations to the Commissioner of Customs for approval;
- d. Establish and maintain a customs compliance program; and
- e. Perform such other functions as may be necessary or incidental in carrying into effect the provisions of this Order, and as may be provided by law.

5.4. Scope of Audit. The Bureau shall develop a computer-aided risk-based management system, the parameters of which are to be based on objective and quantifiable data to be approved by the Secretary of Finance upon recommendation of the Commissioner of Customs.

5.4.1. Post clearance audit of Importers shall be undertaken when firms are selected based on any but not limited to the following criteria:³⁹

- a. Relative magnitude of customs revenue to be generated from the firm;
- b. The rates of duties of the firm's imports;
- c. The compliance track records of the firm;
- d. An assessment of the risk to revenue of the firm's import activities;⁴⁰
- e. The compliance level of a trade sector; and

³⁹ cf. CMTA, Title X, Section 1001.

⁴⁰ cf. CMTA, Title X, Section 1001.



f. Non-renewal of an Importer's customs accreditation.

5.4.2. Customs Brokers and Importer's duly authorized agents may be audited to validate information provided by their Importer clients and fill information gaps revealed during the audit.⁴¹

5.4.3. The Commissioner may authorize the conduct of compliance audit of importers, locators, specific group of importers or other parties engaged in the customs clearance process as he may deem necessary.

For this purpose, the Management Information System and Technology Group (MISTG) in coordination with the PCAG - TIRAO shall develop the computer-aided risk-based management system to facilitate the risk assessment and conduct of audit. The PCAG shall gather data or information from other offices and organizations to set the risk parameters for audit.

5.5. Conduct of Post Clearance Audit.⁴²

5.5.1. The PCAG shall prepare a set of post clearance audit procedures, for approval by the Commissioner, to strictly govern the audit to achieve the highest level of objectivity, fairness, efficiency, and transparency. The guidelines shall include the following procedural/operational concerns:

a. Profiling/Information Analysis – PCAG - TIRAO shall perform risk profiling analysis activities on the Importers. This includes data gathering and evaluation of import and export operations.

b. Audit Notification – The Commissioner shall issue an Audit Notification Letter (ANL) to the company identified for audit. The ANL shall contain the name or names of the authorized customs personnel from PCAG - CAO to perform post clearance audit. It shall be valid for thirty (30) calendar days from the date of issuance, subject to revalidation by the Assistant Commissioner for another thirty (30) days prior to its expiry, and must be served to the Importer through any of the following modes of service: (1) by personal service at the principal place of business; (2) by registered mail; or (3) through electronic notice sent to the registered official electronic mail address during its validity. Failure to serve ANL within the period

⁴¹ cf. CAO No. 4-2004, Section IV.C.2.

⁴² cf. CAO No. 4-2004, Section IV.D.



without proper justification shall make the Customs personnel in charge administratively liable.

- c. **Audit Plan** – The audit team shall prepare an audit plan to fit the circumstances of the audited company and meet the specific audit objectives in the most expeditious and transparent manner.
- d. **Conduct of Audit Proper** – The audit team shall commence the audit proper not later than sixty (60) calendar days from the service of the ANL. In case the Importer manifests his intention to avail of the PDP, the conduct of the audit proper shall be deferred subject to the provisions of Section 6.1.2 of this Order.

The audit proper shall take place when the audit team actually conducts examination, inspection, verification and investigation of accounting and financial records and goods declaration and other records being kept and maintained by the Importer. The audit team may require the presentation of the original of the certified true copies of documents submitted for verification of its authenticity.

A copy of any document certified by or on behalf of the Importer is admissible in evidence in all courts as if it were the original copy.⁴³

The audit shall be completed within one hundred twenty (120) calendar days per year of audit period from the date the Importer receives the ANL. For this purpose, the audit is considered completed when the Final Audit Report (FAR) with Demand Letter, or Post Clearance Audit Group - Clean Report of Findings (PCAG-CRF) has been submitted by the audit team, endorsed by the Assistant Commissioner and subsequently approved by the Commissioner.⁴⁴

The issuance of the PCAG-CRF shall be deemed as proof that the importer or entity subject of audit has been found to have no deficiency in duties, taxes and other charges and that the importer is compliant with its obligation to keep records as required by law.

If the audit team would be unable to submit the FAR within the required period, a status report must be submitted to the Commissioner through the Assistant Commissioner not

⁴³ CMTA, Title X, Chapter 2, Section 1002, 2nd Par

⁴⁴ cf. BIR Revenue Memorandum Order No. 19-2015.



later than five (5) calendar days prior to expiration of the said period giving the reasons for the non-completion of the audit and the proposed period to complete the audit not exceeding thirty (30) calendar days.

- e. **Service of Demand Letter for Payment of Deficiency.** Within five (5) calendar days from receipt of the Demand Letter signed by the Commissioner, the PCAG shall send the same to the Importer through any of the following modes of service: (1) by personal service at the principal place of business; (2) by registered mail; or (3) through electronic notice sent to the registered official electronic mail address with a demand to pay not later than fifteen (15) calendar days from receipt.
- f. **Reconsideration or Reinvestigation on Audit Findings.** The Importer adversely affected by the deficiency assessment issued by the PCAG and approved by the Commissioner may file a request for reconsideration or reinvestigation to the Commissioner within fifteen (15) days from receipt of the Demand Letter.

For requests for reinvestigation, the Importer shall submit all relevant supporting documents in support thereof within thirty (30) days from the date of filing, otherwise, the request shall be denied. The Bureau, through the PCAG, shall have sixty (60) calendar days from submission of complete documents to resolve the request.

- g. **Acknowledgement Letter.** Upon payment of the amount demanded, the Bureau shall immediately issue without a need for request from the Importer, a letter acknowledging receipt of the payment made by the Importer and with a statement that the audit is completed.
- h. **Reporting to DOF and BIR.** The Bureau shall furnish the DOF and the BIR a copy of the final audit results within thirty (30) calendar days from the issuance thereof including the amount paid by the Importer.⁴⁵

In addition, the Bureau shall provide a quarterly status report to the DOF of all ANL's issued and audits conducted.



⁴⁵ cf. CMTA, Title X, Chapter 2, Section 1006.

5.5.2. Nothing in this section shall be construed as restricting or calling into question the right of the Bureau, through the PCAG, to satisfy itself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes, and as may be necessary for the purpose of collecting the proper duties and taxes, and to determine compliance with the government rules and regulations.

5.6. Access to Records.⁴⁶

5.6.1. The Importer shall give to the Bureau personnel authorized to conduct the audit full and free access to the premises where the records are kept, or provide full and free access to a cloud based data-room, or a private server, or other devices, to conduct the audit. This may include access to records showing the Importer's:

- a. Document flow;
- b. Financial flow;
- c. Goods inventory; and
- d. Other business processes necessary or relevant in determining:
 - i. The adequacy and integrity of the manual or electronic system or systems by which such records are created and stored; and
 - ii. Compliance with laws, rules and regulations, particularly in relation to customs valuation, tariff classification, country of origin and compliance with regulatory requirements, with the end in view of collecting the proper duties and taxes.

Customs Brokers and the Importer's duly authorized agents acting on behalf of the Importer at any stage of the Customs Clearance process are likewise required to give authorized Bureau personnel under PCAG full and free access to records covering transactions for purposes of validation and to fill information gaps revealed during the audit of their Importer clients.

In addition, the authorized customs officer may require the Importer and Customs Broker to submit certified copies of any such documents or extracts thereof.



⁴⁶ cf. CMTA, Title X, Chapter 2, Section 1002.

5.6.2. The customs officer shall present written evidence of his authority. The person in charge of the premises must provide the officer with all reasonable facilities and assistance for the effective exercise of the officer's authority under this section.

5.7. Documents Written in a Foreign Language. Where a document in a foreign language is presented to a customs officer in relation to the carrying out of any duty or the exercise of any power of the Bureau of Customs, said document must be accompanied with a translation in English, certified correct under oath by a translator accredited by the Department of Foreign Affairs or by the relevant foreign embassy, or consular office.⁴⁷

5.8. Power of the Commissioner to Obtain Information and Issue Summons.⁴⁸ For the effective implementation of the post clearance audit functions of the Bureau, the Commissioner is hereby authorized to:

5.8.1. Obtain on a regular basis from any person, in addition to the person who is the subject of a post clearance audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the BSP and GOCCs, any information such as costs and volume of production, receipts or sales and gross income of taxpayers, and the names, addresses, and financial statements of corporations, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures or consortia and registered partnerships and their members, whose business operations or activities are directly or indirectly involved in the importation or exportation of imported goods or products manufactured from imported component materials;

5.8.2. Summon the person liable for duties and taxes or required to file goods declaration, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for duties and taxes, or any other person, to appear before the Commissioner or the duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;

5.8.3. Take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; or

⁴⁷ cf. CAO No. 4-2004, Section IV.A.5.

⁴⁸ CMTA, Title 10, Section 1004.



- 5.8.4.** Obtain information from banks or other financial institutions on commercial documents and records pertaining specifically to payments relevant to import transaction.

The provisions of the foregoing paragraphs notwithstanding, nothing in this section shall be construed as granting the Commissioner the authority to inquire into bank deposits of persons or entities mentioned in this Order.

Section 6. Prior Disclosure Program.

6.1. Who May Avail of the Prior Disclosure Program.

- 6.1.1.** Any Importer without waiting for the issuance of an ANL, may avail of the PDP by:

- a.** Submitting the duly accomplished application form prescribed by the Bureau for prior disclosure stating the errors in goods declaration; and
- b.** Tendering payment of the deficiency duties, taxes and penalties⁴⁹, if applicable.

- 6.1.2.** Any Importer who has received an ANL may still avail of the PDP by submitting the duly accomplished application form prescribed by the Bureau for prior disclosure stating the errors in goods declaration and tendering payment of the deficiency duties, taxes and penalties within a period of ninety (90) calendar days from the receipt of the ANL.

The Importer may amend the PDP application and pay additional deficiency duties, taxes and penalties within an additional non-extendible period of thirty (30) calendar days from the filing of the PDP application form, should there be any adjustments to the original application or new issues discovered that need to be disclosed.

- 6.2. Exclusions from the PDP.** The following shall not be qualified for the PDP:

- 6.2.1.** Goods declarations which are the subject of pending cases with any other Customs office;



⁴⁹ cf. 19 U.S. Customs 1592.

6.2.2. Goods declaration which are covered by cases already filed and pending in courts; and

6.2.3. Goods declarations involving Fraud as defined under Section 10.3.2. of this Order.

6.3. Effects of PDP. Instead of the penalties provided in Section 10.3.1, the following penalties shall be imposed on approved applications for PDP in conformity with Section 104 and 108 of the CMTA:

6.3.1. For a PDP applicant who has not yet received an ANL, payment of the deficiency in duties and taxes due plus legal interest as provided in Section 7.;

6.3.2. For a PDP applicant who has received an ANL and availed of the program pursuant to Section 6.1.2, payment of the deficiency in duties and taxes due plus a penalty of ten percent (10%) of the basic deficiency and legal interest as provided in Section 7.; or

6.3.3. For a PDP applicant who has made disclosures on royalties and other proceeds of any subsequent resale, disposal, or use of the imported goods that accrues directly or indirectly to the seller, or on any subsequent adjustment to the price paid or payable, payment of the deficiency in duties and taxes due without penalty and interest, provided that the applicant files for PDP within thirty (30) calendar days from the date of payment or accrual of subsequent proceeds to the seller, directly or indirectly, or from the date the adjustment to the price paid or payable is made. Upon failure to pay within thirty (30) calendar days, the disclosure shall be subject to Section 6.3.1. or 6.3.2. of this Order.

6.4. Verification and Action on the Application for PDP.⁵⁰

6.4.1. The PCAG shall verify the completeness of the PDP application form including payment made and other supporting documents. Failure to comply with the necessary documentation shall result in the non-acceptance or disapproval of the application.

6.4.2. The audit team shall then verify the accuracy of the deficiency duties and tax computation and determine if all errors are fully disclosed. The verification and approval or denial of the PDP application shall be completed within the

⁵⁰ cf. CAO 5-2007, Section VI.



period of ninety (90) calendar days from the submission of the complete PDP documents.

- 6.4.3. In relation to the specific goods declaration subject of the prior disclosure application, when there are findings of Fraud or when there are other material inaccuracies, mistakes or errors in the goods declaration or outright violations committed that are not the subject of the disclosure but has an adverse impact on government revenues, PCAG shall recommend to the Commissioner the conduct of a formal and full audit.
- 6.4.4. In all cases, the tender of payment shall be accepted by the Bureau to be applied to the deficiencies in duties and taxes including penalties, interest, fine, or surcharge as voluntarily disclosed regardless of whether the prior disclosure application is approved or denied by the Commissioner. Any request for a waiver of penalties, interest, fine, or surcharge made by the importer shall be subject to the final approval of the Secretary of Finance.⁵¹

Section 7. Interest on Deficiency Duties, Taxes and Other Charges Plus Fine or Penalty. An interest of twenty percent (20%) per annum, counted from the date of final assessment as provided under Section 429 of the CMTA shall be imposed on:

- 7.1. Prior Disclosure Program availment;
- 7.2. Deficiency duties, taxes and other charges; and
- 7.3. Fine or penalty, if any.⁵²

Section 8. Remedies of the Importer. When the request for reconsideration or reinvestigation is denied by the Commissioner as provided in Section 5.5.1.f., in whole or in part, the Importer may appeal such denial to the Court of Tax Appeals (CTA) within thirty (30) days from receipt of the adverse ruling or decision of the Commissioner.⁵³

Section 9. Remedies of the Bureau.⁵⁴ The remedies of the Bureau for the collection of import duties, taxes, fees, or charges resulting from the conduct of a post clearance audit shall be obtained by:

- 9.1. Distraint of goods, chattels or effects and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property.

⁵¹ CMTA, Title XI, Chapter 7, Section 1131.

⁵² cf. CMTA, Title I, Chapter 1, Section 104 and Title IV, Chapter 3, Section 429.

⁵³ cf. CMTA, Title I, Chapter 2, Section 114 and Title XI, Chapter 1, Section 1104.

⁵⁴ cf. CMTA, Title XI, Chapter 8, Sections 1132, 1133 and 1134.

Upon the failure of the person owing any delinquent duty, tax and other charges to pay at the time required, the Commissioner shall seize and distraint the goods, chattels or effects and the personal property, including stocks and other securities, debts, credits, bank accounts and interests in and rights to personal property of such persons, in sufficient quantity to satisfy the duty, tax or other charge and the expenses of the distraint and the cost of the subsequent sale.

To safeguard the interest of the government, the Commissioner may place under constructive distraint the property of a delinquent Importer who, in the opinion of the Commissioner, is retiring from any business subject to duty and tax, or is intending to leave the Philippines, or to remove the property therefrom, or to hide or conceal the property, or to perform any act tending to obstruct the proceedings for collecting the duty and tax due or which may be due.

9.2. Levy upon real property and interest in rights to real property.

After the expiration of the period within which to pay the duty, tax and other charges as prescribed in this section, real property may be levied upon, before, simultaneously or after the distraint of personal property belonging to the Importer. To this end, the Commissioner or the duly authorized representative shall prepare an authenticated certificate showing the name of the Importer and the amounts of the duty and tax and penalty due. The certificate shall operate with the force of a legal execution throughout the Philippines.

9.3. Civil or criminal action.

Any or all of these remedies may be pursued at the discretion of the Bureau. Provided, that the remedies of distraint and levy shall not be allowed when the amount of duties and taxes, excluding interest and penalties, involved is not more than Ten Thousand Pesos (PhP10,000.00).⁵⁵

The Bureau shall advance the amounts needed to defray costs of collection by means of civil or criminal action which shall be included in the budget of the Office of the Commissioner, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon.

Section 10. Administrative and Criminal Offenses.

10.1. Failure to Keep Records. The following penalties are imposable to those who fail to keep and maintain the prescribed records:

⁵⁵ CMTA, Title XI, Chapter 8, Sections 1132, Section 1132 (b).



- 10.1.1.** Suspension or cancellation of accreditation as Importer or Broker with the Bureau;⁵⁶
- 10.1.2.** Surcharge of twenty percent (20%) on the dutiable value of the goods which is the subject of the importation for which no records were kept and maintained;⁵⁷
- 10.1.3.** Hold delivery or release of subsequent imported articles to answer for the fine and any revised assessment;⁵⁸
- 10.1.4.** Criminal prosecution punishable with imprisonment of not less than three (3) years and one (1) day but not more than six (6) years, and/or a fine of One Million Pesos (PhP1,000,000.00);⁵⁹ and
- 10.1.5.** Waiver of the right to contest the results of the audit based on records kept by the Bureau.⁶⁰

10.2. Failure or Refusal to Give Full and Free Access. The following penalties are imposable to those who deny the authorized customs officer full and free access to the records required to be kept and maintained:

- 10.2.1.** Suspension or cancellation of accreditation as an Importer or Broker with the Bureau;⁶¹
- 10.2.2.** Punishment for contempt, for contumacy or for refusal to provide access, from the proper court having criminal jurisdiction over the matter;⁶²
- 10.2.3.** Re-assessment of the importations subject of audit, the declared transaction value being presumed inaccurate applying therein the correct valuation method, tariff classification, quantity and/or country of origin, as applicable, based on available data;⁶³

⁵⁶ cf. CMO No. 11-2014, Section 8.

⁵⁷ cf. CMTA, Title X, Section 1402.

⁵⁸ cf. CMTA, Title X, Section 1002 and Title XIV, Chapter 1, Section 1427.

⁵⁹ cf. CMTA, Title XIV, Chapter 1, Section 1427.

⁶⁰ cf. CMTA, Title X, Section 1003.

⁶¹ cf. CMO No. 11-2014, Section 8.c.

⁶² cf. CMTA, Title X, Section 1002.

⁶³ cf. CMTA, Title X, Section 1002.



- 10.2.4. Surcharge of twenty percent (20%) on the dutiable value of the goods which is the subject of the importation for which no records were kept and maintained;⁶⁴
- 10.2.5. Hold delivery or release of subsequent imported articles to answer for the fine and any revised assessment;⁶⁵ and
- 10.2.6. Criminal prosecution punishable with imprisonment of not less than three (3) years and one (1) day but not more than six (6) years, and/or a fine of One Million Pesos (PhP1,000,000.00).⁶⁶

10.3. Failure to Pay Correct Duties and Taxes on Imported Goods.

Any person who, after being subjected to post clearance audit and examination, is found to have incurred deficiencies in duties and taxes paid for imported goods, shall be penalized according to two (2) degrees of culpability, subject to any mitigating, aggravating or extraordinary factors that are clearly established by available evidence as described hereunder:⁶⁷

- 10.3.1. **Negligence** – When a deficiency results from an offender's failure, through an act or acts of omission or commission, to exercise reasonable care and competence in ensuring that a statement made is correct, the offender shall be charged for committing Negligence, and, if found guilty shall be penalized with a fine equivalent to one hundred twenty-five percent (125%) of the revenue loss.⁶⁸

Provided, that subject to Section 108, Chapter 2, Title I of the CMTA, a penalty of twenty-five percent (25%) of the revenue loss shall be imposed on an Inadvertent Error amounting to simple Negligence.

- 10.3.2. **Fraud** – When the material false statement or act in connection with the transaction was committed or omitted knowingly, voluntarily and intentionally, as established by clear and convincing evidence, the offender who is charged for committing Fraud and is found guilty thereof, shall be penalized with a fine equivalent to six (6) times of the revenue loss and/or imprisonment of not less than two (2) years but not more than eight (8) years.⁶⁹

⁶⁴ cf. CMTA, Title X, Section 1402.

⁶⁵ cf. CMTA, Title X, Section 1002 and Title XIV, Chapter 1, Section 1427.

⁶⁶ cf. CMTA, Title XIV, Chapter 1, Section 1427.

⁶⁷ cf. CMTA, Title X, Section 1005.

⁶⁸ cf. CMTA, Title X, Section 1005 (a).

⁶⁹ CMTA, Title X, Section 1005 (b).



Section 11. Records to be Kept by the Bureau. The PCAG shall keep a database of Importer and Customs Broker profiles which shall include a record of audit results and the following information and papers:

- 11.1. Articles of incorporation;
- 11.2. The company structure, which shall include but not be limited to:
 - 11.2.1. Incorporators and board of directors;
 - 11.2.2. Key officers;
 - 11.2.3. Organizational structure;
- 11.3. Key importations;
- 11.4. Importation privileges enjoyed;
- 11.5. Record of violations and penalties;
 - 11.5.1. Infringements committed;
 - 11.5.2. Instances of prohibited importation;
 - 11.5.3. Instances of smuggling;
 - 11.5.4. Instances of technical smuggling;
 - a. Misdeclaration
 - b. Misclassification
 - c. Undervaluation
- 11.6. Risk categories;⁷⁰
- 11.7. Audit results; and
- 11.8. Other information and documents from the various offices of the Bureau that may be necessary in order to facilitate the conduct of post clearance audit.

Section 12. Audit Monitoring and Recordkeeping. PCAG, in coordination with the MISTG, shall establish and maintain a real-time case monitoring and control system to ensure that all tasks related to audit operations are completed on time and that approved audit recommendations are properly implemented. For this purpose, PCAG shall maintain a secured database of all audit results and records.⁷¹

Section 13. Periodic Review. Unless otherwise provided, this Order shall be reviewed every three (3) years and be amended or revised as necessary.

Section 14. Turn-over of Records. The DOF-FAIU (Financial Analytics and Intelligence Unit) formerly known as DOF-FIU (Fiscal Intelligence Unit) shall turn-over all files and documents including any pending post clearance audits to the BOC-PCAG.⁷²



⁷⁰ cf. CMTA, Title X, Section 1006.

⁷¹ cf. CAO No. 4-2004, Section IV.D.

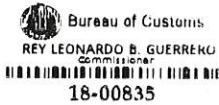
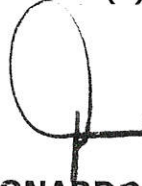
⁷² Executive Order 46, Series 2017, Section 5.

Section 15. Repealing Clause. Department Order Nos. 011-2014, 014-2014, 044-2014 and 033-2015 issued by the DOF, CAO Nos. 02-99, 05-2001, 04-2004, 05-2007, 03-2015 and all other Orders, Memoranda, Circulars or parts thereof which are inconsistent with this Order are hereby deemed repealed and/or modified accordingly.

Section 16. Separability Clause. If any part of this Order is declared unconstitutional or contrary to existing laws, the other parts not so declared shall remain in full force and effect.

Section 17. Effectivity. This Order shall take effect thirty (30) calendar days after its publication at the Official Gazette or a newspaper of national circulation.

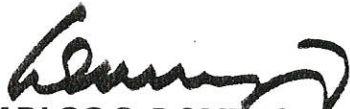
The Office of National Administrative Register (ONAR) of the UP Law center shall be provided three (3) certified copies of this Order.



REY LEONARDO B. GUERRERO
Commissioner, BOC *pr*

NOV 29 2018

Approved:



CARLOS G. DOMINGUEZ
Secretary of Finance
JAN 09 2019



Informational Section.

1. History.

- CAO No. 5-2001 – Implementing Republic Act 9135: An Act Amending Certain Provisions of Presidential Decree No. 1464, Otherwise known as the Tariff and Customs Code of the Philippines, as amended (Customs Code), and for other purposes. Implementing the WTO Valuation System and the recordkeeping and post entry audit systems in order to facilitate importation and protect government revenue at the same time. This CAO was approved on November 16, 2001.
- CAO No. 4-2004 – Amendment to CAO 5-2001 (Implementing Republic Act No. 9135: An Act amending certain provisions of Presidential Decree No. 1464, Otherwise known as the Tariff and Customs Code of the Philippines, as amended (Customs Code), and for other purposes)

2. Related Policies.

- E.O. No. 46, s. 2017 – Reviving the Post Clearance Audit Function of the Bureau of Customs and Institutionalizing the Functions of the Financial Analytics and Intelligence Unit of the Department of Finance.
- E.O. No. 160, s. 2003 – Creating the Post Entry Audit Group in the Bureau of Customs
- CMO No. 1-2002 – Procedure in the Determination of Administrative Liability and the Imposition of Administrative Fines for (a) Failure to keep records; (b) Failure and/or Refusal to give full and free access; and (c) Failure to pay correct duties and taxes on imported goods.
- CMO No. 2-2002 – Recordkeeping and Post Entry Audit Guidelines
- CAO No. 5-2007 – Voluntary Disclosure Program of the Bureau
- CMO No. 18-2007 – Rules and regulations implementing the Customs Voluntary Disclosure Program pursuant to CAO 5-2007
- CMO No. 16-2010 – Rules and regulations to implement CAO 4-2004 more particularly on Dutiable Value
- CMO No. 11-2014 – Revised Guidelines for Registration of Importers and Customs Brokers with the Bureau of Customs pursuant to DOF Department Order No. 33-2014

3. Webpage, Forms, Handbooks and Other References.

- Audit Notification Letter
- List of Documentary Requirements for Post Clearance Audit
- PCAG General Customs Questionnaire
- Voluntary Disclosure Form