



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

[DATE]

CUSTOMS ADMINISTRATIVE ORDER (CAO)
NO. _____

**SUBJECT: SEIZURE AND FORFEITURE PROCEEDINGS AND APPEALS
PROCESS**

Introduction. This CAO implements Sections 1113 to Sections 1125, Chapter 4 and Sections 1126 to 1128, Chapter 5 of Title XI, Section 1400, Chapter 1 of Title XIV and other relevant provisions of Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA).

Section 1. Scope. This CAO covers all imported and exported goods, stores, supplies, packages and receptacles, including vessels, aircraft and vehicles found to be in violation of the CMTA.

Section 2. Objectives.

- 2.1.** To identify the imported goods, stores, supplies, vessels, aircraft, vehicles, packages, receptacles subject to seizure and forfeiture;
- 2.2.** To set forth the conditions in effecting seizure and forfeiture or release of seized items;
- 2.3.** To provide for the rules in the imposition of surcharges in case of misdeclaration, misclassification and undervaluation; and
- 2.4.** To establish a uniform procedure in seizure and forfeiture cases including the rules on settlement, redemption and other remedies.

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

- 3.1. Alert Order** – shall refer to a written order issued by authorized customs officers on the basis of derogatory information regarding possible non-compliance with the CMTA, after the lodgment of goods declaration and before their release from customs custody¹;
- 3.2. Charter** – shall refer to a contract by which an entire vessel, aircraft or vehicle, or some principal part thereof, is let by the owner to another person for a specified time or use which has the effect of

¹ cf. Customs Modernization and Tariff Act (CMTA) Title XI, Chapter 4, Section 1119;

transferring the control on both the vessel, aircraft or vehicle and its crew to the lessee²;

- 3.3. Coastwise Trade** – shall refer to the business of transferring either merchandise or passengers between two seaports in the Philippines³;
- 3.4. Commercial Quantity** – refers to the quantity for a given kind or class of articles which are in excess of what is compatible with and commensurate to the person’s normal requirements for personal use⁴;
- 3.5. Common Carrier** – shall refer to persons, corporations, firms, or association engaged in the business of carrying or transporting passengers or goods or both, by land, water or air, for compensation, offering their services to the public⁵;
- 3.6. Decision** – shall refer to the disposition of the main forfeiture case based on merits;
- 3.7. Decisions Adverse to the Government** – shall refer to the disposition of the main forfeiture case based on merits, which resolves that there is no violation of the law which warrants the forfeiture of the seized articles and consequently allows the release of the articles subject of a Warrant of Seizure and Detention⁶;
- 3.8. FCA or Free Carrier** – shall refer to an international commercial term covered by the Incoterms rules developed by International Chamber of Commerce (ICC) which means free carrier or that the seller delivers the goods to the carrier or another person nominated by the buyer at the seller’s premises or another named place⁷;
- 3.9. FOB or Free on Board** – shall refer to international commercial term covered by the Incoterms rules developed by International Chamber of Commerce (ICC) which means free on board or that the seller delivers the goods on board the vessel nominated by the buyer at the named point of shipment or procures the goods already delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel, and the buyer bears all costs from that moment onwards⁸;

² cf. *Planters Products, Inc., vs. CA* (G.R. No. 101503 September 15, 1993);

³ cf. *Commissioner of Customs vs. Arnaldo Borres, et al.* (G.R. No. 12687 November 28, 1959);

⁴ cf. Section 3.1, Customs Administrative Order (CAO) No. 02-2016;

⁵ cf. Article 1732, Civil Code of the Philippines;

⁶ cf. Section 7, CAO No. 03-1993;

⁷ cf. Section 3.3, CAO No. 02-2016;

⁸ cf. Section 3.4, CAO No. 02-2016;

- 3.10. Forfeiture** – shall refer to the permanent transfer of ownership of seized items from the importer or owner to the government for an established violation of Customs Modernization and Tariff Act after compliance with the due process clause⁹ of the Constitution;
- 3.11. Fraud** – shall refer to acts knowingly, voluntarily and intentionally committed or omitted which prejudice the interest of the government. e.g. submitting fake or spurious document, making material untruthful statement(s) or committing any other analogous act(s) or omission(s);
- 3.12. Goods** – shall refer to articles, wares, merchandise and any other items which may include Philippine and foreign notes and coins imported or exported beyond the allowable amounts prescribed by law¹⁰;
- 3.13. Landed Cost** – shall refer to the total cost of a product delivered at a port of destination, including the production cost plus transportation cost, insurance, brokerage fee, bank charge, arrastre charges, duties and taxes, processing fee and wharfage fees;
- 3.14. Misclassification** – shall refer to insufficient or wrong description of the goods or use of erroneous tariff heading resulting in deficiency between the duty and tax that should have been paid and the duty and tax actually paid¹¹;
- 3.15. Misdeclaration** – shall refer to declarations as to quantity, quality, description, weight, or measurement of the goods which does not tally with the details as declared¹² resulting to a discrepancy in duty and tax to be paid between what is legally determined upon assessment and what is declared;
- 3.16. Notice of Appeal** – shall refer to a document evidencing an aggrieved party's intention to seek redress to a decision which shall indicate the parties to the appeal, specify the judgment or final order or part thereof appealed from, and state the material dates showing the timeliness of the appeal;
- 3.17. Order** – shall refer to the decisions of the District Collector or Commissioner involving incidental matters that does not dispose of the case completely but leaves something to be decided upon;¹³

⁹ cf. Section 1, Article III, 1987 Constitution of the Republic of the Philippines;

¹⁰ cf. CMTA, Title I, Chapter 2, Section 102;

¹¹ cf. CMTA, Title XIV, Chapter 1, Section 1400;

¹² cf. Customs Memorandum Order (CMO) No. 48-1993 & CMTA, Title XIV, Chapter 1, Section 1400;

¹³ cf. Australian Professional Realty, Inc., et al. vs. Municipality of Padre Garcia Batangas Province, (G.R. No. 183367);

- 3.18. Perishable Goods** – shall refer to goods liable to perish or goods that depreciate greatly in value while stored or which cannot be kept without great disproportionate expense¹⁴;
- 3.19. Quashal** – shall refer to an order issued by the District Collector recalling the Warrant of Seizure and Detention when, after summary proceedings, the ground for the issuance of thereof is found to be non-existent or ceased to exist;
- 3.20. Seizure** – shall refer to the actual or constructive taking or bringing into custody the goods, things or chattels by virtue of a Warrant of Seizure and Detention issued by the Collector of Customs for violation of the CMTA¹⁵;
- 3.21. Summary Proceedings** – shall refer to an abbreviated administrative proceedings where in only position papers are required to be submitted in lieu of the conduct of a formal hearing;
- 3.22. Undervaluation** – shall refer to wrongful declarations committed when: (a) 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 (b) 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; and
- 3.23. Warrant of Seizure and Detention** – shall refer to an order in writing, issued in the name of the Republic of the Philippines, signed by the Collector of Customs directed to customs law enforcement officer, commanding him to seize any vessel, aircraft, cargo, goods, animal or any other movable property when the same is subject to forfeiture pursuant to Section 1113, Chapter 4, Title XI of the CMTA¹⁶;

Section 4. General Provisions

- 4.1. Authority to Effect Seizure.**¹⁷ The following are authorized to effect seizure:
- 4.1.1.** Officials of the Bureau, District Collectors, Deputy District Collectors, police officers, agents, inspectors and guards of the Bureau;

¹⁴ cf. CMTA, Title I, Chapter 2, Section 102 (gg);

¹⁵ cf. (draft CAO) Customs Jurisdiction and Exercise of Police Authority;

¹⁶ cf. CMTA, Title XI, Chapter 4, Section No. 1113;

¹⁷ cf. CMTA, Title II, Chapter 3, Section No. 214;

4.1.2. Upon authorization of the Commissioner or his duly authorized representative, officers and members of the Armed Forces of the Philippines (AFP) and national law enforcement agencies; and

4.1.3. Officials of the BIR on all cases falling within the regular performance of their duties, when payment of internal revenue taxes is involved.

4.2. Properties Subject to Seizure & Forfeiture¹⁸. Properties which are imported or exported under the following circumstances shall be subject to seizure and forfeiture, including goods, vessels, aircrafts, conveyance, receptacles, stores:

4.2.1. Goods.

- a.** Goods which are fraudulently concealed in or removed contrary to law from any public or private warehouse, container yard, or container freight station under customs supervision¹⁹
- b.** Goods the importation or exportation is effected or attempted contrary to law;²⁰
- c.** Goods of prohibited importation or exportation²¹;
- d.** Goods which in the opinion of the District Collector, have been used or were entered to be used as instruments in the importation or exportation of prohibited goods²²;
- e.** Unmanifested goods found on any vessel or aircraft, if manifest therefor is required;²³
- f.** Goods sought to be imported or exported without going through a customs office, whether the act was consummated, frustrated, or attempted;²⁴
- g.** Goods found in the baggage of a person arriving from abroad and undeclared by such person;²⁵
- h.** Goods sought to be imported or exported through a false declaration or affidavit executed by the owner, importer, exporter, or consignee concerning the importation of goods;²⁶

¹⁸ cf. CMTA, Title XI, Chapter IV, Section No. 1113;

¹⁹ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (e);

²⁰ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (f);

²¹ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (f);

²² cf. CMTA, Title XI, Chapter IV, Section No. 1113 (f);

²³ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (g);

²⁴ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (I-1);

²⁵ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (I-2);

²⁶ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (I-3);

- i.** Goods sought to be imported or exported the strength of a false invoice or other document executed by the owner, importer, exporter, or consignee concerning the importation or exportation of such goods;²⁷
- j.** Goods sought to be imported or exported through any other practice or device contrary to law by means of which such goods entered through a customs office to the prejudice of the government;²⁸ and
- k.** Imported goods offered openly for sale or kept in storage, which were discovered in the exercise of the Commissioner of power to inspect and visit pursuant to Section 224 of CMTA, when proof of payment of duties and taxes cannot be presented;²⁹

4.2.2. Vehicle, vessel or aircraft.

- a.** Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of goods³⁰;
- b.** Any vehicle, vessel or aircraft used in conveying or transporting smuggled goods in commercial quantities within the Philippines³¹;
- c.** Any vessel engaging in the coastwise trade which shall have on board goods of foreign growth, produce, or manufacture in excess of the amount necessary for sea stores, without such goods having been properly entered or legally imported³²;
- d.** Any vessel or aircraft into which shall be transferred cargo unloaded contrary to law prior to the arrival of the importing vessel or aircraft at the port of destination;³³
- e.** Any conveyance actually used for the transport of goods subject to forfeiture under the CMTA, with its equipage or trappings, and any vehicle similarly used, together with its equipment and appurtenances. The mere conveyance of smuggled goods by such transport vehicle shall be sufficient cause for outright seizure³⁴;
- f.** Vessel or aircraft whose owner, agent, master, pilot in command or other responsible officer is found liable for fine or penalty for any violation of the CMTA taking into account the amount of fine or penalty in relation to the

²⁷ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (I-4);

²⁸ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (I-5);

²⁹ cf. CMTA, Title II, Chapter III, Section No. 224;

³⁰ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (a);

³¹ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (a);

³² cf. CMTA, Title XI, Chapter IV, Section No. 1113 (b);

³³ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (c);

³⁴ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (k);

commercial impact that may be caused to international trade by the seizure or detention as well as the value of the vessel or aircraft.³⁵

4.2.3. Cargo, stores, or supplies of a vessel.

- a.** Any part of the cargo, stores, or supplies of a vessel or aircraft arriving from a foreign port which is unloaded before arrival at the vessel's or aircraft's port of destination and without authority from the customs officer³⁶;
- b.** Sea stores or aircraft stores adjudged by the District Collector to be excessive, when the duties and taxes assessed thereon are not paid³⁷.

4.2.4. Package and receptacles.

- a.** Any package of imported goods which is found upon examination to contain goods not specified in the invoice or goods declaration including all other packages purportedly containing imported goods similar to those declared in the invoice or goods declaration to be the contents of the misdeclared package³⁸;
- b.** Boxes, cases, trunks, envelopes, and other containers of whatever character used as receptacle or as device to conceal goods which are subject to forfeiture under the CMTA or which are so designed as to conceal the character of such goods³⁹.

4.3. Conditions in Effecting Forfeiture.

4.3.1. Seized cargo, stores, or supplies of a vessel or aircraft arriving from a foreign port which is unloaded before arrival at the vessel's or aircraft's port of destination without authority from the customs officer shall not be forfeited if the unloading was due to accident, stress of weather, or other necessity and is subsequently approved by the District Collector⁴⁰;

4.3.2. Vehicle, vessel or aircraft used in carrying smuggled goods in commercial quantity will not be forfeited if:

³⁵ cf. CMTA, Title XI, Chapter IV, Section No. 1122;

³⁶ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (d);

³⁷ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (h);

³⁸ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (i);

³⁹ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (j);

⁴⁰ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (d);

- a.** It is a common carrier⁴¹;
- b.** Has not been chartered for purposes of conveying or transporting persons or cargo⁴²;
- c.** The owner or agent at that time of seizure has no knowledge of and participation in the unlawful act.⁴³

However, a prima facie presumption against such vehicles, vessel or aircraft shall exist under any of the following circumstances⁴⁴:

- i.** If conveyance has been used for smuggling before;
- ii.** If the owner is not in the business for which the conveyance is generally used;
- iii.** If the owner is not financially in a position to own such conveyance.

4.3.3. The forfeiture of seized properties shall be effected only when any of the following circumstances exist⁴⁵:

- a.** The goods are in the custody or within the jurisdiction of customs officer;
- b.** The goods are in the possession or custody of or subject to the control of the importer, exporter, original owner, consignee, agent of another person effecting the importation, entry or exportation in question; and
- c.** The goods are in the possession or custody of or subject to the control of persons who shall receive, conceal, buy, sell, transport the same, or aid in any of such acts, with knowledge that the goods were imported or were subject of an attempt to import or export contrary to law.

If the imported article is in the possession of a third party who has no knowledge of or participation in the fraudulent importation or exportation, the goods shall not be forfeited subject to payment of duties, taxes and other charges as the case may be.

⁴¹ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (k);

⁴² cf. CMTA, Title XI, Chapter IV, Section No. 1113 (k);

⁴³ cf. CMTA, Title XI, Chapter IV, Section No. 1113 (k);

⁴⁴ cf. CMTA, Title XI, Chapter IV, Section No. 1114;

⁴⁵ cf. CMTA, Title XI, Chapter IV, Section No. 1115;

4.4. Seizure in Case of Misdeclaration, Misclassification, Undervaluation.⁴⁶

When the misdeclaration, misclassification or undervaluation is intentional or fraudulent, such as when a false or altered document is submitted or when false statements or information are knowingly made, the goods shall be seized, forfeited and an administrative fine in a form of surcharge equivalent to five hundred percent (500%) of the duty and tax due regardless of the amount of the discrepancy shall be imposed.

The payment of surcharge shall be without prejudice to the criminal liability of the importer and other person or persons who willfully participated in the fraudulent act.

Provided, however that a discrepancy in duty and tax to be paid between what is legally determined and what is declared amounting to more than thirty percent (30%) shall constitute a *prima facie* evidence of fraud.

4.5. Fines in Case of Misdeclaration, Misclassification, Undervaluation.⁴⁷

4.5.1. Misdeclaration and Misclassification.

When the misdeclaration and misclassification results to a discrepancy in duty and tax to be paid does not exceed thirty percent (30%) between what is legally determined upon assessment and what is declared, a surcharge equivalent to two hundred fifty percent (250%) of the duty and tax due shall be imposed.

No surcharge shall be imposed and the goods shall not be subject to seizure under the following circumstances: a) when the discrepancy in duty is less than ten percent (10%) ; b) when the declared tariff heading is rejected in a formal customs dispute settlement process involving difficult or highly technical question of tariff classification ; c) when the tariff classification declaration relied on an official government ruling.

⁴⁶ cf. CMTA, Title XIV, Chapter IV, Section No. 1400;

⁴⁷ cf. CMTA, Title XIV, Chapter IV, Section No. 1400;

4.5.2. Undervaluation.

When the undervaluation is established without the need to go through the formal dispute settlement process, and the discrepancy in duty and tax to be paid does not exceed thirty percent (30%) between what is legally determined upon assessment and what is declared a surcharge shall be imposed equivalent to two hundred fifty percent (250%) of the duty and tax due.

No surcharge shall be imposed under the following circumstance and the goods shall not be subject to seizure: a) when the discrepancy in duty is less than ten percent (10%); b) the declared value is rejected as a result of an official ruling or decision under the customs dispute settlement process involving difficult or highly technical question relating to the application of customs valuation rules.

4.6. Issuance of Warrant of Seizure and Detention (WSD)

4.6.1. Authority to Issue a Warrant of Seizure and Detention. - The District Collector exercising territorial jurisdiction over the location of the seized goods shall have the authority to issue a Warrant of Seizure and Detention.⁴⁸

4.6.2. Partial WSD- If the offense relates only to part or portion of a shipment, only that part shall be seized or detained, provided that the District Collector is satisfied that the remainder of the shipment was not used directly or indirectly, in the commission of the offense.⁴⁹

4.6.3. Contents of the Warrant of Seizure and Detention- A WSD shall indicate the following information⁵⁰:

- a. Docket Number;
- b. Collection District;
- c. Alleged violation(s) of the CMTA and other related laws and regulations;
- d. Description and quantity of the property sought to be seized;⁵¹
- e. Owner(s) of the property sought to be seized, if known;
- f. Address of the owner(s) of the property, if known;
- g. Location of the goods to be seized; and
- h. Date issued.

⁴⁸ cf. CMTA, Title XI, Chapter IV, Section No. 1117;

⁴⁹ cf. Revised Kyoto Convention (RKC), Chapter 1, Standard 12;

⁵⁰ cf. CAO No. 09-1993;

⁵¹ cf. RKC, Standard 13;

4.6.4. Determination of Probable Cause. Within five (5) calendar days, or two (2) calendar days in case of perishable goods, from receipt of the request for issuance of WSD, the District Collector shall determine the existence of probable cause.⁵² However, the District Collector through the Law Division or its equivalent office may conduct summary proceedings if deemed necessary for purposes of determining the existence of probable cause.

Within the prescribed period, the District Collector shall issue either Warrant of Seizure and Detention (WSD), if a probable cause exists, or a Release Order, in the absence of probable cause.

If an Order to Release is issued, the District Collector shall immediately transmit the records of the case to the Commissioner for clearance and approval.⁵³

The Commissioner shall within forty-eight (48) hours or twenty-four (24) hours if the goods are perishable, from receipt of the records, review the findings of the District Collector.

When no decision is made by the Commissioner within the prescribed period, the imported goods shall be deemed released. If the property is subject of an Alert Order, the same shall be lifted by the issuing authority upon the affirmation of the Commissioner of the Release Order or the lapse of the period to review.

If the Commissioner issues an Order reversing the Release Order of District Collector before the lapse of the period to review, the same shall be referred to the District Collector for issuance of the appropriate WSD.

4.7. Service of Warrant of Seizure and Detention.⁵⁴ The District Collector through the apprehending or alerting unit shall serve the WSD to the owner of the goods or its authorized representative, either by personal service or through registered mail.

For the purpose of serving the WSD, the importer, consignee, or person holding the bill of lading or airway bill shall be deemed the owner of the goods. For the same purpose, authorized representative shall include any agent of the owner, and if the owner or the agent is unknown, any person having possession of the goods at the time of the seizure;

⁵² cf. CMTA, Title XI, Chapter IV, Section No. 1116;

⁵³ cf. CMTA, Title XI, Chapter IV, Section No. 1117;

⁵⁴ cf. CMTA, Title XI, Chapter IV, Section No. 1119;

If the owner is unknown, service shall be effected by simultaneous posting in a conspicuous public place at the concerned collection district for fifteen (15) calendar days and by electronic publication through posting at BOC website. Posting shall be made within two (2) calendar days from the issuance of the WSD.

Copies of the WSD shall also be furnished to the following:⁵⁵

- a. Office of Commissioner;
- b. Prosecution and Litigation Division, Legal Service;
- c. Alerting unit or apprehending officer;
- d. Port Operator or Warehouse Owner and Operator;
- e. Commission on Audit; and
- f. Auction and Cargo Disposal Division or its equivalent unit.

4.8. Return of WSD. The alerting unit or apprehending officers shall submit to the District Collector the return of service of WSD within five (5) calendar days or three (3) calendar days, if goods are perishable from the date of issuance of the WSD, with the copy of WSD duly received by the importer or owner or its authorized representative, or registry receipt, if served through registered mail.

In case of unknown owner, the alerting unit or apprehending officers shall within the same period submit a certification that they already commenced the publication of the WSD.

4.9. Custody over Goods Seized. Goods seized by customs officers or deputized officers shall be physically or constructively turned-over to the Bureau of Customs through the Auction and Cargo Disposal Division (ACDD) or its equivalent unit, unless otherwise provided under existing laws, rules and regulations.

4.10. List of Seized Goods.⁵⁶ The District Collector shall cause the preparation of a list and particular description, classification, and valuation of the goods seized and valuation of identical or similar goods.

4.11. Grounds for Quashal of WSD. The WSD issued by the District Collector may be quashed under any of the following grounds:

4.11.1.In case of goods seized pursuant to the power of the Commissioner to inspect and visit⁵⁷, the claimant was able

⁵⁵ cf. CMO No. 47-1990, paragraph 3;

⁵⁶ cf. CMTA, Title XI, Chapter IV, Section No. 1120;

⁵⁷ cf. CMTA, Title II, Chapter III, Section 224;

to prove payment of duties and taxes as evidenced by authentic documents and the release of the goods will not be contrary to law;

4.11.2. When there is a change in circumstances after the issuance of the WSD where the ground upon which the WSD was based no longer exists; and

4.11.3. That the District Collector issuing the WSD has no jurisdiction over the imported goods seized.⁵⁸

4.12. When to File Motion to Quash. The importer or its authorized representative may file motion to quash the WSD within ten (10) calendar days from receipt of the WSD.

Motions to Lift, Recall and Dismiss the WSD shall be deemed as filing of a Motion to Quash.

4.13. Resolution on Motion to Quash. The motion to quash shall be resolved by the District Collector within fifteen (15) days from the date of receipt of the last pleadings from both parties. However, the release of the goods seized shall be subject to clearance by the Commissioner; Provided finally, that the release thereof will not be contrary to law.⁵⁹

In case the District Collector allows the quashal of the WSD, he shall transmit the entire records of the case within two (2) calendar days from the date of issuance of the decision. The Commissioner shall within thirty (30) calendar days, or ten (10) calendar days for perishable goods, from receipt of the entire case records, review the Order of the District Collector allowing the quashal of the WSD. The Order of the District Collector shall be deemed approved when no decision is rendered by the Commissioner, after the lapse of the prescribed period.

If the Commissioner issues an Order reversing the decision of the District Collector allowing the Quashal of the WSD before the lapse of the period to review, the same shall be referred back to the District Collector for the continuation of the seizure proceedings.

The Order of the District Collector and Commissioner on the motion to quash shall be considered as an interlocutory order and shall not be considered as determination of the seizure case based on merits.

⁵⁸ cf. The Rules of Court of The Philippines, Rule 117, Section 3 (b);

⁵⁹ cf. CMTA, Title II, Chapter III, Section 224;

No decision ordering the forfeiture of the seized goods shall be made by the District Collector without hearing the main case.

4.14. Forfeiture Proceedings

4.14.1. Notice of Hearing shall be sent within fifteen (15) days or five (5) days if the subject goods are perishable, from the date of receipt of the WSD⁶⁰, to the owner or its authorized representative and the apprehending officer or alerting unit, copy furnished Prosecution and Litigation Division (PLD), Legal Service. Notice of Hearing shall be served preferably by personal service or, if not practicable, by registered mail or electronic mail. Proof of such service shall be attached to the record of the case.

4.14.2. Upon notice to all the parties, forfeiture proceedings shall be conducted by the District Collector or duly designated hearing officer of the concerned port. In the absence of a hearing officer, the District Collector may request the Legal Service to designate one.

4.14.3. In the formal hearing, uncontroverted facts shall be stipulated on and issues to be heard shall be agreed upon in order to abbreviate the proceedings. The determination shall be made whether or not there is a violation of law from the facts and evidence presented. The District Collector of Customs shall then render a Decision⁶¹

4.15. Proceedings in case of property belonging to unknown parties.⁶² - If within fifteen (15) days after service of WSD, no owner or agent can be found or appears before the District Collector, the seized goods shall be forfeited ipso facto in favor of the government to be disposed of according to the rules on disposition.

4.16. Settlement of Forfeiture Cases. The owner, importer, exporter, or consignee or agent, may during the course of the proceedings, or pending appeal, offer settlement of the forfeiture case. The offer of settlement shall be made in writing and addressed to the District Collector or office of the Commissioner.

Offer of settlement may either be through payment of fine or payment of redemption value.

⁶⁰ cf. CMTA, Title XI, Chapter 4, Section No. 1125;

⁶¹ cf. Section 7, CAO 09-1993;

⁶² cf. CMTA, Title XI, Chapter 4, Section No. 1121;

Unless otherwise expressly withdrawn or impliedly abandoned, the offer of settlement made before the District Collector shall be considered and resolved until final disposition by the Commissioner.

When the District Collector renders a Decision of forfeiture on the main case and no offer of settlement was made by the claimant or owner (either by payment of fine or payment of redemption value) before the District Collector, the offer of settlement during appeal before the Commissioner may be allowed only through payment of redemption value.⁶³

4.17. Conditions for Accepting Offer of Settlement.⁶⁴ Settlement of any forfeiture case by payment of fine or payment of redemption value shall only be allowed under the following circumstances:

- 4.17.1.** When fraud is not attendant to the importation;
- 4.17.2.** When the importation is not prohibited; and
- 4.17.3.** When the release of the goods is not contrary to law.

4.18. Settlement by Payment of Fine. The District Collector may accept the settlement by payment of fine during the pendency of the forfeiture case, under any of the following circumstances:

- 4.18.1.** For regulated goods, when the release of the same through payment of fine is allowed by the concerned regulating agency even without required permits or licenses;
- 4.18.2.** For vessels or aircrafts when the owner, agent, master, pilot-in-command or other responsible officer is found liable for fine or penalty for any violation of the CMTA, and the owner, agent, master, pilot-in-command or other responsible officer fails to pay such fine or penalty upon demand. However, vessels or aircrafts shall not be seized if the amount of fine or penalty is too minimal in relation to the commercial value of the vessel or aircraft as determined by the District Collector;⁶⁵
- 4.18.3.** For sea stores or aircraft stores when adjudged by the District Collector to be excessive, and when the duties and taxes assessed thereon are not paid;
- 4.18.4.** Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of goods;

⁶³ cf. CMTA, Title XI, Chapter 4, Section No. 1124;

⁶⁴ cf. CMTA, Title XI, Chapter 4, Section No. 1124;

⁶⁵ cf. CMTA, Title XI, Chapter 4, Section No. 1122;

- 4.18.5.** Any vehicle, vessel or aircraft used in conveying or transporting smuggled goods in commercial quantities within the Philippines;
- 4.18.6.** Any vessel engaging in the coastwise trade which shall have on board goods of foreign growth, produce, or manufacture in excess of the amount necessary for sea stores, without such goods having been properly entered or legally imported;
- 4.18.7.** Any vessel or aircraft into which shall be transferred cargo unloaded contrary to law prior to the arrival of the importing vessel or aircraft at the port of destination; and
- 4.18.8.** Any other valid grounds, as may be determined by the District Collector.

In case of Settlement by Fine, the owner, importer, exporter, or consignee or agent shall pay the amount of fine equivalent to thirty percent (30%) of the landed cost.⁶⁶

4.19. Settlement by Redemption. The District Collector may accept settlement by redemption, under any of the following circumstances:

- 4.19.1.** For regulated goods, when the release of the same through redemption is allowed by the concerned regulating agency even without required permits or licenses;
- 4.19.2.** Unmanifested goods found on any vessel or aircraft, if manifest therefor is required;
- 4.19.3.** Goods, other than currencies found in the baggage of a person arriving from abroad and undeclared by such person;
- 4.19.4.** Imported goods offered openly for sale or kept in storage, which were discovered in the exercise of the Commissioner to inspect and visit pursuant to Section No. 224 of CMTA, when proof of payment of duties and taxes cannot be presented;
- 4.19.5.** Any imported goods found upon examination not specified in the goods declaration ; and
- 4.19.6.** Any other valid grounds, which may be determined by the District Collector.

⁶⁶ cf. CMTA, Title XI, Chapter 4, Section No. 1124;

In case of settlement by redemption, the owner, importer, exporter, or consignee or agent shall pay the redeemed value equivalent to one hundred percent (100%) of the landed cost.

4.20. Effects of Settlement by Payment of Fine or Redemption.⁶⁷

Upon payment of the fine or redemption value, the goods shall be released and all liabilities which may attach to the goods shall be discharged without prejudice to the filing of administrative or criminal case against the importer, owner or authorized representative.

4.21. Burden of Proof. In all proceedings for the forfeiture of any vehicle, vessel, aircraft, or goods, the burden of proof shall lie upon the claimant, to show cause why the shipment should not be forfeited.⁶⁸

4.22. Decision of the District Collector. The District Collector shall render a decision within thirty (30) calendar days upon termination of the hearing or within ten (10) calendar days in case of perishable goods.

The decision of the District Collector shall include a declaration of forfeiture or release, the imposition of a fine or redemption of the goods, or such other action as may be proper.⁶⁹

Copies of the decision rendered by the District Collector shall be served to all concerned parties within five (5) calendar days from the date of issuance. Such service shall preferably be by personal service or, if not practicable, by registered mail. Proof of such service shall be attached to the record of the case.⁷⁰

Decisions by the District Collector in case an Offer of Settlement was made shall be subject to clearance and review of the Commissioner, who shall decide within thirty (30) calendar days, or within ten (10) calendar days in the case of perishable goods, from receipt of the records: Provided, that the period to resolve shall not run until the complete records of the case is received by the Office of the Commissioner: Provided, finally that the same shall not be subject to automatic review of the Secretary of Finance as provided under Section 4.24 of this Order

4.23. Appeal to the Commissioner. The person aggrieved by the decision of a District Collector may, within fifteen (15) days or five (5) days in case of perishable goods, from receipt of the decision of the District Collector, file a written Notice of Appeal with proof of

⁶⁷ cf. CMTA, Title XI, Chapter 4, Section No. 1124;

⁶⁸ cf. CMTA, Title XI, Chapter 4, Section No. 1123;

⁶⁹ cf. CMTA, Title XI, Chapter 4, Section No. 1125;

⁷⁰ cf. CMO No. 29-1997;

payment of the required appeal fee amounting to One Thousand Five Hundred Pesos (Php 1,500.00) to the District Collector, furnishing a copy to the Commissioner.⁷¹

Upon receipt of the Notice of Appeal with proof of payment of the requisite appeal fee, the District Collector shall immediately transmit all the records of the proceedings to the Commissioner, who shall review and decide on the appeal within thirty (30) calendar days or fifteen (15) calendar days in case of perishable goods from receipt of the records of the case: Provided, that if within thirty (30) days or fifteen (15) days in case of perishable goods, no decision is rendered, the appealed decision of the District Collector shall be deemed affirmed⁷²: Provided further, that the period to resolve shall not run until the complete records of the case is received by the Office of the Commissioner.

An appeal filed beyond the prescribed period or an appeal filed without the payment of the required appeal fee shall be dismissed.

Motion for Reconsideration filed with the District Collector shall be deemed as an appeal, hence, payment of the required appeal fee is necessary.

4.24. Automatic Review of Decisions Adverse to the Government.⁷³ The Commissioner shall automatically review any decision by the District Collector adverse to the government. The entire records of the case shall be elevated within five (5) calendar days from the promulgation of the decision. The Commissioner shall decide on the automatic review within thirty (30) calendar days, or within ten (10) calendar days in the case of perishable goods, from receipt of the records: Provided, that the period to resolve shall not run until the complete records of the case is received by the Office of the Commissioner.

When no decision is rendered within the prescribed period or when a decision adverse to the government is rendered by the Commissioner involving goods with FOB or FCA value of ten million pesos (₱10,000,000.00) or more, the records of the decision of the Commissioner, or of the District Collector under review, as the case may be, shall be automatically elevated within five (5) days for review by the Secretary of Finance.

The decision issued by the Secretary of Finance, whether or not a decision was rendered by the Commissioner within thirty (30) days, or within ten (10) days in the case of perishable goods, from receipt

⁷¹ cf. CMTA, Title XI, Chapter 4, Section No. 1126

⁷² cf. CMTA, Title XI, Chapter 4, Section No. 1126;

⁷³ cf. CMTA, Title XI, Chapter 4, Section No. 1127;

of the records, shall be final upon the Bureau, subject to appeal to the Court of Tax Appeals.⁷⁴

The Secretary of Finance shall within thirty (30) calendar days or ten (10) calendar days, for perishable goods review the decision of the District Collector or the Commissioner, provided that when no decision is rendered within the prescribed period, the decision of the District Collector or the Commissioner shall be deemed approved.

Section 5. Authority of the Commissioner to issue Supplementary Rules and Regulations. The Commissioner may issue supplementary rules and regulations to effectively implement the provisions of this CAO.

Section 6. Penal Provision. Any violations of this CAO committed by any person, officer or employee shall be penalized in accordance with Title XIV of the CMTA and other applicable penal laws or provisions.

Section 7. Transitory Provision. Pending full implementation of comprehensive legal docketing and management system that will establish and provide electronic monitoring of forfeiture cases, the Bureau shall implement the provisions of this CAO. The Management Information and System Technology Group (MISTG) shall devise an Information Communication Technology (ICT) enabled system for the docketing, reporting and monitoring of forfeiture cases.

Section 8. Periodic Review. Unless otherwise provided, this CAO shall be reviewed every three (3) years and may be amended, if necessary.

Section 9. Repealing Clause. This CAO specifically amends or repeals CAO Nos. 02-1993, 06-1993, 09-1993, 04-1994, 05-2003, and 11-2003, and CMO Nos. 47-1990, 71-1990, 61-1991, 41-1993, 48-1993, 23-1994, 29-1997, 39-1997, 10-1999, 19-2003, 12-2008, 21-2011, 21-2015, as well as other previous issuances which are inconsistent with the provisions hereof.

Section 10. Separability Clause. If any part of this CAO is declared unconstitutional or contrary to existing laws, the other parts not so declared shall remain in full force and effect.

Section 11. Effectivity. This CAO shall take effect after fifteen (15) days from 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 CAO.

⁷⁴ cf. Section 7 RA 9282.

NICANOR E. FAELDON

Commissioner

Approved:

CARLOS G. DOMINGUEZ III

Secretary

Informational Section. As the title denotes this section only provides information and does not give rise to any substantive or formal rights or obligations.

1. History. This CAO seeks to amend and repeal the following Customs Administrative Orders (CAOs)

- CAO 02-1993- Appreciation of documents executed by foreign based witnesses in seizure and forfeiture proceedings
- CAO 06-1993- Automatic Forfeiture
- CAO 09-1993- Rules and Regulations Governing the Issuance of Warrants of Seizure and Detention, the Conduct of Seizure Proceedings and the Procedure in Appeals to the Commissioner of Customs and to the Secretary of Finance
- CAO 04-1994- Schedule of Fines to be imposed in the Settlement of Seizure Cases Pending Hearing pursuant to Section 2307 of the Tariff and Customs Code, as amended by Executive Order No. 38
- CAO 05-2003- Summary Seizure Proceedings for Tax Deficient Imported Motor Vehicles Offered for Voluntary Payment
- CAO 11-2003- Extending the effectivity of CAO 5-2003

2. Related Policies.

- Customs Administrative Order (CAO) No. ____ Alert Orders
- Customs Administrative Order (CAO) No. ____ Deputization
- Customs Administrative Order (CAO) No. ____ Disposal

3. Webpage, Forms, Handbooks and other References. Unit webpage or other information relating to the regulations, such as guidelines, forms, charts, and handbooks, should not be incorporated into the body of the CAO but should be listed and hyperlinked in the additional information section after the text of the CAO. Hyperlinks should refer to the title of the document not the https address.

- a. International Commercial Terms 2010
- b. Revised Kyoto Convention
- c. Rules of Court