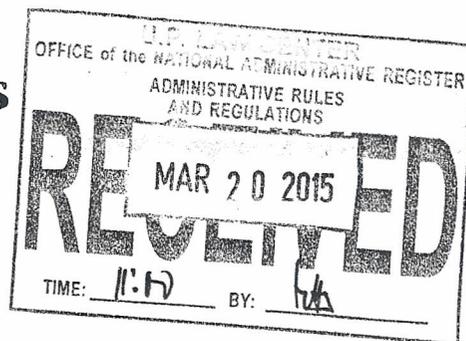


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REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS



**Customs Administrative Order
No. 3-2015**

10 March 2015

Subject: AMENDED AND CONSOLIDATED GUIDELINES AND PROCEDURES FOR THE IMPOSITION OF PENALTIES ARISING FROM POST-ENTRY AUDITS

By authority of Section 18 of Republic Act No. 9135, or An Act Amending Certain Provisions of Presidential Decree No. 1464, otherwise known as The Tariff and Customs Code of the Philippines (TCCP), As Amended, and For Other Purposes; as well as Section 608 of the Tariff and Customs Code of the Philippines, as amended, the following rules and regulations are hereby promulgated.

1. OBJECTIVES

- 1.a. To provide consolidated guidelines for the imposition of administrative and criminal penalties in relation to post-entry audits of import transactions.
- 1.b. This Customs Administrative Order (CAO) amends and consolidates the rules and procedures on the imposition of penalties under:
 - 1.b.i. Section III of Customs Memorandum Order (CMO) 1-2002
 - 1.b.ii. Section V of CMO2-2002; and
 - 1.b.iii. Section VI of CAO5-2001, as amended by Section VI of CAO 4-2004.

Copies of these CAOs and CMOs are attached for reference only, and can be obtained from www.customs.gov.ph.

2. ADMINISTRATIVE FINES, PENALTIES, SURCHARGES, AND OTHER SANCTIONS

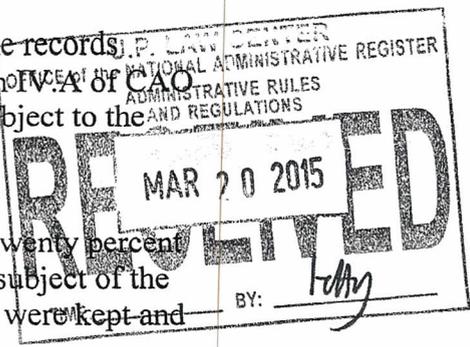
2.a. RECORDKEEPING AND ACCESS TO RECORDS

- 2.a.i. Failure to keep records

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MICHELLE N. TABLAZON
Admin Officer I
CRMD-Printing Unit

Any person who fails to keep and maintain all the records required to be kept and maintained under Section IV.A of CAO 5-2001, as amended by CAO 4-2004, shall be subject to the following:



- 2.a.i.a. Administrative fine equivalent to twenty percent (20%) ad valorem on the article/s subject of the importations for which no records were kept and maintained.
- 2.a.i.b. Hold delivery or release of subsequent imported articles to answer for the fine, any revised assessment, and/or as penalty for failure to keep records.
- 2.a.ii. Failure and/or refusal to give full and free access

Any importer and/or broker who denies an authorized officer full and free access under Section IV.B of CAO 5-2001, as amended by CAO 4-2004, to the records required to be kept and maintained as specified in Section IV.A of CAO 5-2001, as amended by CAO 4-2004, shall be subject to the following:

- 2.a.ii.a. Re-assessment of the importations subject to audit applying the correct valuation method based on available data, the declared transaction value being presumed inaccurate.
- 2.a.ii.b. Administrative fine equivalent to twenty percent (20%) ad valorem on the article/s subject of the importations for which full and free access to the records was not given.
- 2.a.ii.c. Hold delivery or release of subsequent imported articles to answer for the fine, any revised assessment, and/or as a penalty for failure or refusal to give full and free access.
- 2.b. FAILURE TO PAY CORRECT DUTIES AND TAXES ON IMPORTED GOODS

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BY: *[Signature]*

2.b.i. Any person who, after being subjected to post-entry audit and examination as provided in Sections IV.B and IV.C of CAO 5-2001, as amended by CAO 4-2004, is found to have incurred deficiencies in duties and taxes paid for imported goods, shall be penalized according to three (3) degrees of culpability, subject to any mitigating, aggravating, or extraordinary factors that are clearly established by the available evidence:

2.b.i.a. **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 to ensure that a statement made is correct, it shall be determined to be negligent and punishable by an administrative fine equivalent to not less than one-half (1/2) but not more than two (2) times the revenue loss, computed as follows:

2.b.i.a.1 Revenue loss percentage:

$$\frac{\text{what should have been paid} - \text{what was paid}}{\text{what should have been paid}}$$

2.b.i.a.2 Penalty multiplier:

$$50\% + (\text{revenue loss percentage} \times 1.5)$$

2.b.i.a.3 Penalty:

$$\text{deficiency} \times \text{penalty multiplier}$$

2.b.i.b. **Gross Negligence.** When a deficiency results from an act or acts of omission or commission done with actual knowledge or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligation under these rules or the TCCP, it shall be determined to be grossly negligent and punishable by an administrative fine equivalent to not less than two and a half (2½) but not more than four (4) times the revenue loss, computed as follows:

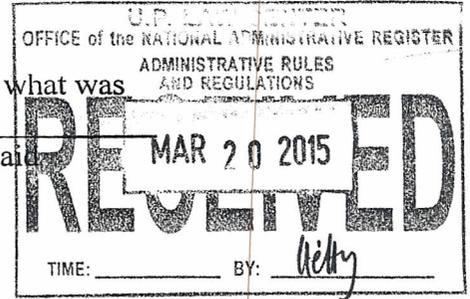
2.b.i.b.1 Revenue loss percentage:

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MICHELLE N. TARLAZON
Admin. Officer I
CRAD-Printing Unit

what should have been paid – what was paid

what should have been paid



2.b.i.b.2 Penalty multiplier:

250% + (revenue loss percentage x 1.5)

2.b.i.b.3 Penalty:

deficiency x penalty multiplier

2.b.i.c. **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, it shall be determined to be fraudulent and be punishable by an administrative fine equivalent to not less than five (5) times but not more than eight (8) times the revenue loss, computed as follows:

2.b.i.c.1 Revenue loss percentage:

what should have been paid -- what was paid

what should have been paid

2.b.i.c.2 Penalty multiplier:

500% + (revenue loss percentage x 3)

2.b.i.c.3 Penalty:

deficiency x penalty multiplier

2.b.ii. Except in cases of fraud, the Commissioner of Customs may, pursuant to Section 2316 of the TCCP and subject to the approval of the Secretary of Finance, exercise his power to compromise the imposition of the fine prescribed above, when

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the importer makes a voluntary and full disclosure of the deficiency prior to the commencement of the audit on a date fixed by the Commissioner, provided that the compromise shall only be to the extent of the voluntary disclosure made

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2.b.iii. The decision of the Commissioner to impose the penalties as prescribed in Sections 2.A and 2.B herein, may be appealed to the Court of Tax Appeals in accordance with Section 2402 of the TCCP.

3. CONFIDENTIALITY CLAUSE

All information which is by nature confidential, or which is provided on a confidential basis for the purposes of customs valuation, or which was confidentially obtained in the course of the conduct of the compliance audit, shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the persons or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings, and violation of such confidentiality shall be prosecuted under Subsection (j) of Section 360 of the TCCP.

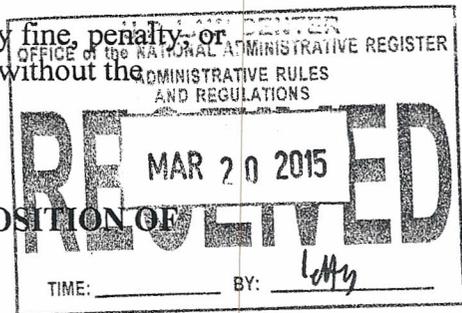
4. CRIMINAL PROSECUTION AND RESORT TO JUDICIAL REMEDIES

- 4.a. In addition to the administrative sanctions under Section 2 herein, criminal prosecution under Sections 3601, 3602, 3610, 3611, and/or other pertinent sections of the TCCP may be instituted against the erring importer and/or broker.
- 4.b. The Bureau of Customs may likewise seek remedies from the proper regional trial court having jurisdiction against the erring importer and/or broker under Section 2.A.2, including punishment for contempt.
- 4.c. Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of the TCCP or other laws enforced by the Bureau of Customs shall be brought in the name of the Government of the Philippines and the prosecution thereof shall be conducted by Customs officers. However, the determination of probable cause in criminal cases for purposes of filing the information in the appropriate court shall remain with the prosecutors of the Department of Justice or other authorized officials.

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4.d. No civil or criminal action for the recovery of any fine, penalty or forfeiture under the TCCP shall be filed in court without the approval of the Commissioner.

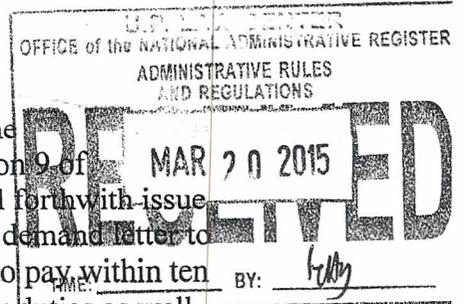


5. GUIDELINES AND PROCEDURES FOR THE IMPOSITION OF ADMINISTRATIVE PENALTIES

- 5.a. After it finds the importer liable for deficiency duties and taxes, the Fiscal Intelligence Unit of the Department of Finance (DOF-FIU), pursuant to Executive Order No. 155, Series of 2013, or the concerned government body tasked by law to conduct post-entry audit, shall make an initial determination on the administrative sanctions which may be imposed against the audited importer under Sections 2.A and 2.B hereof.
- 5.b. Upon issuance of the Final Audit Report and Recommendation (FARR), the DOF-FIU shall include recommendations on the appropriate administrative sanctions either in the FARR or in a separate report, stating clearly the basis thereof and attaching thereto all pertinent documents and records in support of the same.
- 5.c. The DOF-FIU shall forward the FARR, which includes the recommendations for the imposition of administrative sanctions, or the separate report containing the same, to the Commissioner of Customs for appropriate action.
- 5.d. Upon receipt of the FARR or the report, the Commissioner of Customs shall determine whether there is sufficient basis for DOF-FIU's recommendations. To make such a determination, the Commissioner shall conduct, or cause the conduct of, hearings in compliance with Section 3611 of the Tariff and Customs Code of the Philippines, as amended by RA 9135, and may, directly or through the Legal Services Department or other groups within the Bureau of Customs:
 - 5.d.i. Require more information from the importer and/or customs broker, as the case may be, who shall be given a period of fifteen (15) days from receipt of the findings, to respond to such a request;
 - 5.d.ii. Instruct the Legal Services Department, or other groups within the Bureau of Customs, to review the FARR or the report.

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MICHELLE N. TARLAZON
Adm. Officer I
CRM - Finance Unit



5.e. If and when the Commissioner of Customs accepts the recommendations of the DOF-FIU, pursuant to Section 9 of the Department of Finance DO No. 44-2014, he/she shall forthwith issue a (a) collection letter, or (b) a formal assessment and demand letter to the importer, as the case may be, directing the latter to pay, within ten (10) working days from receipt thereof the deficiency duties as well as the fines, penalties, surcharges, and other sanctions.

Where warranted, the Commissioner shall likewise order that the Bureau hold delivery or release of subsequent imported articles to answer for the fine, any revised assessment, and/or as a penalty for failure to keep records and/or failure or refusal to give full and free access, pursuant to Sections 2.A.1(b) and 2.A.2(c) herein, and inform the importer or broker of such order.

5.f. The importer has thirty (30) days from receipt of the collection letter, or formal assessment and demand letter of the Commissioner of Customs, as the case may be, to file an appeal to the Court of Tax Appeals in accordance with the applicable laws, rules, and regulations.

6. INDICATORS OF NEGLIGENCE, GROSS NEGLIGENCE, AND/OR FRAUD

6.a. For purposes of determining the degree of culpability of the importer (i.e., negligence, gross negligence, fraud) and, consequently, the appropriate administrative penalty to be imposed, certain indicators may be considered during the proceedings, including but not limited to the following:

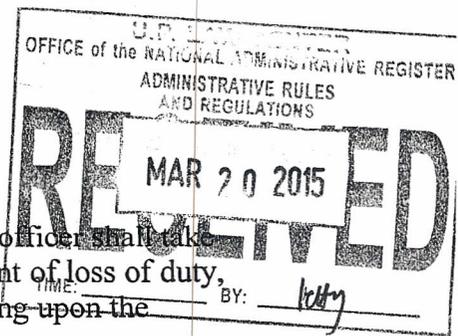
6.a.i. Negligence

6.a.i.a. Failure to take necessary measures to ensure the completeness, accuracy, and correctness of information and statements made in pertinent documents relative to the importation resulting in the deficiency;

6.a.i.b. Failure to take necessary measures to ensure compliance with any requirement mandated by laws, rules, and regulations resulting in the deficiency.

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Admin Officer I
CRMD-Printing Unit



6.a.ii. Gross negligence

In determining gross negligence, the appropriate officer shall take into account the gravity of the offense, the amount of loss of duty, the extent of wrongdoing, and other factors bearing upon the seriousness of the violation.

6.a.iii. Fraud

6.a.iii.a. Unresponsive Single Comprehensive Reply(SCR), or misleading or unclear statements in the SCR;

6.a.iii.b. Importer's failure to file its SCR, or to respond to any finding;

6.a.iii.c. Unauthorized withdrawal of items entered for warehousing;

6.a.iii.d. Failure to liquidate warehousing entries or transshipment entries;

6.a.iii.e. Failure to comply with import requirements for regulated commodities;

6.a.iii.f. Importation of goods that do not conform with the standards and permit requirements required by applicable law and regulated by relevant government agencies ;

6.a.iii.g. Type of commodity being imported is not in line with the importer's regular business activities;

6.a.iii.h. Misclassification of items resulting in the avoidance of tax clearance and/or reduction of duties and taxes;

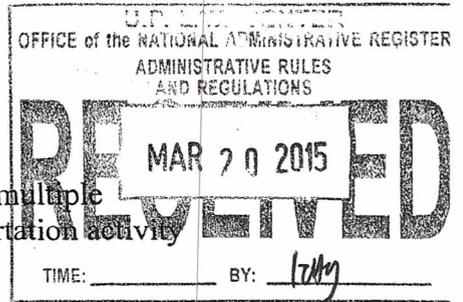
6.a.iii.i. Mislabeling / nonmarking of containers;

6.a.iii.j. Records that do not comply with generally accepted accounting principles;

6.a.iii.k. Recordkeeping and bookkeeping practices that produce dubious mistakes, suspiciously misplaced documents, and other doubtful facts and circumstances;

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6.a.iii.l. Existence of duplicate or otherwise multiple records pertaining to only one importation activity that contain varying information;

6.a.iii.m. Unexplained absence or lack of relevant documents, or unexplained missing pages or entries in the said relevant documents;

6.a.iii.n. Unusual format of importer's documents (e.g., invoice format that lack the usual elements such as, but not limited to, company logo, address, terms of delivery, and the like);

6.a.iii.o. Inconsistencies and/or contradictions

6.a.iii.o.1 in the data contained in the pieces of evidence submitted by the importer / customs broker in the post-entry audit;

6.a.iii.o.2 between the data submitted by the importer / customs broker, and the data gathered by DOF-FIU, or the concerned government body tasked by law to conduct post-entry audit, from independent sources;

6.a.iii.p. habitual errors, mistakes or inaccuracies import declarations or violations of customs laws, rules and regulations.

The listing above does not preclude the consideration of any other similar, analogous, or relevant indicators that can facilitate the determination of the degree of culpability.

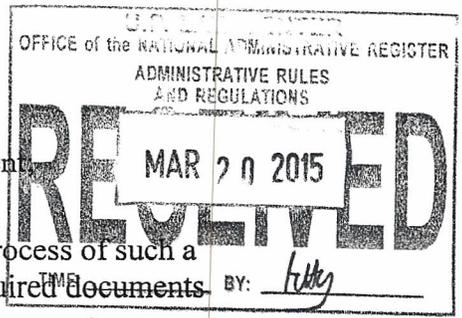
7. MITIGATING AND AGGRAVATING CIRCUMSTANCES AFFECTING CULPABILITY UNDER SECTION 2.B

7.a. Mitigating circumstances

The following circumstances may mitigate the culpability of the erring importer and/or broker:

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CRMD-Printing Unit



- 7.a.i. Contributory error on the part of the government;
- 7.a.ii. Cooperation throughout the post-entry audit process of such a nature that transcends mere submission of required documents or mere grant of access to said documents;
- 7.a.iii. Corrective action immediately taken by the importer to address the issues pertaining to its management systems that resulted in the deficiency in duties;
- 7.a.iv. Payment of deficiency duties immediately after being notified of the deficiency or prior to the issuance of the collection letter / formal assessment and demand letter;
- 7.a.v. Absence of any prior violations of the TCCP, and related rules and regulations;
- 7.a.vi. Any other circumstance that is similar or analogous to the foregoing.

7.b. Aggravating circumstances

The following circumstances may aggravate the culpability of the erring importer and/or broker:

- 7.b.i. Unexplained delayed compliance and/or total noncompliance with the demand to produce documents;
 - 7.b.ii. Obstructing or unnecessarily delaying the conduct of any administrative proceeding conducted in relation to the post-entry audit;
 - 7.b.iii. Prior violations of the TCCP, and related rules and regulations; and
 - 7.b.iv. Any other circumstance that is similar or analogous to the foregoing.
- 7.c. The foregoing mitigating and aggravating circumstances may be considered in the determination of the degree of culpability of the erring importer, and in imposing the corresponding administrative penalty as prescribed in Section 2.B herein.

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8. REPEALING CLAUSE

All orders, memoranda, circulars, or other issuances or parts thereof which are inconsistent with this CAO are hereby deemed repealed and/or modified accordingly.

9. SEPARABILITY CLAUSE

If any part of this CAO is declared by the courts of competent jurisdiction as unconstitutional or contrary to existing laws, the other parts shall remain in full force and effect.

10. EFFECTIVITY

This CAO shall take effect immediately upon its publication on _____.

[Signature]
John P. Sevilla
Commissioner



Approved by: *[Signature]*

[Signature]
Cesar V. Purisima
Secretary of Finance

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REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS

Customs Administrative Order
1-2015

March 2015

SUBJECT: AMENDED AND CONSOLIDATED GUIDELINES AND PROCEDURES FOR THE IMPOSITION OF PENALTIES ARISING FROM POST-ENTRY AUDITS

By authority of Section 18 of Republic Act No. 9135, or An Act Amending Certain Provisions of Presidential Decree No. 1464, otherwise known as The Tariff and Customs Code of the Philippines (TCCP), As Amended, and For Other Purposes; as well as Section 608 of the Tariff and Customs Code of the Philippines, as amended, the following rules and regulations are hereby promulgated.

OBJECTIVES

- a. To provide consolidated guidelines for the imposition of administrative and criminal penalties in relation to post-entry audits of import transactions.
- b. This Customs Administrative Order (CAO) amends and consolidates the rules and procedures on the imposition of penalties under:
 - 1. b.i. Section III of Customs Memorandum Order (CMO) 1-2002
 - 1. b.ii. Section V of CMO2-2002; and
 - 1. b.iii. Section VI of CAO 5-2001, as amended by Section VI of CAO 4-2004.

Copies of these CAOs and CMOs are attached for reference only, and can be obtained from www.customs.gov.ph.

ADMINISTRATIVE FINES, PENALTIES, SURCHARGES, AND OTHER SANCTIONS

a. RECORDKEEPING AND ACCESS TO RECORDS

2.a.i. Failure to keep records

Any person who fails to keep and maintain all the records required to be kept and maintained under Section IV.A of CAO 5-2001, as amended by CAO 4-2004, shall be subject to the following:

2.a.i.a. Administrative fine equivalent to twenty percent (20%) ad valorem on the article/s subject of the importations for which no records were kept and maintained.

2.a.i.b. Hold delivery or release of subsequent imported articles to answer for the fine, any revised assessment, and/or as penalty for failure to keep records.

and/or refusal to give full and free access

Any importer and/or broker who denies an authorized person full and free access under Section IV.B of CAO

what should have been paid – what was paid
what should have been paid

2.b.i.c.2 Penalty multiplier:

500% + (revenue loss percentage x 3)

2.b.i.c.3 Penalty:

deficiency x penalty multiplier

2.b.ii. Except in cases of fraud, the Commissioner of Customs may, pursuant to Section 2316 of the TCCP and subject to the approval of the Secretary of Finance, exercise his power to compromise the imposition of the fine prescribed above, when the importer makes a voluntary and full disclosure of the deficiency prior to the commencement of the audit on a date fixed by the Commissioner, provided that the compromise shall only be to the extent of the voluntary disclosure made.

2.b.iii. The decision of the Commissioner to impose the penalties as prescribed in Sections 2.A and 2.B herein, may be appealed to the Court of Tax Appeals in accordance with Section 2402 of the TCCP.

3. CONFIDENTIALITY CLAUSE

All information which is by nature confidential, or which is provided on a confidential basis for the purposes of customs valuation, or which was confidentially obtained in the course of the conduct of the compliance audit, shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the persons or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings, and violation of such confidentiality shall be prosecuted under Subsection (j) of Section 360 of the TCCP.

4. CRIMINAL PROSECUTION AND RESORT TO JUDICIAL REMEDIES

4.a. In addition to the administrative sanctions under Section 2 herein, criminal prosecution under Sections 3601, 3602, 3610, 3611, and/or other pertinent sections of the TCCP may be instituted against the erring importer and/or broker.

4.b. The Bureau of Customs may likewise seek remedies from the proper regional trial court having jurisdiction against the erring importer and/or broker under Section 2.A.2, including punishment for contempt.

4.c. Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of the TCCP or other laws enforced by the Bureau of Customs shall be brought in the name of the Government of the Philippines and the prosecution thereof shall be conducted by Customs officers. However, the determination of probable cause in criminal cases for purposes of filing the information in the appropriate court shall remain with the prosecutors of the Department of Justice or other authorized officials.

4.d. No civil or criminal action for the recovery of any fine, penalty, or forfeiture under the TCCP shall be filed in court without the approval of the Commissioner.

5. GUIDELINES AND PROCEDURES FOR THE IMPOSITION OF ADMINISTRATIVE PENALTIES

5.a. After it finds the importer liable for deficiency duties and taxes, the Fiscal Intelligence Unit of the Department of Finance (DOF-

6.a.iii.b. Importer's failure to file its SCR, or to respond to any finding;

6.a.iii.c. Unauthorized withdrawal of items entered for warehousing;

6.a.iii.d. Failure to liquidate warehousing entries or transshipment entries;

6.a.iii.e. Failure to comply with import requirements for regulated commodities;

6.a.iii.f. Importation of goods that do not conform with the standards and permit requirements required by applicable law and regulated by relevant government agencies;

6.a.iii.g. Type of commodity being imported is not in line with the importer's regular business activities;

6.a.iii.h. Misclassification of items resulting in the avoidance of tax clearance and/or reduction of duties and taxes;

6.a.iii.i. Mislabeling / nonmarking of containers;

6.a.iii.j. Records that do not comply with generally accepted accounting principles;

6.a.iii.k. Recordkeeping and bookkeeping practices that produce dubious mistakes, suspiciously misplaced documents, and other doubtful facts and circumstances;

6.a.iii.l. Existence of duplicate or otherwise multiple records pertaining to only one importation activity that contain varying information;

6.a.iii.m. Unexplained absence or lack of relevant documents, or unexplained missing pages or entries in the said relevant documents;

6.a.iii.n. Unusual format of importer's documents (e.g. invoice format that lack the usual elements such as, but not limited to, company logo, address, terms of delivery, and the like);

6.a.iii.o. Inconsistencies and/or contradictions

6.a.iii.o.1 in the data contained in the pieces of evidence submitted by the importer / customs broker in the post-entry audit;

6.a.iii.o.2 between the data submitted by the importer / customs broker, and the data gathered by DOF-FIU, or the concerned government body tasked by law to conduct post-entry audit, from independent sources;

6.a.iii.p. habitual errors, mistakes or inaccuracies import declarations or violations of customs laws, rules and regulations.

The listing above does not preclude the consideration of any other similar, analogous, or relevant indicators that can facilitate the determination of the degree of culpability.

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OF THE ORIGINAL**

[Signature]
LEON N. TABLAZON
Chief Officer I
CRMD-Printing Unit