[DATE]

**CUSTOMS ADMINISTRATIVE ORDER (CAO)**

**NO. \_\_\_\_\_\_\_\_\_\_\_\_\_**

**SUBJECT: POST CLEARANCE AUDIT AND PRIOR DISCLOSURE PROGRAM**

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**Introduction.** This CAO implements the (a) post clearance audit functions of the Bureau, found in Sections 1000 to 1006, Title X; (b) the function of the Bureau regarding assessment and collection of revenues from imported goods and other dues, fees, charges and penalties accruing under this CAO as provided in Section 202(a) Chapter 1, Title II, in relation to Section 1131, Chapter 7, Title XI, and (c) other related provisions of Republic Act No. 10863 otherwise known as the Customs Modernization and Tariff Act (CMTA).

The CMTA expressly repeals the Tariff and Customs Code of the Philippines, as amended, and all other laws, acts, presidential decrees, executive order, rules and regulations or parts thereof inconsitent with the CMTA. Specifically relevant to this CAO, the following are expressly repealed by the CMTA: Executive Order No. 155 s. 2013 and Department Order Nos. 011-2014 and 044-2014 issued by the Department of Finance (DOF).

**Section 1.Scope.**This CAO 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, locators as provided for in Sections 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.**

* 1. To prescribe the principles, purposes, mechanics and methodology of the post clearance audit system, recordkeeping requirement, and the period covered by the conduct of audit;
	2. To implement the post clearance audit under a regime of informed compliance;
	3. To stress the importance of the requirement to keep records and to comply with other legal obligations of Importers and other customs stakeholders and the adverse consequences of non-compliance with customs rules and regulations;
	4. To promote compliance with customs laws and regulations by providing a non-punitive facility for Importers to voluntarily disclose or report to customs plain errors or innocent mistakes in the goods declarations and in the payment of duties, taxes and other charges;
	5. To provide a clear set of policies and guidelines in the application and availment of the PDP on fines and surcharges for deficiencies in the payment of duties and taxes; and

**2.6.** To generate additional customs revenues with least administrative cost to both the government and the concerned Importer.

**Section 3.Definition of Terms.**

**3.1. Importer** shall include the following:

**3.1.1.** 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.

 **3.1.2.** An agent of any party described in Section 3.1 of this CAO;

**3.1.3.** A person whose activities require the filing of a goods declaration; or

**3.1.4.** A person ordering imported goods from a local importer or supplier in a domestic transaction shall be considered an importer if:

**a.** the person placing the order controls the 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 on record;

**ii)** the importer on record is an affiliate of the juridical entity which placed the order;

**iii)** the importer on record and the entity which placed the order are owned by the same set of majority stockholders in both corporations;

**iv)** 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 / goods to be imported.[[1]](#footnote-1)

**3.2. Customs Clearance**- refers 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.[[2]](#footnote-2)

**3.3. Inadvertent Error** - shall mean a mechanical, electronic or clerical error that an Importer demonstrates was not intentional and occurred notwithstanding the maintenance of internal controls reasonably adapted to avoid such errors.[[3]](#footnote-3)

**3.4. Prior Disclosure Program** – is a program based on international best customs practice, authorizing the Commissioner of Customs to accept prior disclosure by Importers of errors in goods declaration resulting in deficiency in duties and taxes on past importations.[[4]](#footnote-4)

**3.5. Locators** - persons authorized to bring imported goods into free zones, such as the special economic zones and free ports.[[5]](#footnote-5)

**3.6.** **Fraud** – commission or omission of any act resulting in material false statements such as submission of false or altered documents in connection with any importation knowingly, voluntarily, and intentionally done to reduce the taxes and duties paid either through misdeclaration, misclassification or undervaluation.[[6]](#footnote-6)

**3.7.** **Negligence** – 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.[[7]](#footnote-7)

* 1. **Misdeclaration** – refers 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.
	2. **Misclassification** – refers to insufficient or wrong description of the goods and use of erroneous tariff heading resulting in deficiency between the duty and tax that should have been paid and the duty and tax actually paid.
	3. **Undervaluation** – refers to a declared value that is lower than the correct value of the imported goods by not reflecting the full price actually paid or payable, or by failing to include any dutiable adjustment to the price of the goods, or by using an incorrect valuation method, or by non-observance of the valuation rules which results in a deficiency between the duty and tax that should have been paid and the duty and tax actually paid.

**Section 4**.**General Provisions.**

**4.1. Records to be Kept by the Bureau.** The Bureau shall keep a database of Importer and customs broker profiles which shall include a record of audit results and the following information and papers:

**4.1.1.** Articles of incorporation;

**4.1.2.** The company structure, which shall include but not be limited to:

**a.** Incorporators and board of directors;

**b.** Key officers; and

**c.** Organizational structure;

**4.1.3.** Key importations;

**4.1.4.** Importation privileges enjoyed;

**4.1.5.** Record of Violations and Penalties;

**a.** Infringements committed;

1. Instances of prohibited importation;
2. Instances of smuggling;
3. Instances of technical smuggling;

**i)** Misdeclaration

**ii)** Misclassification

**iii)** Undervaluation

**4.1.6.** Risk categories;

**4.1.7.** Audit Reports; and[[8]](#footnote-8)

**4.1.8.** 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.

**4.2. Entities required to maintain and keep records.**

**4.2.1.****Importers.** - All importers, including those mentioned in the definition of importers insofar as the application of post clearance audit and Sec. 1005 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.** **Brokers and other parties.** - All customs brokers and all other parties engaged in customs clearance and processing, are required to keep copies of the records covering transactions that they handle.

**4.2.3.** **Locators.** - Locators are required to keep records of all its activities, including in whole or in part, records on imported goods withdrawn from said zones into the customs territory. [[9]](#footnote-9)

**4.3.Purposes of keeping records.** - The records shall be kept for the following purposes:

**4.3.1.** For verifying the accuracy of the transaction value declared by the importers/customs brokers on the import entry;

**4.3.2.** For conducting audit examination, inspection, verification and/or investigation of the records in relation to specific transactions or to the adequacy and integrity of the manual or electronic system or systems by which such records are created and stored; and

**4.3.3.** For collecting the proper duties and taxes.

**4.4.Period and place to keep records.** – Importers, brokers, and locators are required to keep the records at their principal place of business for a period of three (3) years from the date of importation.

**4.5. Records Required to be Kept.** The following records are required to be kept by Importers, locators or persons authorized to bring imported goods into free zones and all parties engaged in Customs Clearance and processing for the purpose of post clearance audit:[[10]](#footnote-10)

**4.5.1.** Company or entity structure including the following to the extent that they are relevant for the verification of the accuracy of the transaction value declared on the goods declaration and necessary for the purpose of collecting the proper duties and taxes on imports, as the case may be:

1. Articles of incorporation, articles of partnership, registration certificate with the Department of Trade and Industry and the like;
2. List of incorporators, stockholders, partners, board of directors, owners;
3. Organizational structure;
4. Management and key personnel involved in import processing including authorized declarants and their specimen signatures;
5. Capital composition;
6. Stock and transfer book, General Information Sheet, list of partners/owners;
7. Principals and subsidiaries, or affiliates and their capital composition;
8. List of exporters/suppliers and nature of relationship with importer pursuant to Section 701 (c), Chapter 1, Title VII of the CMTA;
9. Audited financial statements and tax returns for income tax, withholding tax, value added taxes, excise taxes, documentary stamp taxes, and capital gains taxes;
10. General contracts and agreements with regular suppliers;
11. Company profile/history and description of operations;
12. Minutes of Board of Directors meetings; and
13. Permits and licenses.

**4.5.2.** Ordering and purchase documentation to the extent that they are relevant for the verification of the accuracy of the transaction value declared on the goods declaration and necessary for the purpose of collecting the proper duties and taxes on imports, including the following:

**a.** Sales and other related agreements, in whatever form, including, whenever applicable, 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, whenever applicable, 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.** Shipping, importation, exportation and transportation documentation including the following to the extent that they are relevant for the verification of the accuracy of the transaction value declared on the goods declaration and necessary for the purpose of collecting the proper duties and taxes on imports, as the case may be:

1. Goods declaration and proof of payment of duties and taxes;
2. Commercial, non-commercial invoices, and/or consignment agreements;
3. Import and export licenses or permits;
4. Ocean bills of lading, master air waybills, house air waybills, and/or consolidator bills of lading;
5. Shipping instructions and/or freight forwarders instructions;
6. Certificates of origin, certificates of eligibility, certificates of inspection and loading and/or certificates of identification;
7. Freight and insurance contracts;
8. Packing lists;
9. Transshipment permits, boatnotes and/or special permits to transfer;
10. Quota allocation and/or certificates;
11. Customs brokerage, logistics or forwarding agreements, billings, statements of accounts and/or receipts;
12. Receipts for arrastre charges, cargo handling and storage fees;
13. Short shipped and/or bad order reports;
14. Goods tally records;
15. Letters of credit, applications for letter of credit, bank details;
16. Remittance advice;
17. Credit card transactions;
18. Telegraphic money transfers;
19. Offshore monetary transactions;
20. Evidence of payments by any other means, including information detailing non-cash compensation transactions;
21. Permit to operate Customs Bonded Warehouses, Customs Facilities and Warehouses and Free Zones;
22. Formula of conversion/manufacture;
23. List of monthly importable materials/quota;
24. List of imported purchases;
25. Summary of export/local sales;
26. Summary of liquidated and unliquidated entries;
27. List of sub-contractors;
28. List of inventory;
29. Production report; and
30. Privileges enjoyed by the BOI registered Importers and Free Zone locators.

**4.5.4.** Manufacturing, stock and resale documentation including the following to the extent that they are relevant for the verification of the accuracy of the transaction value declared on the goods declaration and necessary for the purpose of collecting the proper duties and taxes on imports:

1. Inward goods register/receipts journal;
2. Stock register/inventory records;
3. Production records;
4. Costing records;
5. Purchases book; and
6. Sales book.

**4.5.5.** The following bank documents, financial statements and other accounting information to the extent that they are relevant for the verification of the accuracy of the transaction value declared on the goods declaration and necessary for the purpose of collecting the proper duties and taxes on imports:

1. Cash receipts and disbursements books;
2. Subsidiary ledgers of accounts payable and accounts receivable; and
3. Cheque records.
4. Bank reconciliation records.

**4.5.6.** To the extent that they are relevant for the verification of the accuracy of the transaction value declared on the goods declaration and necessary for the purpose of collecting the proper duties and taxes on imports, and if applicable, 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, papers, books, registers, discs, films, tapes, sound tracks, and other devices or things in or on which information contained in the records described in Sections 4.5.1. to 4.5.6. of this CAO are recorded or stored.

**Section 5.Post Clearance Audit.**

**5.1. Audit and Examination of Records.** 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, to ensure compliance with this CAO.[[11]](#footnote-11)

**5.2. Selection Criteria.**

**5.2.1.** Post clearance audit of Importers shall be undertaken when firms are selected by a computer-aided risk management system, the parameters of which are to be based on objective and quantifiable data which shall include, but not be limited to, the following:

**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;[[12]](#footnote-12)

**e.** Country of Origin;

**f.** Errors in the import declaration are detected which if uncorrected would result in substantial revenue loss or grave distortion of relevant statistical data;[[13]](#footnote-13)

**g.** The compliance level of a trade sector; and

**h.** Non-renewal of Importer’s customs accreditation.

**5.2.2.** For this purpose, the Management Information System and Technology Group (MISTG) shall design and establish a computer-aided risk management system, to be approved by the Commissioner, that will facilitate the risk assessment and conduct of audit.

**5.2.3.** Customs brokers and Importer’s duly authorized agents may be audited to validate audits of their Importer clients and fill in information gaps revealed during an audit of their Importer clients. [[14]](#footnote-14)

**5.3. Conduct of Post Clearance Audit.[[15]](#footnote-15)**

**5.3.1.** The Post Clearance Audit Group (PCAG) shall prepare a set of post clearance audit procedures, for approval by the Commissioner to strictly govern the audit system and procedure as well as the conduct of the audit examination itself to achieve the highest level of objectivity, fairness, efficiency and transparency. The guidelines, whenever applicable, shall include the following procedural/operational concerns:

* 1. **Profiling/Information Analysis** – PCAG shall perform risk profiling analysis activities on the Importers based on other information and documents from the various offices of the Bureau. This includes data gathering and evaluation of import and export operations.
	2. **Audit Notification** – The Commissioner shall issue an Audit Notification Letter (ANL) to the company identified for audit. The ANL shall contain the name/s of the authorized customs officer/s to perform post clearance audit and is subject to a 30 day validity for service to the Importer.
	3. **Audit Plan** – The audit team shall prepare a general audit plan to fit the circumstances of the audited company with the end view of achieving the specific audit objectives in the most expeditious and transparent manner.
	4. **Pre-Audit Conference** – Before the start of the audit, the audit team shall meet with the importer on a pre-arranged schedule to discuss all matters pertaining to the conduct of the audit. The following shall be covered during the pre-audit conference:
		+ - 1. Authority of the auditors to conduct the audit;
				2. Scope and duration of the audit;
				3. Written designation of officer or staff of the importer authorized to provide information and answer queries of the auditors;
				4. Work area designated for the auditors;
				5. Access to premises of the importer;
				6. Documents to be examined;
				7. Certified copies of documents to be provided to the auditors;
				8. Designation and authority of the certifying officer of the company;
				9. Conduct of walk-through of the systems relevant to importation.
	5. **Conduct of Audit Proper** – The audit proper shall commence on the date when the audit team actually conducts examination, inspection, verification and investigation of accounting and financial records and goods declaration and other records mentioned in Section 4.5. of this CAO.
	6. **Conduct of exit conference.**– When the auditors have performed compliance audit and have gathered all documents relevant to the investigation or inquiry, the audit team shall hold an exit conference with the importer to discuss the following matters:
1. Turn over of all original documents provided to the auditors during the audit;
2. Schedule of providing the importer with the management letter;
3. Response of the importer to the management letter;
4. Possibility of negligence or fraud to be communicated to the importer;
5. Duty of the importer to provide further documents and testimony when summoned by the Commissioner in relation to any negligence or fraud that may be discovered by the audit review team;
6. Issuance of the final audit report.
	1. **Audit Reporting** – The audit team shall prepare and submit the Final Audit Report and Recommendation (FARR) to the Commissioner of Customs for approval and issuance of Demand Letter. The Bureau shall furnish the Bureau of Internal Revenue (BIR) and the Department of Finance (DOF) a copy of the FARR within thirty (30) days from the issuance thereof.
	2. **Audit Monitoring and Recordkeeping** – PCAG shall, with the assistance of the Management Information System and Technology Group, establish a secure electronic system of maintaining audit reports and records. PCAG shall develop an internal monitoring system to ensure that all tasks related to audit operations are completed and on time and that approved audit recommendations are properly implemented.

**5.3.2.** The conduct of post clearance audit shall depend on the yearly Post Clearance Audit (PCA) program of the PCAG. The audit may be divided into stages or may have varying scopes. Initially, the Importer shall be required to produce for examination documents enumerated in Sections 4.5.1, 4.5.2 and 4.5.3. The audit may be expanded to cover documents enumerated in Section 4.5.4, 4.5.5, 4.5.6 and 4.5.7.

**5.3.3.** Nothing in this section shall be construed as restricting or calling into question the rights of the Bureau 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.

**5.4. Access to Records.[[16]](#footnote-16)**

**5.4.1.** Any authorized Bureau personnel under PCAG shall be given by the Importer and customs broker full and free access to the premises where the records are kept, or be provided with full and free access to a cloud based data-room, to conduct audit examination, inspection, verification and investigation of records relevant to such investigation and inquiry, such as but not limited to the importer’s:

* + 1. Document flow;
		2. Financial flow;
		3. Goods inventory; and
		4. Other business processes necessary or relevant in determining the adequacy and integrity of the manual or electronic system or systems by which such records are created and stored and to ensure compliance with customs laws and existing rules and regulations, particularly in relation to customs valuation, tariff classification and country of origin with the end in view of collecting the proper duties and taxes.

In addition, the authorized customs officer may require the importer and customs broker to make certified copies of any such documents or extracts thereof.

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.

**5.4.2.** A customs officer is not entitled to enter the premises in this section unless, before so doing, the officer produces to the person occupying or apparently in charge of the premises written evidence of the fact of being authorized which shall be the certified true copy of the ANL. The person occupying or apparently in charge of the premises entered by an officer must provide the officer with all reasonable facilities and assistance for the effective exercise of the officer’s authority under this section.

**5.5. Document in 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 a foreign embassy.[[17]](#footnote-17)

**5.6. Power of Commissioner to Obtain Information.**

**5.6.1.Submission of information related to importation.**Pursuant to the power of the commissioner to obtain from any person any information related to importations such as costs and volume of production, receipts or sales and gross income of taxpayers, all importers, whether selected to be the subject of a post clearance audit or investigation or not and without need of summons from the Commissioner, shall submit on a quarterly basis the following documents and information:

1. For trading concerns:
2. Itemized list of imported goods including tariff classification, itemized cost, taxes and duties paid;
3. Sales report of imported goods, including list of buyers, quantities sold per buyer with reference to sales invoices;
4. Report of gross income from importations;
5. For manufacturing concerns:
6. Itemized list of imported goods including tariff classification, itemized cost, taxes and duties paid;
7. Report of imported materials used in production;
8. Production report;
9. Sales report;
10. Gross income from imported raw materials;

**5.6.2.Request for information from government agencies and offices.** The Commissioner may request from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas (BSP) and government-owned or -controlled corporations (GOCCs), information related to the importations and transactions covering the imported goods including 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.

The Commissioner shall enter into a Memorandum of Agreement with the concerned agencies and government offices to define the coordination between the Bureau and the concerned agency or office, how the post clearance auditors can have access to information held by the concerned agency or office, and the regularity of submission of information to the Bureau for the effective implementation of the post clearance audit.

**5.6.3.Power to obtain information from banks and other financial institutions.** The Commissioner may obtain information from banks or other financial institutions on commercial documents and records pertaining specifically to payments relevant to import transaction. This power of the Commissioner shall not be construed as granting the Commissioner the authority to inquire into bank deposits of importers or their agents.

**5.7. Result of the Completion of Audit on the Goods Declaration.** After the Post Clearance Audit is completed, the affected goods declaration may be altered or modified to conform to the findings.[[18]](#footnote-18)

**5.8. Administrative and Criminal Offenses.**

**5.8.1. Failure to Keep Records.** Any person who fails to keep and maintain the prescribed records required to be kept and maintained in this CAO shall be subject to the following:

* + 1. Suspension or cancellation of accreditation as Importer with the Bureau;[[19]](#footnote-19)
		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;[[20]](#footnote-20)
		3. Hold delivery or release of subsequent imported articles to answer for the fine and any revised assessment;[[21]](#footnote-21)
		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);[[22]](#footnote-22) and
		5. Waiver of the right to contest the results of the audit based on records kept by the Bureau.[[23]](#footnote-23)

**5.8.2. Failure or Refusal to Give Full and Free Access.** Any person who denies an authorized customs officer full and free access to the records required to be kept and maintained as prescribed in this CAO shall be subject to the following:

* + - 1. Punishment for contempt, for contumacy or refusal from the proper court having criminal jurisdiction;
			2. Re-assessment of the importations subject of audit applying the correct valuation method, tariff classification, quantity and/or country of origin, as applicable, based on available data, the declared transaction value being presumed inaccurate;[[24]](#footnote-24)
			3. Suspension or cancellation of accreditation as an importer with the Bureau;[[25]](#footnote-25)
			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;[[26]](#footnote-26)
			5. Hold delivery or release of subsequent imported articles to answer for the fine and any revised assessment;[[27]](#footnote-27) and
			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).[[28]](#footnote-28)

**5.8.3 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:[[29]](#footnote-29)

* + 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.

Provided, That subject to Section 108, Chapter 2, Title I of the CMTA, a penalty of ten percent (10%) of the revenue loss shall be imposed on an Inadvertent Error amounting to simple Negligence.

* + 1. **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.

**5.8.4. Interest on Unpaid Duties, Taxes, Other Charges and Fine or Penalty.** Unpaid duties, taxes and other charges, shall incur legal interest of twenty percent (20%) per annum computed fifteen (15) days from the time the final assessment becomes due and demandable until final payment.[[30]](#footnote-30)

**5.8.5 Remedies.** The importer adversely affected by the assessment issued by the PCAG and approved by the Commissioner (approved FARR) may file a request for reconsideration to the Commissioner within fifteen (15) days from receipt. When said request is denied by the Commissioner, the Importer may appeal the same to the Court of Tax Appeals (CTA) within thirty (30) days from receipt of the adverse ruling or decision of the Commissioner.[[31]](#footnote-31)

**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;

**a.** 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 initial estimate of deficiency duties, taxes and reduced penalties[[32]](#footnote-32), if applicable.

**b.** By paying the balance, if applicable, for the deficiency within a non-extendible period of sixty (60) calendar days from the filing of the PDP application form.

**6.1.2.** Any Importer who has received an ANL may still avail of the PDP provided the following conditions are satisfied:

**a.** Before or during the Pre-Audit Conference, the Importer manifests his intention to avail of the PDP;

**b.** The Importer submits the duly accomplished application form for prior disclosure stating the errors in goods declaration and tenders payment of the initial estimated deficiency duties, taxes and reduced penalties, if applicable, within thirty (30) calendar days from the Pre-Audit Conference; and

**c.** The Importer pays the balance, if applicable, for the deficiency within a non-extendible period of sixty (60) calendar days from the filing of the PDP application form.

**6.1.3.** The Importer who intends to avail of the PDP shall secure the services of an independent auditor to assure the Bureau that the voluntary disclosure, in all aspect, has been verified and certified under oath to be correct, accurate and complete. However, PCAG shall not be bound by the findings of the independent auditor when PCAG finds that there are additional payment due from the Importer as a result of its review.

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

**6.2.1.** Goods declaration which are the subject of pending case with any other customs office;

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

**6.2.3.** Goods declaration involving Fraud as defined under Section 5.8.3.b. of this CAO.

**6.3. Benefit of the Program.** An approved applicant of the PDP shall be subject to a reduced penalty of ten percent (10%) of the deficiency duties and taxes.

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

**6.4.1.** After the receipt of the PDP application form, initial payment and other supporting documents, the PCAG shall verify if the application is complete. If incomplete, PCAG shall require the submission of additional relevant documents.

**6.4.2.** In relation to the specific goods declaration subject of the prior disclosure application, when there are preliminary findings of Fraud or that there are other material inaccuracies, mistakes or errors in the entry declaration or outright violations committed that are not the subject of the disclosure but has an adverse impact on government revenues, PCAG shall recommend the conduct of formal and full audit.

**6.4.3.** In all cases, the tender of payment shall be accepted by the Bureau to be applied to the deficiencies in duties and taxes as voluntarily disclosed regardless of whether the prior disclosure application is finally approved or denied by the Commissioner.

**6.5. Interest on Unpaid Duties and Taxes.** The deficiency duties and taxes on the goods declarations and customs issues disclosed shall incur a legal interest of twenty percent (20%) per annum computed fifteen (15) days from the time the final assessment becomes due and demandable until final payment.[[33]](#footnote-33)

**Section 7.Civil Remedies for the Collection of Duties, Taxes, Fines, Surcharges, Interests, and Other Charges.[[34]](#footnote-34)**

**7.1. Remedies for the Collection of Duties, Taxes, Fines, Surcharges, Interests and Other Charges.** The civil 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:

**7.1.1.** 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, and by levy upon real property and interest in rights to real property; and

**7.1.2.** By civil or criminal action.

Either or both 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 involved is not more than Ten Thousand Pesos (P10,000.00).

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

**7.2. Constructive Distraint of the Property.**

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.

The constructive distraint of personal property shall be effected by requiring the importer or any person in possession or control of such property to sign a receipt covering the property, to obligate to preserve the distrained property on the state and condition at the time of the government’s seizure of the same, and not to dispose of the same in any manner whatsoever, without the express authority of the Commissioner.

In case the importer or the person in possession and control of the property sought to be placed under constructive distraint refuses or fails to sign the receipt herein referred to, the customs officer effecting the constructive distraint shall proceed to prepare a list of such property and, in the presence of two (2) witnesses, leave a copy thereof in the premises where the property distrained is located, after which the said property shall be deemed to have been placed under constructive distraint.

**7.3. Summary Remedies.**

**7.3.1. Distraint of Personal Property**.

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.

The officer serving the warrant of distraint shall make or cause to be made an account of the goods, chattels, effects, or other personal property distrained, a copy of which, signed by the said officer, shall be left either with the owner or person from whose possession such goods, chattels, or effects or other personal property were taken, or at the dwelling or other place of business of such person and with someone of suitable age and discretion, to which list shall be added a statement of the sum demanded and note of the time and place of sale.

Stocks and other securities shall be distrained by serving a copy of the warrant of distraint upon the importer and upon the president, manager, treasurer, or other responsible officer of the corporation, company or association, which issued the said stocks or securities.

Debts and credits shall be distrained by leaving with the person owing the debts or having in his possession or under his control such credits, or with his agent, a copy of the warrant of distraint. The warrant of distraint shall be sufficient authority to the person owing the debts or having in his possession or under his control any credits belonging to the importer to pay to the Commissioner the amount of such debts of credits.

Bank accounts shall be garnished by serving a warrant of garnishment upon the importer and upon the president, manager, treasurer, or other responsible officer of the bank. Upon the receipt of the warrant of garnishment, the bank shall turn over to the Commissioner so much of the bank accounts as may be sufficient to satisfy the claim of the government.

A report on the distraint shall, within ten (10) days from receipt of the warrant, be submitted by the Commissioner to the Secretary of Finance: Provided, That the Commissioner shall have the power to lift such order of distraint subject to the rules and regulations promulgated pursuant to this CAO.

**7.3.2. Levy on 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 a duly 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.

The levy shall be effected by writing upon the certificate a description of the property on which levy is made. At the same time, written notice of the levy shall be mailed to or served upon the register of deeds of the province or city where the property is located and upon the importer, or if the latter is not in the Philippines, upon the agent or the manager of the business from which the liability arose, or if there be none, to the occupant of the property in question.

In case the warrant of levy on real property is not issued before or simultaneously with the warrant of distraint on personal property, and the personal property of the importer is not sufficient to satisfy the duty and tax due, the Commissioner or a duly authorized representative shall, within thirty (30) days after execution of the distraint, proceed with the levy on the real property of the importer.

Within ten (10) days after receipt of the warrant, a report on any levy shall be submitted by the levying officer to the Commissioner: *Provided*, That the Commissioner may lift such warrants of levy issued, subject to the rules and regulations promulgated pursuant this CAO.

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

**Section 9.Repealing Clause.** 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 CAO are hereby deemed repealed and/or modified accordingly.

**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 fifteen (15) 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 CAO.

**NICANOR E. FAELDON**

Commissioner

Approved:

**CARLOS G. DOMINGUEZ III**

Secretary

**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.160 – 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

1. *cf* CMTA, Title X, Section 1003 [↑](#footnote-ref-1)
2. *cf* CMTA, Title X, Section 102 (k) [↑](#footnote-ref-2)
3. *cf* U.S.C.S. Appx 12 CFR § 202.2 and CMTA, Title X, Section 1005 (a) [↑](#footnote-ref-3)
4. *cf* U.S. Customs 1592 and WCO Agreement on Trade Facilitation Article 6: 3.6 [↑](#footnote-ref-4)
5. cf CMTA, Title X, Section 1003 (c) [↑](#footnote-ref-5)
6. *cf* TCCP, Section 3611 (c) and CMTA, Title X, Section 1005 (b) [↑](#footnote-ref-6)
7. *cf* TCCP, Section 3611 (a) and CMTA, Title X, Section 1005 (a) [↑](#footnote-ref-7)
8. *cf* CMTA, Title X, Section 1006 [↑](#footnote-ref-8)
9. *cf* CMTA, Title X, Section 1003 [↑](#footnote-ref-9)
10. *cf* CAO No. 4-2004, Section IV.A.2 [↑](#footnote-ref-10)
11. c*f* CMTA, Title X, Section 1000 [↑](#footnote-ref-11)
12. *cf* CMTA, Title X, Section 1001 [↑](#footnote-ref-12)
13. *cf* CAO No. 4-2004, Section IV.C. [↑](#footnote-ref-13)
14. c*f* CAO No. 4-2004, Section IV.C.2. [↑](#footnote-ref-14)
15. *cf* CAO No. 4-2004, Section IV.D. [↑](#footnote-ref-15)
16. *cf* CMTA, Title X, Section 1002 [↑](#footnote-ref-16)
17. *cf* CAO No. 4-2004, Section IV.A.5. [↑](#footnote-ref-17)
18. *cf* CMTA, Title IV, Chapter3, Section 427 [↑](#footnote-ref-18)
19. *cf* CMO No. 11-2014, Section 8 [↑](#footnote-ref-19)
20. *cf* CMTA, Title X, Section 1402 [↑](#footnote-ref-20)
21. *cf* CMTA, Title X, Section 1002 and Title XIV, Chapter 1, Section 1427 [↑](#footnote-ref-21)
22. *cf* CMTA, Title XIV, Chapter 1, Section 1427 [↑](#footnote-ref-22)
23. *cf* CMTA, Title X, Section 1003 [↑](#footnote-ref-23)
24. *cf* CMTA, Title X, Section 1002 [↑](#footnote-ref-24)
25. *cf* CMO No. 11-2014, Section 8.c. [↑](#footnote-ref-25)
26. *cf* CMTA, Title X, Section 1402 [↑](#footnote-ref-26)
27. *cf* CMTA, Title X, Section 1002 and Title XIV, Chapter 1, Section 1427 [↑](#footnote-ref-27)
28. *cf* CMTA, Title XIV, Chapter 1, Section 1427 [↑](#footnote-ref-28)
29. *cf* CMTA, Title X, Section 1005 [↑](#footnote-ref-29)
30. *cf* CMTA, Title I, Chapter 1, Section 104 and Title IV, Chapter 3, Section 429 [↑](#footnote-ref-30)
31. *cf* CMTA, Title I, Chapter 2, Section 114 and Title XI, Chapter 1, Section 1104 [↑](#footnote-ref-31)
32. *cf* 19 U.S. Customs 1592 [↑](#footnote-ref-32)
33. *cf* CMTA, Title I, Chapter 1, Section 104 and Title IV, Chapter 3, Section 429 [↑](#footnote-ref-33)
34. *cf* CMTA, Title XI, Chapter 8, Sections 1132, 1133 and 1134 [↑](#footnote-ref-34)