



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

CUSTOMS ADMINISTRATIVE ORDER (CAO)

NO. _____

SUBJECT: GOVERNMENT'S RIGHT OF COMPULSORY ACQUISITION

Introduction. This CAO implements Sections 709, Chapter 2, Title 7 and other relevant provisions of Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA).

Section 1. Scope. This CAO applies to all imported goods, the declared value of which is said to be undervalued, including but not limited to consumption, warehousing, transshipment, consolidated goods and postal items.

Section 2. Objectives.

- 2.1.** To protect government revenues;
- 2.2.** To deter importers from committing undervaluation; and
- 2.3.** To prevent the abuse and misuse of postal items declared under De Minimis and those covered by the privilege accorded to balikbayans, OFWs and returning residents.¹

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

- 3.1. Public Auction** – shall refer to a public sale of property to the highest bidder by one licensed and authorized for that purpose.² For customs purposes, the auction must comply with COA rules and regulations.
- 3.2. Compulsory Acquisition** – shall refer to the power of the government to acquire imported goods when the importers declared customs value is unconscionably low.
- 3.3. Customs Facilities and Warehouses** – shall refer to facilities for temporary storage of goods established and authorized by the Bureau pursuant to Title VIII, Chapter 2 of the CMTA. These includes yards, container freight stations, seaport temporary storage warehouses,

¹ cf. CAO 5-2016 and CAO 3-2017.

² cf. Black's Law Dictionary.

airport temporary storage warehouses and other premises for customs purposes.³

- 3.4. De Minimis Value** – shall refer to the value of goods for which no duty or tax is collected. Goods with De Minimis Value are considered importations of negligible amount and entitled to immediate release.⁴
- 3.5. Duty Benchmark** – shall refer to the irregular practice of paying uniform duty on certain categories of goods disregarding the quality, quantity and the actual value of the goods.
- 3.6. Imported Goods** – shall refer to goods brought in from a foreign territory into Philippine territory.⁵
- 3.7. 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. In both cases, the methods of valuation should be strictly followed.⁶
- 3.8. Warrant of Compulsory Acquisition** – shall refer to the order issued by the Commissioner identifying the goods subject for Compulsory Acquisition.
- 3.9. Writ of Acquisition** – shall refer to the preliminary order issued by the Commissioner identifying the goods subject for Compulsory Acquisition. This writ shall ripen into a Warrant of Compulsory Acquisition upon the affirmation of the Commissioner’s decision during the appeals process.

Section 4. General Provisions.

- 4.1. Authority to Exercise Right of Compulsory Acquisition.** Only the Commissioner may exercise the power of Compulsory Acquisition. He may, on his own or upon the recommendation of the District Collector, issue the Warrant of Compulsory Acquisition.
- 4.2. Grounds for the Issuance of Warrant of Compulsory Acquisition.**
 - 4.2.1.** When the commodity is found to be grossly undervalued.
 - 4.2.2.** A commodity is considered grossly undervalued when the declared value falls fifty percent (50%) below the median value of previously imported identical or similar goods.

³ cf. CMTA, Title 8, Chapter 2, Section 803.

⁴ cf. CAO 2-2016, Section 3.2.

⁵ cf. CMTA, Title 1, Chapter 2, Section 102 (z).

⁶ cf. CMTA, Title 14, Chapter 1, Section 1400 par. 2.

4.3. Badges of Undervaluation.

4.3.1. Paying or assessing uniform duty on certain categories of goods disregarding the quality, quantity and the actual value of the goods, which is an indicator of Duty Benchmark.

Once the existence of Duty Benchmark is established, the District Collector shall recommend to the Commissioner the issuance of Writ of Compulsory Acquisition.

4.3.2. Information coming from Customs Administration from other countries and report based on an industry valid complaint and recommendation by reputable and recognized organizations or chambers that such importation is causing economic sabotage to the local industry.

4.4. Requirements to Prove the Transaction Value.

4.4.1. Sales Contract

4.4.2. Proof of Payment

4.4.3. Invoice

4.4.4. Modes of Payment

4.4.4.1. Letter of Credit

4.4.4.2. Direct payment

4.4.4.3. Telegraphic transfer

4.4.5. Insurance

4.4.6. Royalties

4.5. Procedure.

4.5.1. The Commissioner may, motu proprio, issue the order of acquisition of goods found to be undervalued.

4.5.2. If Compulsory Acquisition is upon the recommendation of the District Collectors after the issuance of a WCA, the Commissioner shall act on the recommendation by issuing the Warrant of Compulsory Acquisition.

4.5.3. Upon the issuance of Warrant of Compulsory Acquisition, the goods shall immediately be transferred to a Customs Facilities and Warehouses.⁷

Section 5. Operational Procedures.

⁷ cf. CMO 66-1993.

5.1. Motion for Reconsideration. The importer may file a motion for reconsideration on the propriety on the issuance of the Writ of Compulsory Acquisition within ten (10) working days from receipt thereof. Thereafter, the Commissioner shall resolve the motion for reconsideration within ten (10) days from receipt thereof.

5.2. Appeal.

5.2.1. In case of denial of the motion of reconsideration, the aggrieved importer may file an appeal before the Secretary of Finance within twenty (20) working days from receipt of the denial.

5.2.2. If dissatisfied with the decision of the Secretary of Finance, the importer may appeal to the Court of Tax Appeals within thirty (30) days⁸ from receipt of the decision from the Department of Finance.

5.3. Mode or Manner of Payment. When no appeal is taken or upon affirmation of the decision of the Commissioner during the appeals process.

5.3.1. The importer shall be paid in cash based on the price equal to the declared customs value plus any duties already paid on the goods.

5.3.2. When:

a. Within ten (10) working days from the issuance of Warrant of Compulsory Acquisition where no motion for reconsideration was filed on the Writ of Compulsory Acquisition.

b. Within ten (10) working days from the issuance of Warrant of Compulsory Acquisition upon finality of the decision of the court affirming the exercise by the Commissioner to acquire the property.

5.4. Disposition of Acquired Goods. Goods subject to Compulsory Acquisition shall be disposed of through Public Auction or negotiated sale in accordance with the rules and regulations on Disposition of Goods under customs custody. For this purpose, the floor price shall consider the cost of storage and all other expenses related to the safekeeping of the goods pending appeal.

Section 6. Penal Provision. 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 provisions.

⁸ cf. CMTA, Title 11, Chapter 1, Section 1104

Section 7. Repealing Clause. This CAO amends or repeals previously issued CAOs and CMOs which are inconsistent with the provisions herein stated.

Section 8. Separability Clause. If any part of this order is declared unconstitutional or contrary to laws, the other parts not so declared shall remain in full force and effect.

Section 9. Review. This CAO shall be reviewed every three (3) years and be amended or revised, if necessary.

Section 10. Effectivity. This CAO shall take effect fifteen (15) days from publication at the Official Gazette or a newspaper of national circulation.

The Office of the National Administrative Registrar (ONAR) of the UP Law Center shall be provided three (3) copies of this CAO.

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 is amendatory to all the previous issuances of the Bureau of Customs relating to Compulsory Acquisition.
2. "The collection, recording, storage maintenance, processing, sharing of data and information; and maintenance of data information in the CAO shall be secured and consistent with the principles and policy of Republic Act 10173, also known as The Data Privacy Act."
3. **Related Policies.**
 - Republic Act No. 10863, otherwise known as Customs Modernization and Tariff Act (CMTA)

4. Webpage, Forms, Handbooks and other References.
 - Republic Act No. 10863 "Customs Modernization and Tariff Act"
 - Revised Kyoto Convention