

**[BOC Customs Administrative Order No. 03-2015,
March 10, 2015]**

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

*Adopted: 10 March 2015
Date Filed: 20 March 2015*

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 CMO 02-2002; 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.

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

2.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.

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

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 (!) 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 (2 1/2) but not more than four (4) times the revenue loss, computed as follows:

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

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

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 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 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 (i) 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 on 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