



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DEPARTMENT ORDER NO. 011-2014
05 February 2014

WHEREAS, Section 3515 of the Tariff and Customs Code of the Philippines ("TCCP"), as inserted by Republic Act No. 9135, authorizes the conduct of audit examination, inspection, verification and/or investigation of transaction records of importers and brokers;

WHEREAS, pursuant to the Constitutional mandate for the President to ensure the faithful execution of all laws and the corresponding Constitutional grant of control of all executive departments, bureaus and offices, Executive Order No. 160, Series of 2003, created the Post Entry Audit Group in the Bureau of Customs ("BOC-PEAG") to discharge the functions and responsibilities provided under Section 3515 of the TCCP;

WHEREAS, pursuant to the same mandate and grant of power under Section 17, Article VII of the 1987 Constitution, Executive Order No. 155, Series of 2013, transferred the functions of the BOC-PEAG to the Fiscal Intelligence Unit of the Department of Finance ("DOF-FIU");

WHEREAS, Executive Order No. 292, Series of 1987, otherwise known as the "Administrative Code of 1987" confers on the Secretary of Finance supervision and control over the Bureau of Customs, including the authority to act directly whenever a specific function is entrusted by law or regulation to the Bureau of Customs;

WHEREAS, there is a need to prescribe the guidelines and procedures in the performance by the DOF-FIU of the foregoing functions and responsibilities, for the guidance of the public and the government officials concerned;

NOW, THEREFORE, in consideration of the foregoing premises, the following rules and regulations are hereby promulgated:

PART I. RECORD-KEEPING

Section 1. *Obligation to keep records.*— All importers are required to keep at their principal place of business, for a period of ten (10) years from the date of filing of the import entry, all the records of their importations and/or books of accounts, business and/or computer systems and all other customs commercial data, in whatever form, including payment records relevant for the verification of the accuracy of the transaction value declared by the importers/customs brokers on the import entry and the documents enumerated in Section 2 of this Department Order.

All customs brokers are also required to keep at their principal place of business, for a period of ten (10) years from the date of importation copies of the importation records in whatever form covering transactions that they handle, including records enumerated under Section 2(c), paragraphs 1 to 13, of this Department Order.

For purposes of this Department Order, the term "*importer*" shall include the importer of record/consignee, beneficial owner, agent of the persons effecting the importation in question or any other person or entity who knowingly causes the goods to be imported. The phrase "*knowingly causes the goods to be imported*" covers, among others, domestic transactions where: 1) the terms and conditions of the importation are controlled by the person placing the order with the importer; or 2) technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with the importer with knowledge that they will be used in the manufacture or production of imported goods.

Section 2. *Records to be kept.*— The following records are required to be kept by importers:

a. 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 import entry 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 Bureau of Domestic Trade and the like;
- 2) List of incorporators, stockholders, partners, board of directors, owners;
- 3) Organizational structure;
- 4) Management and key personnel involved in the import processing including authorized declarants and their specimen signatures;
- 5) Capital composition; stock and transfer book;
- 6) Principals and/or subsidiaries and their capital composition, if applicable;
- 7) List of exporters/suppliers to which the importer is related pursuant to Section 1 of this Department Order;

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

- 1) Sales and other related agreements, in whatever form, including, whenever applicable, those covering distribution, royalty, agency, warranty, terms of payment, and the like;

- 2) Correspondence or communication relating to the import transaction, in whatever form, including, whenever applicable, purchase orders, vouchers, confirmations, pro-forma invoice, acknowledgement receipts, notices, advisories, and the like;
- 3) Product description or specifications. Brochures, manual, catalogue, pamphlet, flier, literature, if applicable;

c. 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 import entry and necessary for the purpose of collecting the proper duties and taxes on imports, as the case may be:

- 1) Import and/or export entry;
- 2) Invoice and/or consignment notes;
- 3) Import and export licenses/permits;
- 4) Ocean bill of lading, and/or master air waybill, and/or house air waybill, and/or consolidator bill of lading;
- 5) Shipping instructions, and/or freight forwarders instructions;
- 6) Certificates of Origin, and/or Certificates of Eligibility and/or Certificate of Inspection and/or Loading;
- 7) Freight and insurance contracts;
- 8) Packing Lists;
- 9) Transshipment permits, and/or boatnotes, and/or special permits to transfer;
- 10) Quota Allocation and/or Certificates;
- 11) Customs brokerage agreements, and/or billings, and/or statement of accounts, and/or receipts;
- 12) Receipts for arrastre charges, cargo handling and storage fees,
- 13) Short shipped/bad order reports, if applicable;
- 14) Goods tally records, if applicable;
- 15) Letters of credit, application for letter of credit, bank details;
- 16) Remittance advice;
- 17) Credit card transactions;
- 18) Telegraphic money transfers;
- 19) Offshore monetary transactions; and
- 20) Evidence of payments by any other means, including information detailing non-cash compensation transactions.

d. 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 import entry 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) Sales records;

e. 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 import entry and necessary for the purpose of collecting the proper duties and taxes on imports:

- 1) Receipts, cashbooks;
- 2) Schedules of accounts payables and accounts receivables; and
- 3) Cheque records;

f. To the extent that they are relevant for the verification of the accuracy of the transaction value declared on the import entry and necessary for the purpose of collecting the proper duties and taxes on imports, and if applicable charts and codes of accounts, ledgers, financial statements, accounting instruction manuals, and systems and program documentation that describes the accounting system used by the importer; and

g. 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 paragraphs (a) to (f) of this Section are recorded or stored.

Section 3. *Documents in a foreign language.* – Whenever a document in a foreign language is presented to the DOF-FIU in relation to the conduct of audit examination, inspection, verification and/or investigation of transaction records of importers and brokers, said document must be accompanied with a translation in English or Filipino, certified correct under oath by the translator.

PART II. SCOPE OF POST-ENTRY AUDIT

Section 4. *Audit of importers.* – The audit of importers shall be undertaken by the DOF-FIU at the following instances, among others:

- a. When firms are selected by a computer-aided risk management system, the criteria for which are provided in Section 5 hereof;
- b. When errors in the import declaration are detected;
- c. When firms voluntarily request to be audited, subject to the approval of the Commissioner of Customs, upon recommendation of the DOF-FIU.

Section 5. *Importer Profiling.* – The selection of importers to be audited pursuant to Section 4(a) hereof shall be based on the following objective and quantifiable data, among others:

- 1) Relative magnitude of customs revenue from the firm;
- 2) The rates of duties of the firm's imports;
- 3) The compliance track record of the firm; and
- 4) An assessment of the risk to revenue of the firm's import activities;

Section 6. *Audit of brokers.* – Brokers shall be audited to validate audits of their importer clients and/or fill in information gaps revealed during an audit of their importer clients.

Section 7. *Coverage of audit.* – The audit of importers shall include the conduct of examination, inspection, verification and/or investigation of the importer's:

- a) Document flow;
- b) Financial flow;
- c) Goods inventory; and
- d) 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.

PART III. POST-ENTRY AUDIT PROCESS

Section 8. *Issuance of an Audit Notification Letter ("ANL")* – Whenever the DOF-FIU determines, in accordance with the provisions of this Department Order, that there is a basis to conduct an audit on a particular importer, DOF-FIU shall inform the Commissioner of Customs in writing. Within fifteen (15) days from receipt of notice from DOF-FIU, the Commissioner of Customs shall issue an Audit Notification Letter ("ANL") to the concerned importer and the broker/s authorized by the importer to file its import entries for the subject period, if any, authorizing the conduct of audit examination, inspection, verification and/or investigation of all records pertinent to the importations made by the importer for the period of three (3) years from the date of final payment/ settlement of duties, substantially in the form prescribed in Annex "A" hereof.

The notice from DOF-FIU and the ANL shall state the following:

- a. Names of the members of the audit team;
- b. Date, time and venue of the pre-audit conference; and
- c. Date of commencement of audit proper.

Section 9. *Submission of records.* – The documents to be submitted by the importer and/or broker to whom an ANL was issued pursuant to this Department Order shall be certified by the importer and/or broker to be true copies of the same.

Section 10. *Submission of additional documents and verification of submitted documents.* – Nothing in this Department Order shall be interpreted to preclude or restrict DOF-FIU from requiring additional documents or from verifying 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.

Section 11. *Audit manual.* – The DOF-FIU shall prepare and submit, for the approval of the Secretary of Finance, a set of compliance audit guidelines 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 and fairness, efficiency, and transparency.

Section 12. *Aid of courts.* – Unless otherwise provided by law, the BOC Commissioner upon the recommendation of DOF-FIU may, in case of disobedience, invoke the aid of the proper regional trial court within whose jurisdiction the matter falls. The court may punish contumacy or refusal as contempt. In addition, the fact that the importer/broker denies the authorized customs officer full and free access to importation records during the conduct of a post-entry audit shall create a presumption of inaccuracy in the transaction value declared for their imported goods and shall constitute a ground for the re-assessment of such goods using the alternate methods of valuation as applicable.

PART IV. PENAL PROVISIONS

Section 13. *Penalties for failure to keep records.* – Any person who fails to keep and maintain all the records required to be kept and maintained under Section 2 of this Department Order shall be subject to the following:

- a. Imposition of 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 as prescribed in Section 2504 of the TCCP;
- b. Cancellation of accreditation privileges in accordance with existing rules and regulations; and/or
- c. Institution of criminal prosecution punishable with a fine of not less than one hundred thousand pesos (Php100,000.00) but not more than two hundred thousand pesos (Php200,000.00) and/or imprisonment of not less two (2) years and one (1) day but not more than six (6) years.

Section 14. *Penalties for failure and/or refusal to give full and free access.* – Any importer and/or broker who denies an authorized DOF-FIU officer full and free access to the records required to be kept and maintained as specified in Section 2 of this Department Order shall be subject to the following:

- a. Punishment for contempt, for contumacy or refusal from the proper court having criminal jurisdiction;
- b. Re-assessment of the importations subject to audit applying the correct valuation method based on available data, the declared transaction value being presumed inaccurate;
- c. Imposition of 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 as prescribed in Section 2504 of the TCCP;
- d. Cancellation of accreditation privileges in accordance with existing rules and regulations; and/or
- e. Institution of criminal prosecution punishable with a fine of not less than one hundred thousand pesos (Php100,000.00) but not more than two hundred thousand pesos (Php200,000.00) and/or imprisonment of not less than two (2) years and one (1) day but not more than six (6) years.

Section 15. *Penalties for failure to pay proper duties and taxes.* – Any person who, after being subjected to compliance audit or post entry audit and examination in accordance with the provisions of this Department Order, 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:

- 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.
- 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 this Department Order 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.
- 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.

The decision of the Commissioner of Customs, upon proper hearing to impose penalties prescribed in this Section may be appealed in accordance with Section 2402 of the TCCP, as amended.

In addition to the foregoing, criminal prosecution may be instituted under Section 3611 of the TCCP.

Section 16. *Authority to compromise.* – Except in cases of fraud and/or unless otherwise specified by law, the Commissioner of Customs may, pursuant to Section 2316 of the TCCP, subject to the approval of the Secretary of Finance as recommended of DOF-FIU, exercise his power to compromise the imposition of the fines prescribed in this Department Order when the importer makes a voluntary and full disclosure of the deficiency prior to the commencement of the audit stated in the ANL, provided that the compromise shall only be to the extent of the voluntary disclosure made.

PART V. MISCELLANEOUS PROVISIONS

Section 17. *Transitory provision.* – Upon the effectivity of this Department Order, all documents and records in the official custody of the BOC-PEAG shall be turned over to DOF-FIU. The genuineness and completeness of the records turned over to DOF-FIU shall be certified by the head of the BOC-PEAG.

The audit of all the cases pending with the BOC-PEAG as of the effectivity of this Department Order shall be transferred to and continued by the DOF-FIU.

No provision in this Department Order shall be interpreted to preclude the DOF-FIU from performing an audit of an importer who has been issued an ANL by the Commissioner of Customs and who has been assessed deficiency taxes and duties.

Section 18. *Access to Records.* – Upon the filing by a person of an application for accreditation as an importer or broker, copies of the General Information Sheet and supporting documents submitted shall be furnished the DOF-FIU. An Undertaking to comply with the duty to maintain records for a period of three (3) years and to allow access to examination by DOF-FIU pursuant to the TCCP shall be submitted by the importer or broker as a requirement for registration.

Moreover, as part of the import clearance procedure, one copy of the Import Entry and Internal Revenue Declaration, which include the Supplemental Declaration on Valuation (SDV) Form, shall be furnished directly the DOF-FIU.

Section 19. *Additional Implementing Rules and Regulations.* – The Secretary of Finance may, upon recommendation of DOF-FIU, promulgate additional rules and regulations to effectively implement the provisions of Republic Act No. 9135 and this Department Order.

Section 20. *Repealing Clause.* – All orders, memoranda, circulars or other issuances or parts thereof which are inconsistent with this Department Order are hereby deemed repealed and/or modified accordingly.

Section 21. *Separability Clause.* – If any part of this Department Order is declared by the courts as unconstitutional or contrary to existing laws, the other parts shall remain in full force and effect.

Section 22. *Effectivity.* – This Department Order shall take effect fifteen (15) days after publication.


CESAR V. PURISIMA
Secretary
010367

Annex "A" - Audit Notification Letter

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
DEPARTMENT OF FINANCE - FISCAL INTELLIGENCE UNIT (DOF-FIU)

ANL CONTROL No: _____

Date: _____

AUDIT NOTIFICATION LETTER

THE PRESIDENT

Dear Sir/Madam:

Pursuant to the provisions of the Tariff and Customs Code of the Philippines (TCCP), as amended by Republic Act No. 9135, as well as Executive Order No. 155, Series of 2013, you are hereby informed that the Fiscal Intelligence Unit of the Department of Finance (DOF-FIU) will be conducting a compliance audit including the examination, inspection, verification, and/or investigation of all pertinent records in relation to your import transactions for a three year period counted backward from the date abovementioned.

A pre-audit conference is scheduled on _____ at the offices of the DOF-FIU. Audit proper and company walk-through will commence on _____. The members of the audit team are _____ (Team Head), _____, and _____.

Your office is required to prepare the documents enumerated in Annex "A" for compliance audit and properly accomplish and submit the attached General Customs Questionnaire prior to the pre-audit conference.

Kindly acknowledge receipt hereof by signing on the space provided hereunder.

Very truly yours,

Commissioner

Received:

Signature over printed name and date received

This ANL shall be served within 30 days from date of issuance. For any questions regarding this ANL, please contact the Revenue Operations and Legal Affairs Group, Department of Finance, 6th Floor, DOF Bldg., BSP Complex, Roxas Blvd., Manila 1004, Philippines.