



# BUREAU OF CUSTOMS

Professionalism Integrity Accountability



## CUSTOMS ADMINISTRATIVE ORDER (CAO) NO. 10-2020

**SUBJECT: SEIZURE AND FORFEITURE PROCEEDINGS AND APPEALS  
PROCESS**

**Introduction.** This CAO implements Sections 1113 to 1117, Sections 1119 to 1125, Chapter 4 and Sections 1126 to 1128, Chapter 5 of Title XI and other relevant provisions of Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA).

**Section 1. Scope.** This CAO covers all properties subject to seizure and forfeiture as enumerated under Section 1113 found to be in violation of the CMTA.

### **Section 2. Objectives.**

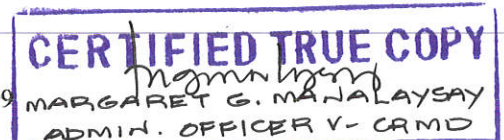
- 2.1. To identify the properties subject to Seizure and Forfeiture;
- 2.2. To set forth the conditions in effecting Seizure and Forfeiture or release of seized items; and
- 2.3. To establish a uniform procedure in seizure and forfeiture cases including the rules on settlement, redemption and other remedies.

**Section 3. Definition of Terms.** For purposes of this CAO, the following terms are defined accordingly:

- 3.1. **Alert Order** — shall refer to a written order issued by the Commissioner, District Collector, or other customs officers authorized in writing by the Commissioner after the Lodgement of goods declaration and before their actual release from customs custody, on the basis of derogatory information stated in this CAO regarding possible non-compliance with the CMTA and other laws, rules and regulations enforced by Customs.<sup>1</sup>
- 3.2. **Coastwise Trade** — shall refer to the business of transferring either merchandise or passengers between two seaports in the Philippines.<sup>2</sup>

<sup>1</sup> CAO 7-2019 Pre-Lodgement Control Order and Alert Order.

<sup>2</sup> cf. Commissioner of Customs vs. Arnaldo Borres, et al. (G.R. No. 12687 November 28, 1959).



- 3.3. Commercial Quantity** — shall refer to the quantity for a given kind or class of articles which are in excess of what is compatible with and commensurate to the person's normal requirements for personal use.<sup>3</sup>
- 3.4. Common Carrier** — shall refer to persons, corporations, firms, or association engaged in the business of carrying or transporting passengers or goods or both, by land, water or air, for compensation, offering their services to the public.<sup>4</sup>
- 3.5. Constructive Customs Custody** — shall refer to the situation where, falling short of physical seizure or possession, the Customs Officers and the owner of the goods enter into a written agreement after the inventory to the effect that the goods, subject of a Letter of Authority (LOA), shall not be removed or disposed of pending disposition or resolution on the issue of whether proper payment of duties and taxes has been made.<sup>5</sup>
- 3.6. Decision** — shall refer to the disposition of the main forfeiture case by the District Collector or Commissioner based on merits.
- 3.7. Decisions Adverse to the Government** — shall refer to the disposition of the main forfeiture case based on merits, which resolves that there is no violation of the law that will warrant the Forfeiture of the seized articles, and consequently allows the release of the articles subject of a Warrant of Seizure and Detention (WSD) without payment of additional duties and taxes, interests, penalties and/or surcharges.<sup>6</sup>
- 3.8. Deputized Officer** — shall refer to officers or members of the Armed Forces of the Philippines (AFP) or other selected national law enforcement agencies covered by a written order signed by the Commissioner of Customs authorizing them to assist in the exercise of customs police authority, particularly the power to search, seize, and arrest in specified areas outside of customs premises.
- 3.9. Free Carrier (FCA)** — shall refer to an international commercial term covered by the Incoterms rules developed by International Chamber of Commerce (ICC) which means that the seller delivers

<sup>3</sup> cf. CAO No. 02-2016 "Imported Goods with De Minimis Value Not Subject to Duties and Taxes", Section 3.1.

<sup>4</sup> cf. Civil Code of the Philippines, Article 1732.

<sup>5</sup> Cf. CAO 03-2019 (Customs Jurisdiction and Exercise of Police Authority

<sup>6</sup> cf. CAO No. 09-1993.



the goods to the carrier or another person nominated by the buyer at the seller's premises or another named place.<sup>7</sup>

- 3.10. Free on Board (FOB)** — shall refer to international commercial term covered by the Incoterms rules developed by International Chamber of Commerce (ICC) which means that the seller delivers the goods on board the vessel nominated by the buyer at the named point of shipment, or procures the goods already delivered.<sup>8</sup>
- 3.11. Forfeiture** — shall refer to the acquisition of ownership by the government for an established violation of CMTA as a result of the forfeiture proceedings.
- 3.12. Fraud** — shall refer to acts knowingly, voluntarily and intentionally committed or omitted which prejudice the interest of the government, e.g. submitting fake or spurious document, making material untruthful statement(s) or committing any other analogous act(s) or omission(s).
- 3.13. Goods** — shall refer to articles, wares, merchandise and any other items which are subject of importation or exportation.<sup>9</sup>
- 3.14. Held Baggage Receipt (HBR)** – shall refer to a receipt issued by a customs officer acknowledging that the baggage is temporarily held in custody by the Bureau for undeclared dutiable goods and/or declared dutiable goods pending payment of duties and taxes, verification of documents, or compliance with customs laws, rules and regulations.
- 3.15. Interlocutory Order** — shall refer to the orders of the District Collector or Commissioner involving incidental matters that does not dispose of the case completely but leaves something to be decided upon.<sup>10</sup>
- 3.16. Landed Cost** — shall refer to the sum of the customs value including the total cost of the product, transportation cost and insurance plus applicable customs duty and other taxable charges such as but not limited to brokerage fee, bank charge, other

<sup>7</sup> cf. CAO No. 02-2016 "Imported Goods with De Minimis Value Not Subject to Duties and Taxes", Section 3.3.

<sup>8</sup> CAO No. 02-2016 "Imported Goods with De Minimis Value Not Subject to Duties and Taxes", Section 3.4.

<sup>9</sup> CMTA, Title I, Chapter 2, Section 102.

<sup>10</sup> cf. Australian Professional Realty, Inc., et al. vs. Municipality of Padre Garcia Batangas Province, (G.R. No. 183367).



charges, processing fee, arrastre charges and wharfage dues, if applicable.

**3.17. Misclassification** — shall refer to the use of insufficient or wrong description of the goods or the use of erroneous tariff heading/s and sub-heading/s resulting in deficiency between the duty and tax that should have been paid and the duty and tax actually paid; and/or to avoid compliance with government regulations related to the entry of Regulated, Prohibited or Restricted goods into Philippine Customs territory.<sup>11</sup>

**3.18. Misdeclaration** — shall refer 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; and/or to avoid compliance with government regulations related to the entry of Regulated, Prohibited or Restricted goods into Philippine customs territory.

There is **Misdeclaration as to the Quantity of Goods** when there is a difference in the number of the Goods as declared in the Goods Declaration and the quantity as found after physical examination of the Goods.

There is **Misdeclaration as to the Quality of Goods** when there is a difference in the characteristics of the Goods as declared in the Goods Declaration and the quality as found after physical examination of the Goods (*e.g. declared as USED but found out as BRAND NEW or declared as Off-Quality, Remnants Fabrics but found as Whole, First Class, Best Quality Fabrics, among others*).

There is **Misdeclaration as to Description of Goods** when there is a difference in the descriptive nature and identity of the Goods as declared in the Goods Declaration and the description as found after physical examination of the Goods (*e.g. product code, item code, make, model, series, displacement, version, among others*).

There is **Misdeclaration as to the Weight of Goods** when there is a discrepancy in the actual weight as declared in the Goods Declaration and the weight as found after physical examination and weighing of the Goods.

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<sup>11</sup> CAO 1-2020 "Fines and Surcharges for Clerical Errors, Misdeclaration, Misclassification and Undervaluation, Section 3.9.

There is **Misdeclaration as to the Measurement of Goods** when there is a difference in the size, length, width, height or volume of the Goods as declared in the Goods Declaration and the measurement as found after physical examination of the Goods.<sup>12</sup>

**3.19. Notice of Appeal** — shall refer to a document evidencing an aggrieved party's intention to seek redress to a Decision which shall indicate the parties to the appeal, specify the judgment or final order on the merits or part thereof appealed from, and state the material dates showing the timeliness of the appeal.

**3.20. Perishable Goods** — shall refer to goods liable to perish or goods that depreciate greatly in value while stored or which cannot be kept without great disproportionate expense.<sup>13</sup>

**3.21. Quashal** — shall refer to a recall of a WSD when the ground for the issuance of thereof is found to be non-existent or ceased to exist.

**3.22. Seizure** — shall refer to the actual or constructive taking or bringing into custody the goods, things or chattels by virtue of a WSD issued by the Collector of Customs for violation of the CMTA.

**3.23. Summary Proceedings** — shall refer to an abbreviated administrative proceeding wherein only position papers are required to be submitted in lieu of the conduct of a formal hearing.

**3.24. Undervaluation** — shall refer to situation when 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 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.<sup>14</sup>

**3.25. Warrant of Seizure and Detention (WSD)** — shall refer to an order in writing, issued in the name of the Republic of the Philippines, signed by the District Collector of Customs directed to the Enforcement and Security Service (ESS) or any Deputized Officer of a national law enforcement agency, commanding him to



<sup>12</sup> CAO 1-2020 "Fines and Surcharges for Clerical Errors, Misdeclaration, Misclassification and Undervaluation, Section 3.10.

<sup>13</sup> cf. CMTA, Title I, Chapter 2, Section 102 (gg).

<sup>14</sup> CAO No. 01-2019 "Post Clearance and Prior Disclosure Program", Section 3.16.

seize any properties subject to Forfeiture pursuant to Section 1113, Chapter 4, Title XI of the CMTA.<sup>15</sup>

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

**4.1. Properties Subject to Seizure & Forfeiture.**<sup>16</sup> Properties which are imported or exported under the following circumstances shall be subject to Seizure and Forfeiture:

##### **4.1.1. Goods.**

- a. Goods which are fraudulently concealed in or removed contrary to law from any public or private warehouse, container yard, or container freight station under customs supervision;<sup>17</sup>
- b. Goods the importation or exportation is effected or attempted contrary to law;<sup>18</sup>
- c. Goods of prohibited importation or exportation;<sup>19</sup>
- d. Goods which, in the opinion of the District Collector, have been used or were entered to be used as instruments in the importation or exportation of prohibited goods;<sup>20</sup>
- e. Unmanifested goods found on any vessel or aircraft, if manifest therefor is required;<sup>21</sup>
- f. Goods sought to be imported or exported without going through a customs office, whether the act was consummated, frustrated, or attempted;<sup>22</sup>
- g. Goods found in the baggage of a person arriving from abroad and undeclared by such person;<sup>23</sup>

<sup>15</sup> CMTA, Title XI, Chapter 4, Section No. 1117.

<sup>16</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113.

<sup>17</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (e).

<sup>18</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (f).

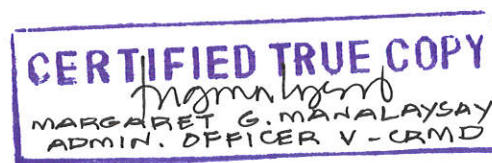
<sup>19</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (f).

<sup>20</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (f).

<sup>21</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (g).

<sup>22</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (I-1).

<sup>23</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (I-2).



- h. Goods sought to be imported or exported through a false declaration or affidavit executed by the owner, importer, exporter, or consignee concerning the importation of goods;<sup>24</sup>
- i. Goods sought to be imported or exported on the strength of a false invoice or other document executed by the owner, importer, exporter, or consignee concerning the importation or exportation of such goods;<sup>25</sup>
- j. Goods sought to be imported or exported through any other practice or device contrary to law by means of which such goods entered through a customs office to the prejudice of the government;<sup>26</sup>
- k. Imported goods offered openly for sale or kept in storage, which were discovered in the exercise of the Commissioner's power to inspect and visit pursuant to Section 224 of CMTA, when proof of payment of duties and taxes cannot be presented after the lapse of fifteen (15) days;

**4.1.2. Vehicle, vessel or aircraft.**

- a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of goods;<sup>27</sup>
- b. Any vehicle, vessel or aircraft used in conveying or transporting smuggled goods in commercial quantities within the Philippines;<sup>28</sup>
- c. Any vessel engaging in the Coastwise Trade which shall have on board goods of foreign growth, produce, or manufacture in excess of the amount necessary for sea stores, without such goods having been properly entered or legally imported;<sup>29</sup>

<sup>24</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (I-3).

<sup>25</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (I-4).

<sup>26</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (I-5).

<sup>27</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (a).

<sup>28</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (a).

<sup>29</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (b).

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- d. Any vessel or aircraft into which shall be transferred cargo unloaded contrary to law prior to the arrival of the importing vessel or aircraft at the port of destination;<sup>30</sup>
- e. Any conveyance actually used for the transport of goods subject to Forfeiture under the CMTA, with its equipage or trappings, and any vehicle similarly used, together with its equipment and appurtenances. The mere conveyance of smuggled goods by such transport vehicle shall be sufficient cause for outright Seizure;<sup>31</sup> and
- f. The vessel or aircraft of the owner, agent, master, pilot-in-command or other responsible officer who is liable for any fine or penalty for violation of this Act. In determining whether or not to seize a vessel or aircraft, the Bureau shall take into account the amount of fine or penalty in relation to the commercial impact that be caused to international trade by the seizure or detention as well as the value of the vessel or aircraft.<sup>32</sup>

#### 4.1.3. Cargo, stores, or supplies of a vessel.

- a. Any part of the cargo, stores, or supplies, including petroleum of a vessel or aircraft arriving from a foreign port which is unloaded before arrival at the vessel's or aircraft's port of destination and without authority from the customs officer;<sup>33</sup> and
- b. Sea stores or aircraft stores adjudged by the District Collector to be excessive, when the duties and taxes assessed thereon are not paid.<sup>34</sup>

#### 4.1.4. Package and receptacles.

- a. Any package of imported goods which is found upon examination to contain goods not specified in the invoice or goods declaration including all other packages purportedly containing imported goods similar to those

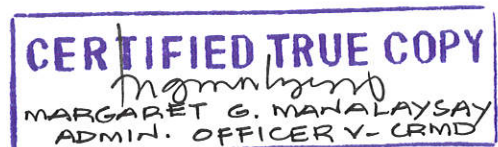
<sup>30</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (c).

<sup>31</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (k).

<sup>32</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1122.

<sup>33</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (d).

<sup>34</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (h).





declared in the invoice or goods declaration to be the contents of the misdeclared package<sup>35</sup>; and

- b. Boxes, cases, trunks, envelopes, and other containers of whatever character used as receptacle or as device to conceal goods or are so designed as to conceal the character of such goods.<sup>36</sup>

## 4.2. Conditions for Forfeiture.

**4.2.1.** The Forfeiture of goods shall be effected only when any of the following circumstances exist:<sup>37</sup>

- a. The goods are in the custody or within the jurisdiction of customs officers;
- b. The goods are in the possession or custody of or subject to the control of the importer, exporter, original owner, consignee, agent of another person effecting the importation, entry or exportation in question; or
- c. The goods are in the possession or custody of or subject to the control of persons who shall receive, conceal, buy, sell, transport the same, or aid in any of such acts, with knowledge that the goods were imported or were subject of an attempt to import or export contrary to law.

**4.2.2.** Seized cargoes, stores, or supplies of a vessel or aircraft arriving from a foreign port which were unloaded before arrival at the vessel's or aircraft's port of final destination without authority from the customs officer shall be forfeited, except if the unloading was due to accident, stress of weather, or other necessity and is subsequently approved by the District Collector;<sup>38</sup>

**4.2.3.** Vehicles, vessels or aircrafts used in carrying smuggled goods in Commercial Quantity shall be forfeited except if all of the following conditions are present:

- a. It is a Common Carrier;<sup>39</sup>

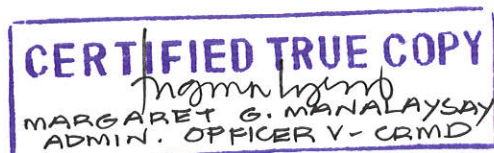
<sup>35</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (i).

<sup>36</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (j).

<sup>37</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1115.

<sup>38</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (d).

<sup>39</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (k).



- b. It has not been chartered for purposes of conveying and transporting persons or cargo.<sup>40</sup> As used in this CAO, a charter shall refer to a contract by which an entire vessel, aircraft or vehicle, or some principal part thereof, is let by the owner to another person for a specified time or use which has the effect of transferring the control on both the vessel, aircraft or vehicle and its crew to the lessee;<sup>41</sup> and
- c. The owner or agent at that time of Seizure has no knowledge of and participation in the unlawful act.<sup>42</sup>

However, a prima facie presumption against such vehicles, vessel or aircraft shall exist under any of the following circumstances:<sup>43</sup>

- a. If conveyance has been used for smuggling before;
- b. If the owner is not in the business for which the conveyance is generally used; and
- c. If the owner is not financially in a position to own such conveyance.

**Section 5. Seizure and Forfeiture of Imported Goods pursuant to the Commissioner's Power to Inspect and Visit.** The Commissioner or any customs officer who is authorized in writing by the Commissioner, may demand evidence of payment of duties and taxes on imported goods openly for sale or kept in storage.

**5.1. Presentation of the Proof of Payment of Duties and Taxes within the fifteen (15) day period.** During the said period, the goods shall be placed under Constructive Customs Custody provided that the same may be released if any of the following documents are presented and verified:

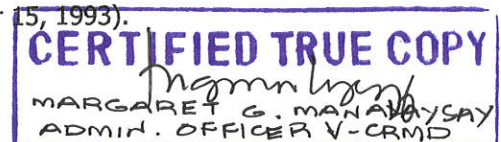
- 5.1.1.** Proof of payment of correct duties and taxes or proof of exemption from payment of duties and taxes;
- 5.1.2.** Proof of local purchase and payment of correct duties and taxes by the original importer; or

<sup>40</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (k).

<sup>41</sup> cf. Planters Products, Inc., vs. CA (G.R. No. 101503 September 15, 1993).

<sup>42</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1113 (k).

<sup>43</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1114.



**5.1.3.** Proof that the goods were locally produced or manufactured.

In the event that the interested party fails to produce such evidence within the said fifteen (15) day period, the goods shall be seized and subjected to forfeiture proceedings.

**5.2. A Warrant of Seizure and Detention has been issued.**

**5.2.1.** The goods seized may be released to the owner under the following circumstances:

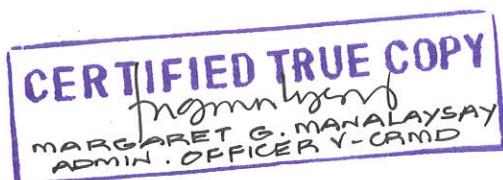
- a. Proof of exemption from payment of duties and taxes, or proof of payment of correct duties and taxes were presented and are found to be authentic and in order;
- b. Proof of local purchase and payment of correct duties and taxes by the original importer were presented and are found to be authentic and in order;
- c. Proof was presented that the goods were locally produced or manufactured; or
- d. Voluntary payment of duties and taxes, provided that claimant presented a proof of local purchase.

If the owner cannot present proof of local purchase, it is presumed that he is the importer of the goods in his possession. However, if the owner can overcome such presumption provided that all the conditions stated in Section 14.4 of this Order are complied with, the goods may be released provided that an offer to settle the case by payment of the redemption value of the goods shall have been made and accepted.

**5.3.** In all cases, the release of the goods seized pursuant to Section 224 of the CMTA shall be subject to the clearance of the Commissioner, provided that:

**5.3.1.** The goods are not prohibited ;

**5.3.2.** The necessary permits and licenses are presented in case of restricted or regulated goods ; and



**5.3.3.** The release of the goods is not contrary to law.

**Section 6. Issuance & Service of Warrant of Seizure and Detention.**

**6.1. Authority to Issue a Warrant of Seizure and Detention.** The District Collector exercising territorial jurisdiction over the location of the seized goods shall have the original and exclusive authority to issue the WSD.

**6.2. Partial Seizure of the Shipment.** If the offense relates only to a part or portion of a shipment, only that part shall be seized or detained, provided that the District Collector is satisfied that the remainder of the shipment was not used, directly or indirectly, in the commission of the offense.<sup>44</sup>

However, any package of imported goods which is found upon examination to contain goods not specified in the invoice or goods declaration including all other packages purportedly containing imported goods similar to those declared in the invoice or goods declaration to be the contents of the misdeclared package, shall be subject to seizure and forfeiture.<sup>45</sup>

**6.3. Contents of the Warrant of Seizure and Detention.** A WSD shall indicate the following information:

**6.3.1.** Docket Number;

**6.3.2.** Collection District;

**6.3.3.** Alleged violation(s) of the CMTA and other related laws and regulations;

**6.3.4.** Description and quantity of the property sought to be seized;<sup>46</sup>

**6.3.5.** For vessels, aircrafts, and/or other conveyances the Registry Number, if available;

<sup>44</sup> cf. RKC, Chapter 1, Specific Annex H Customs Offences, Standard 12, "If a Customs offence relates only to part of a consignment, only that part shall be seized or detained, provided that the Customs are satisfied that the remainder of the consignment did not serve, directly or indirectly, in the commission of the offence. "

<sup>45</sup> CMTA, Title XI, Chapter 4, Section 1113 (i).

<sup>46</sup> cf. RKC, Chapter 1, Specific Annex H Customs Offences, Standard 13.



**6.3.6.** Consignee, owner(s) and/or possessor of the property sought to be seized, if known;

**6.3.7.** Location of the goods to be seized; and

**6.3.8.** Date issued.

**6.4. Determination of Probable Cause.** The existence of probable cause to warrant the issuance of a WSD shall be determined by the District Collector within five (5) working days, or two (2) working days in case of Perishable Goods, from receipt of recommendation for issuance of a WSD. However, the District Collector may, on meritorious circumstances, conduct Summary Proceedings as may be deemed necessary for the determination of the existence of probable cause.

If a Release Order is issued for an alerted shipment, the District Collector shall immediately transmit the records of the case to the Commissioner for clearance and approval.

The Commissioner shall within forty-eight (48) hours or twenty-four (24) hours, if the goods are perishable, from receipt of the records of the alerted shipment, review the findings of the District Collector.<sup>47</sup>

When no Decision is made by the Commissioner within the prescribed period, the alerted imported goods shall be deemed released.

Accordingly, the subject Alert Order shall be lifted by the issuing authority upon the affirmation of the Commissioner of the Release Order or the lapse of the period to review.

If the Commissioner issues an Order reversing the Release Order of the District Collector before the lapse of the period to review, the same shall be referred to the District Collector for the issuance of the appropriate WSD.

**6.5. Service of Warrant of Seizure and Detention.**<sup>48</sup> The District Collector shall immediately direct the Enforcement and Security Service<sup>49</sup> to serve the WSD within three (3) working days from its issuance:

<sup>47</sup> CMTA, Title XI, Chapter 4, Section 1117.

<sup>48</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1119.

<sup>49</sup> EO 127, Section 36, Paragraph (c), Sub-paragraph (3).



**6.5.1.** To the customs warehouseman or wharfinger and the CFW or CBW operator if the goods are still in customs custody; and

**6.5.2.** To the owner of the goods or his authorized representative.

For the purpose of serving the WSD, the importer, consignee, named in the bill of lading or airway bill, or possessor shall be deemed the owner of the goods.

If the owner is unknown, with insufficient address, or a foreign entity or individual, service shall be effected by posting of the WSD by the ESS in the bulletin board of the concerned collection district office, and by electronic posting through the BOC website, or printed publication, for fifteen (15) days.<sup>50</sup>

**6.6. Return of Service of Warrant.** The ESS or duly deputized officer tasked to serve the WSD shall submit to the District Collector a return within twenty-four (24) hours from the service thereof as specified in this CAO. Failure to submit the required return within the time prescribed period shall subject the defaulting officer to appropriate administrative charges and penalties in accordance with the pertinent civil service rules and regulations.

**Section 7. Custody over Seized Goods.** Upon service of the WSD, the ESS or duly deputized officer shall immediately seize the goods, either physically or constructively, and turn over the same to the District Collector concerned through the Auction and Cargo Disposal Division (ACDD) or its equivalent unit, unless otherwise provided under existing laws, rules and regulations.

Notwithstanding the physical and/or constructive turnover of seized goods to the ACDD, the ESS and ACDD shall jointly secure and safekeep the seized goods.

The District Collector shall immediately cause the inventory and examination of the seized goods.

**Section 8. Custody of Seized Goods requiring Immediate Turn-over to Regulating Agencies.** Seized goods requiring immediate turn-over to regulating agencies as required under existing laws, rules and regulations shall immediately be delivered to the concerned agencies, such as but not limited to the Philippine Drug Enforcement Agency, Bureau of Plant Industry, Bureau of Animal Industry and Department of Environment and Natural Resources.<sup>51</sup>

<sup>50</sup> cf. CMTA, Title XI, Chapter 4, Section 1119.

<sup>51</sup> cf. Republic Act No. 9165, Section 21.

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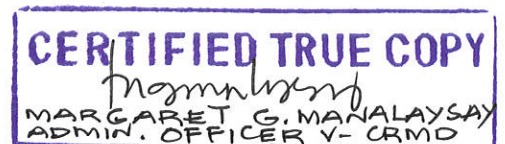


## **Section 9. Forfeiture Proceedings.**

- 9.1.** The Bureau shall exercise exclusive original jurisdiction over all Forfeiture cases under the CMTA.
- 9.2.** The venue of forfeiture proceedings shall be at the Law Division of the Collection District which issued the WSD. For Collection Districts without Law Divisions, the venue shall be at the Office of the District Collector. However, the District Collector may authorize the conduct of hearing.
- 9.3.** If the subject shipment involved has been sufficiently established to be prohibited, the same shall be *ipso facto* forfeited in favor of the government.
- 9.4.** If, within fifteen (15) calendar days after service of warrant and due notice, no owner or agent can be found or appears before the District Collector, the seized goods shall be forfeited *ipso facto* in favor of the government to be disposed of in accordance with the CMTA.<sup>52</sup>
- 9.5.** The Bureau shall, in accordance with international standards, utilize information and communications technology (ICT) in managing the recordation of cases and the dissemination and utilization of resolutions or Decisions in forfeiture cases.

## **Section 10. Pleadings, Notices and Appearances.**

- 10.1.** All pleadings shall be filed personally, by registered mail, or private courier service,<sup>53</sup> with the appropriate Law Division or Office of the District Collector. In addition, soft copies of pleadings shall also be submitted simultaneously either by electronic mail or in an external drive.
- 10.2.** In the event that the pleadings are sent by private courier service, the date of receipt by the Law Division or Office of the District Collector shall be considered as the date of filing.
- 10.3.** Pleadings filed beyond the reglementary period shall be considered as mere scrap of paper.



<sup>52</sup> cf. Section 1121, Chapter 4, Title XI of the CMTA.

<sup>53</sup> Subject to the issuance of Internal Rules and Regulations on Electronic Filing.



- 10.4.** Where WSDs are issued by the District Collector involving the same consignee, commodity and violation, these cases may be consolidated. In case where two (2) hearing officers are assigned, the same shall be consolidated with the lower/lowest docket number.
- 10.5.** Upon motion, the District Collector, on just and equitable grounds, may allow separate proceedings for seizure case involving several claimants and several subject matters.
- 10.6.** A lawyer appearing in any forfeiture case must be duly authorized by the claimant. All pleadings and motions submitted by a lawyer appearing for the claimant must indicate his/her office address, electronic mail address, Attorney's Roll Number and Professional Tax Receipt (PTR) Numbers and Mandatory Continuing Legal Education (MCLE) compliance.
- 10.7.** In case the claimant is a juridical entity, it may authorize a responsible officer of the company to appear on its behalf.
- 10.8.** For individual claimants of goods of small value, a licensed customs broker or his authorized representative may be allowed to appear on his behalf. Goods of small value cover those with value of less than fifty thousand pesos (Php50,000.00) which are cleared through an informal entry process.<sup>54</sup>
- 10.9.** An attorney-in-fact appearing in any forfeiture case must be duly authorized by the claimant.
- 10.10.** Authorization issued by claimant currently abroad must be duly authenticated by the appropriate Consular Office.
- 10.11.** A party appearing without proper authorization from the claimant for two (2) successive hearings shall be considered as in default and authorize the presentation of the evidence ex parte.
- 10.12.** Any change or withdrawal of counsel or authorized representative shall be made in accordance with the Rules of Court.
- 10.13.** Notice of Hearing shall be served by personal service or, if not practicable by reason of distance and lack of personnel to effect personal service, by private courier service; or posting in the bulletin board of the Law Division or equivalent office of the

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<sup>54</sup> cf. CMTA, Title IV, Chapter 1, Section 402.





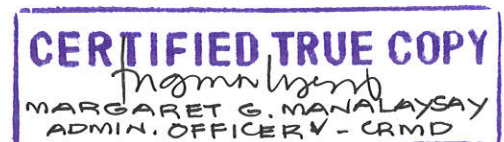
concerned Collection District for unknown claimants, with insufficient address or foreign claimants. Proof of such service shall be attached to the record of the case.

**Section 11. Designation of Hearing Officer and Prosecutor.**

- 11.1.** Immediately from issuance of the WSD, the District Collector shall endorse the same to the Law Division for the assignment of a Hearing Officer.
- 11.2.** The District Collector may conduct a hearing or may designate any lawyer assigned to the Collection District as a Hearing Officer. If there is no lawyer assigned in the Collection District, the District Collector shall request for a Hearing Officer from the Legal Service,<sup>55</sup> within two (2) days from the issuance of the WSD.
- 11.3.** In all cases, the District Collector shall request a Government Prosecutor from the Legal Service within two (2) days from issuance of the WSD.

**Section 12. Hearing Proper.**

- 12.1.** The Hearing Officer shall immediately set the hearing of the forfeiture case upon receipt of the case folder or the copy of the WSD. Clarificatory hearing/s may be conducted by the Hearing Officer as may be deemed necessary.
- 12.2.** After termination of the hearing, the Hearing Officer shall require the claimant to submit its verified Position Paper, within five (5) days from date of last hearing, copy furnished the Government Prosecutor.
- 12.3.** Within five (5) days from receipt of the Position Paper, the Government Prosecutor shall file its Comment, copy furnished the claimant. The claimant may file a verified Reply within three (3) days from receipt thereof, copy furnished the Government Prosecutor. After submission of the last pleading the case will be submitted for resolution.



<sup>55</sup> Executive Order No. 724 "Reorganizing Certain Functions within the Bureau of Customs to Make it More Responsive to the Intensified Anti-Smuggling Thrusts of the Government".

**12.4.** The District Collector shall render a Decision within thirty (30) days or ten (10) days in case of Perishable Goods,<sup>56</sup> upon the submission of the case for resolution.

**Section 13. Prohibited Pleadings and Motions.** The following pleadings and motions shall not be allowed and acted upon by the Law Division or Office of the District Collector:

**13.1.** Motion for Postponement, , except if it is based on Acts of God or force majeure;

**13.2.** Motion for Reconsideration;

**13.3.** Motion for Extension of Time to File Pleadings;

**13.4.** Motion to Quash/Recall/Lift/Set-aside or any other similar motion, except as authorized in Section 14.1 of this CAO;

**13.5.** Motion to Suspend/Hold in Abeyance Forfeiture Proceedings; and

**13.6.** Motion to Reopen.

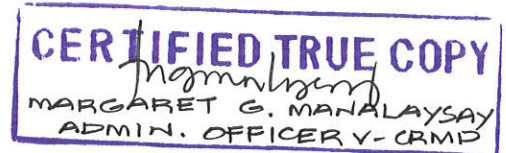
**Section 14. Remedies.**

**14.1. Quashal/Recall of WSD.**

**14.1.1.** The WSD may be quashed under any of the following grounds:

**a.** In case of goods seized pursuant to the power of the Commissioner to inspect and visit,<sup>57</sup> the claimant was able to submit proof as required under Section 5.1. of this Order.

**b.** The District Collector issuing the WSD has no territorial jurisdiction over the seized goods,<sup>58</sup> without prejudice to the issuance of the WSD by the District Collector having territorial jurisdiction thereof;



<sup>56</sup> CMTA, Title XI, Chapter 4, Section 1125.

<sup>57</sup> cf. CMTA, Title II, Chapter 3, Section 224.

<sup>58</sup> cf. The Rules of Court of The Philippines, Rule 117, Section 3 (b).

- c. When the concerned regulatory agency, in cases of regulated goods, has issued the necessary clearances or licenses in accordance with its governing laws and regulations.

**14.1.2. When to File Motion to Quash/Recall.** The importer or its authorized representative may file a verified Motion to Quash/Recall the WSD at any time prior to the completion of presentation of his evidence.

Motions to Lift, Recall or Set-aside the WSD shall be deemed as a Motion to Quash.

**14.1.3. Resolution on Motion to Quash.** The motion to quash shall be resolved by the District Collector within fifteen (15) working days from the date of submission of the said matter for resolution.<sup>59</sup>

In case the District Collector allows the Quashal of the WSD, he shall seek clearance from the Commissioner<sup>60</sup> by transmitting the entire records of the case within two (2) working days from the date of issuance of the order.

The Commissioner shall within thirty (30) working days, or ten (10) working days for Perishable Goods, from receipt of the entire case records, issue clearance to the order of the District Collector allowing the Quashal of the WSD. The order of the District Collector shall be deemed affirmed when no action is made by the Commissioner, after the lapse of the thirty (30) working days, or ten (10) working days period in case of Perishable Goods.

If the Commissioner timely reverses the order of the District Collector allowing the Quashal of the WSD, the same shall be remanded to the District Collector for the continuation of the Forfeiture proceedings.

The Order of the District Collector and the Commissioner denying the Motion to Quash shall be considered as Interlocutory Orders.

**14.2. Payment of Surcharge for Undeclared Baggage.** Undeclared dutiable goods brought by any person arriving in the Philippines

<sup>59</sup> cf. CMTA, Title II, Chapter III, Section 224.

<sup>60</sup> CMTA, Title II, Chapter III, Section 224.

shall be seized through the issuance of a Held Baggage Receipt (HBR). However, the release of seized undeclared goods shall be allowed when:

**14.2.1.** Importation is not contrary to law; and

**14.2.2.** The surcharge of thirty percent (30%) of the Landed Cost in addition to all duties, taxes and other charges due shall be paid.<sup>61</sup>

**14.3. Settlement of Forfeiture Cases.** Subject to the approval of the Commissioner, the District Collector may allow the settlement by payment of fine or the redemption of forfeited goods, during the course of the forfeiture proceeding. However, the Commissioner may accept the settlement by redemption of any forfeiture case on appeal.

The offer of settlement shall be made in writing and duly sworn under oath, and addressed to the District Collector or office of the Commissioner.

Offer of settlement may either be through payment of fine or payment of redemption value.

**14.4. Settlement by Payment of Fine or Redemption of Forfeited Goods.**<sup>62</sup> Settlement by payment of fine or redemption of forfeited goods may be allowed under the following circumstances:

**14.4.1.** When there is no Fraud attributable to the importer, consignee or owner;

**14.4.2.** When the goods are not absolutely prohibited; and

**14.4.3.** When the release of the goods is not contrary to law.

Settlement by payment of fine shall not be allowed when the discrepancy in duties and taxes to be paid between what is determined and what is declared amounts to more than thirty percent (30%).



<sup>61</sup> cf. CMTA, Title XIV, Chapter 1, Section 1404 and Section 4.13, CAO 1-2017 "Customs Clearance of Accompanied and Unaccompanied Baggage of Travelers and Crew".

<sup>62</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1124.



In case of settlement by fine, the owner, importer, exporter, or consignee or agent shall pay the amount of fine equivalent to thirty percent (30%) of the Total Landed Cost.

In case of settlement by redemption, the owner, importer, exporter, or consignee or agent shall pay the redeemed value equivalent to one hundred percent (100%) of the Total Landed Cost.

**14.5. Effects of Settlement by Payment of Fine or Redemption.**

Upon payment of the fine or redemption value, the goods shall be released and all liabilities which may attach to the goods shall be discharged without prejudice to the filing of administrative or criminal case against the importer, owner or authorized representative.<sup>63</sup>

The payment of fine or redemption value shall be without prejudice to fines and charges to be imposed by the port authorities.

**14.6. Decision of the District Collector.** The District Collector shall render a Decision within thirty (30) working days from the time the case is submitted for decision.

**CERTIFIED TRUE COPY**  
Margaret G. Manalaysay  
ADMIN. OFFICER V - CRMD

The Decision of the District Collector shall include a declaration of Forfeiture or release, the imposition of a fine or redemption of the goods, or such other action as may be proper.<sup>64</sup>

Copies of the Decision rendered by the District Collector shall be served to all concerned parties within five (5) working days from the date of issuance. Such service shall preferably be by personal service or, if not practicable, by registered mail. If the importer is a registered importer of the Bureau of Customs, service may also be through electronic mail at the given email address of the importer. Proof of such service shall be attached to the record of the case.<sup>65</sup>

Decisions by the District Collector in case an Offer of Settlement was made shall be subject to clearance and review of the

<sup>63</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1124.

<sup>64</sup> cf. CMTA, Title XI, Chapter 4, Section No. 1125.

<sup>65</sup> cf. CMO No. 29-1997 "Mandatory Service of Notices of Orders, Decisions and Other Proceedings in all Seizure Cases to Government Prosecutors and all Other Aggrieved/Interested Parties".



Commissioner. Provided, that the period to resolve shall not run until the complete records of the case is received by the Office of the Commissioner: Provided, finally that the same shall not be subject to automatic review of the Secretary of Finance as provided under this CAO.

**Section 15. Referral to Import Assessment Service (IAS).** During appeal or automatic review, Legal Service shall refer the assessment made by the District Collector to IAS for its review of the valuation and classification with corresponding computation of duties and taxes and other charges or penalties, if any. The IAS shall submit its recommended value within the period three (3) hours, otherwise the recommended settlement or redemption value by the District Collector stands.

**Section 16. Appeal to the Commissioner.**

- 16.1. The aggrieved importer or exporter or any stakeholder directly affected by the adverse Decision of the District Collector may appeal the Decision by filing a Notice of Appeal with a corresponding Memorandum on Appeal within fifteen (15) days or five (5) days in case of Perishable Goods, from receipt thereof.<sup>66</sup>
- 16.2. Upon receipt of the Notice of Appeal and Memorandum on Appeal with proof of payment of the requisite appeal fee, the District Collector shall immediately transmit all the records of the proceedings to the Appellate Division, Legal Service within five (5) working days, from the receipt of the appeal. A soft copy of the Decision shall also be sent to the Appellate Division, Legal Service via electronic mail at [appellatedivision888@gmail.com](mailto:appellatedivision888@gmail.com).
- 16.3. An appeal filed beyond the prescribed period or an appeal filed without the payment of the required appeal fee or payment of the appeal fee beyond the period to file an appeal shall be dismissed.
- 16.4. The filing of the Notice of Appeal without the corresponding Memorandum on Appeal shall likewise be dismissed.

**Section 17. Automatic Review.**

- 17.1. The Commissioner shall automatically review any Decision by the District Collector adverse to the government. The District Collector shall elevate the entire records of the case to the Appellate Division within five (5) working days from the issuance of the Decision.<sup>67</sup> A

<sup>66</sup> cf. CMTA, Title XI, Chapter 5, Section 1126.

<sup>67</sup> cf. CMTA, Title XI, Chapter 5, Section 1127.



soft copy of the Decision shall also be sent to the Appellate Division, Legal Service via electronic mail at [appellatedivision888@gmail.com](mailto:appellatedivision888@gmail.com).

- 17.2.** When no Decision is rendered within the prescribed period or when a Decision adverse to the government is rendered by the Commissioner involving goods with Free on Board (FOB) or Free Carrier (FCA) value of ten million pesos (Php 10,000,000.00) or more, the records of the Decision of the Commissioner, or of the District Collector under review, as the case may be, shall be elevated to the Secretary of Finance within five (5) working days from the lapse of the prescribed period to resolve or from the date of issuance of Decision, for review by the Secretary of Finance.<sup>68</sup>
- 17.3.** The Secretary of Finance shall review the Decision of the District Collector or the Commissioner. The Decision issued by the Secretary of Finance, whether or not a Decision was rendered by the Commissioner within thirty (30) days, or within ten (10) days in the case of Perishable Goods, from receipt of the records, shall be final upon the Bureau, subject to appeal to the Court of Tax Appeals.<sup>69</sup>

**Section 18. Penal Provision.** Any 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 laws or provisions.

**Section 19. Transitory Provision.** Pending full implementation of comprehensive legal docketing and management system that will establish and provide electronic monitoring of seizure and forfeiture cases, the Bureau shall implement the provisions of this CAO. The Management Information and System Technology Group (MISTG) shall devise an Information Communication Technology (ICT) enabled system for the docketing, reporting and monitoring of forfeiture cases.

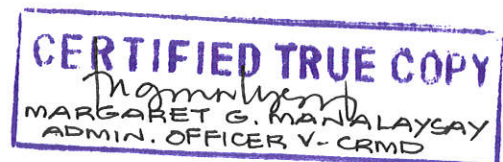
**Section 20. Periodic Review.** Unless otherwise provided, this CAO shall be reviewed every three (3) years and may be amended, if necessary.

**Section 21. Repealing Clause.** This CAO specifically repeals previously issued Orders which are inconsistent with the provisions here stated.

**Section 22. 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.

<sup>68</sup> cf. CMTA, Title XI, Chapter 5, Section 1127.

<sup>69</sup> cf. RA 9282, Section 7.



**Section 23. Effectivity.** This CAO shall take effect thirty (30) days after its complete 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.



**REY LEONARDO B. GUERRERO**

Commissioner of Customs

MAY 11 2020



BOC-02-01256

Approved:



**CARLOS G DOMINGUEZ**

Secretary of Finance

JUN 05 2020

