

NMM

NAGUE MALIC MAGNAWA & ASSOCIATES
Customs Brokers

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CUSTOMS GAZETTE

Updates on Customs-Related Matters

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In Brief

Implementing the Tax Exemption Provisions Under Section 4 (cc) and Section 18 of Republic Act (RA) No. 11494, Otherwise Known as the “Bayanihan to Recover as One Act” on the Incentives for the Manufacture or Importation of Certain Equipment, Supplies or Goods - REVENUE REGULATIONS NO. 28-2020 (page 02)

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REVENUE REGULATIONS NO. 28-2020

Issue Date: October 15, 2020

Scope and Objective

Pursuant to the provisions of Sections 244 and 245 of the National Internal Revenue Code of 1997, as amended (Tax Code), these Regulations are hereby promulgated to implement Sections 4 (cc) and 18 of RA No. 11494, otherwise known as the "Bayanihan to Recover as One Act", to wit:

"(cc) Liberalization of the grant of incentives for the manufacture or importation of critical or needed equipment or supplies or essential goods for the carrying-out of the policy declared herein, including health care equipment and supplies: *Provided, That the exemption from import duties, taxes and other fees for manufacture or importation of critical equipment or essential goods shall be determined by the Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR), respectively*: *Provided, further, That limitations and restrictions to the sale, distribution, and trade of the foregoing goods, equipment or supplies may be imposed to prevent shortage of supply and to ensure that the prices *thereof remain reasonable, giving priority and preference to the needs and safety of workers and frontliners, violations of which shall be punishable under Section 16 of Republic Act No. 7581 or the "Price Act", as amended. For this purpose, critical products, equipment or supplies or essential goods shall include the following: (1) goods referred to in Section 4(u)(l) hereof related to the containment or mitigation of COVID-19; (2) equipment for waste management, including, but not limited to, waste segregation, storage, collection, sorting, treatment and disposal services: *Provided, furthermore, That these said equipment and technologies and services are approved by the Department of Environment and Natural Resources (DENR), DOH or other concerned regulatory agencies; (3) inputs, raw materials and equipment necessary for the manufacture or production of essential goods referred to in Section 4(u)(1) hereof related to the containment or mitigation of COVID-19: *Provided, furthermore, That for the purpose of qualifying for import duties, taxes, and other fees and ensuring the supply of PPE at competitive prices, DTI shall certify that the equipment and supplies being imported are not locally available or of***

insufficient quality and preference: Provided, finally, That preference is given to products, materials and supplies produced, made or manufactured in the Philippines;

xxx xxx xxx

SECTION 18. Effectivity. — Except as otherwise specifically provided herein, this Act shall be in full force and effect until the next adjournment of the Eighteenth Congress on December 19, 2020. This Act shall take effect immediately upon its publication in a newspaper of general circulation or in the Official Gazette: Provided, *That Section 4(cc) of this Act shall be deemed to be in effect since Republic Act No. 11469 expired.*" (underscoring supplied)

Coverage

Based on the law, it is hereby declared that:

- The importation from June 25, 2020 to December 19, 2020 of the goods enumerated below and identified as critical products, essential goods, equipment or supplies needed to contain and mitigate COVID-19, subject to the limitations and restrictions hereunder, shall be exempt from value-added tax, excise tax and other fees:
 - Goods which may include personal protective equipment (PPE) such as gloves, gowns, masks, goggles, and face shields; surgical equipment and supplies; laboratory equipment and its reagents; medical equipment and devices; support and maintenance for laboratory and medical equipment, surgical equipment and supplies; medical supplies, tools, and consumables such as alcohol, sanitizers, tissue, thermometers, hand soap, detergent, sodium hypochlorite, cleaning materials, povidone iodine, common medicines (e.g., paracetamol tablet and suspension, mefenamic acid, vitamins tablet and suspension, hyoscine tablet and suspension, oral rehydration solution, and cetirizine tablet and suspension); testing kits, and such other supplies or equipment as determined by the Department of Health (DOH) and Department of Trade and Industry (DTI).
 - Equipment for waste management, including, but not limited to, waste segregation, storage, collection, sorting, treatment and disposal services as approved by the Department of Environment and Natural Resources (DENR), DOH or other concerned regulatory agencies.

- Inputs, raw materials and equipment necessary for the manufacture or production of essential goods related to the containment or mitigation of COVID-19 enumerated in Section 2 (A)(I) of these Regulations.
- For the purpose of qualifying for exemption from import duties, taxes, and other fees and ensuring supply of PPE at competitive prices, the taxpayer availing of the exemption must present a certification from the Department of Trade and Industry (DTI) that the equipment and supplies being imported are not locally available or of insufficient quality and preference.
- The importation hereof shall not be subject to the issuance of Authority to Release Imported Goods (ATRIG) under Revenue Memorandum Order (RMO) No. 35- 2002, as amended, and may be released by the Bureau of Custom' (BOC) without need of ATRIG. The BIR may, however, conduct post investigation/audit on the importations released by the BOC without ATRIG pursuant to these Regulations.
- Donations of these imported articles to or for the use of the National Government or any entity created by any of its agencies which is not conducted for profit, or to any political subdivision of the Government are exempt from donor's tax and subject to the ordinary rules of deductibility under existing rules and issuances.
- The grant of exemption for the importation of goods enumerated above is deemed to be in effect beginning June 25, 2020, following the lapse of RA No. 11469. The value-added tax on all covered and qualified shipments/importations that may have been paid from June 25, 2020 up to September 14, 2020 shall be refunded pursuant to Section 204(C) of the Tax Code in accordance with the existing procedures for refund of value-added tax on importation, provided that the input tax on the imported items have not been reported and claimed as input tax credit in the monthly and/or quarterly value-added tax returns. The same shall not be allowed as input tax credit pursuant to Section 110 of the Tax Code for purposes of computing the value-added tax payable of the concerned taxpayer/s for the said period.
- Inputs, raw materials and equipment necessary for the manufacture of essential goods of medical grade related to containment and mitigation of COVID-19 referred to in Section 2 (A) (1) of these Regulations, as determined by Food and Drug Administration — Department of Health (FDA-DOH), whether locally sourced or imported by the registered manufacturer, shall be exempt from value-added tax.

For the purpose of availing the exemption, supplier/s of inputs, raw materials and equipment shall submit the following:

- Certified true copy of "License to Operate", issued to the manufacturer-buyer by the FDA-DOH, authorizing the manufacture of essential goods of medical grade related to containment and mitigation of COVID-19; and
- "Sworn Declaration" from the manufacturer-buyer that the item/s shall be used for the manufacture of essential goods of medical grade related to containment and mitigation of COVID- 19.

Sale Subject to Value-Added Tax

The sale of finished goods / products under Section 2 (A) (1) of these Regulations, whether locally manufactured or imported, is subject to value-added tax. The sale of inputs, raw materials and equipment referred to in Section 2 (F) of these Regulations to a non-holder of "License to Operate" issued by the FDA-DOH is likewise subject to value-added tax.

Repealing Clause

All existing rules and regulations, issuances or parts thereof, which are inconsistent with the provisions of these Regulations are hereby amended or modified accordingly.

Separability Clause

If any clause, sentence, provision or sections of these Regulations shall be held invalid or unconstitutional, the remaining parts thereof shall not be affected thereby.

Effectivity

If any clause, sentence, provision or sections of these Regulations shall be held invalid or unconstitutional, the remaining parts thereof shall not be affected thereby.

CMO NO. 26-2020

Issue Date: October 9, 2020

Scope

This Customs Memorandum Order (CMO) prescribes the rules and regulations further implementing Section 1149 of the CMTA, Customs Administrative Order (CAO) 03-2020 detailing the procedures governing the disposition of abandoned and forfeited goods through negotiated sale.

Objectives

- Provide for a uniform procedure and specific requirements in the conduct of negotiated sale;
- Ensure the integrity and transparency in the negotiated sale process by establishing a detailed procedure in the conduct thereof;
- Expedite the disposition of goods through negotiated sale

Negotiated Sale Committee

A Negotiated Sale Committee is hereby created to be composed of the following:

Chairperson: Deputy Commissioner, RCMG

Vice-Chairperson: Deputy Commissioner, AOCG

Members: Director, Legal Service
Director, Financial Management Office
OCOM Representative

Duties and Functions of the Negotiated Sale Committee

The Committee shall have the following duties and functions:

- Implement the provisions of CAO 03-2020 relative to the conduct of negotiated sale;
- Conduct an ocular inspection of the sale lots or items;

- Reject any or all offers or any part thereof and consider offer/s most advantageous to the interest of the government;
- Recommend to the Secretary of Finance the acceptance of the offer/s most advantageous to the interest of the government; and
- Issue orders necessary to implement CAO 03-2020.

Goods Subject to Negotiated Sale

Goods which remain unsold after at least two (2) failed biddings, that are not suitable either for official use or donation may be sold through a negotiated sale subject to the approval of the Secretary of Finance and executed in the presence of a Commission on Audit (COA) representative.

Documents Required in the Indorsement of Lots to the Negotiated Sale Committee

In indorsing lots that have undergone at least two (2) failed biddings, the Ports shall submit the following documents:

- Abstract of Bids per sale lot indicating the floor price, name of bidders and reason for the failed auction;
- Proof of Publication;
- District Collector's Certification of two (2) failed auction conducted on the said lots;
- In case the goods are perishable, the District Collector's certification to that effect;
- Decision or Order;
- Certificate of Finality of Decision or Order;
- Examination Report;
- Appraisal Report;
- Certification from the regulating agency that goods are still fit for human consumption, for food items;
- Any other Certification issued by any regulating agency for other goods;
- Pictures; and
- Such other requirements as may be required by the Committee.

Notice of Negotiated Sale

A Notice of Negotiated Sale shall be prepared by the Committee which shall contain the following information:

- Time, date, and place of submission and opening of offers;
- Time, date, and place for the pre-offer conference;
- Time, date, and place for the public viewing of sale lots;
- Description of goods being offered for negotiated sale;
- Location of the goods;
- Consignee, if any;
- Decision or Order;
- Terms and conditions for the negotiated sale;
- Additional requirements for the sale of the goods;
- Container number, if any; and
- Such other information deemed by the Committee to be included in the Notice of Negotiated Sale.

Publication of the Notice of Negotiated Sale

The Notice of Negotiated Sale shall be published in a newspaper of general circulation and posted in the BOC website at least ten (10) calendar days prior to the scheduled date of negotiated sale.

Public Viewing

Interested offeror/s shall be given an opportunity to personally view the items/goods on the date indicated in the Notice of Negotiated Sale. In this regard, the Collection District/s concerned shall make the necessary arrangement for the actual viewing. Pictures of the items/goods shall likewise be posted in the BOC website.

Pre-Offer Conference

At least two (2) calendar days prior to the date of negotiated sale, a pre-offer conference shall be held for those offerors who have signified their intent to participate to raise any questions they may have relative to the negotiated sale.

Registration Fee

Payment of the registration fee in the amount of Two Thousand Pesos (Php 2,000) and Legal Research Fee of Twenty Pesos (Php 20.00) shall be made at the Customer Care Center, Port of Manila, South Harbor.

However, in exceptional circumstances (e.g. declaration of National Health emergencies, calamities, etc.), offeror/s who will participate online during the opening of offers shall pay the registration fee at the Collection Division of the District Ports nearest them.

Documentary Requirements

For interested offerors, the following documentary requirements shall be submitted:

- Tax Identification Number (TIN);
- Official receipt on the payment of a non-refundable registration fee of Php 2,000.00 and legal research fee of Php 20.00
- Latest Income and/or Business Tax Returns duly stamped and received by the Bureau of Internal Revenue (BIR) and validated with the payment made thereon;
- Government-issued Identification Card (ID) of the participant/offeror, or their duly authorized representative;
- Clearance or registration from the concerned government agencies in case of regulated goods;
- For Single Proprietorship:
 - Department of Trade and Industry (DTI) registration;
 - Special Power of Attorney of the person duly authorized to represent, offer, and enter into a sale and execute all necessary documents in behalf of the participant/offeror;
 - Affidavit executed by the participant/offeror declaring that he or his officers are not related to any of the following:
 - The Chairperson, member and secretariat of the Negotiated Sale Committee, within third civil degree of consanguinity or affinity; and
 - The consignee (if applicable) of the seized and forfeited shipments.
- For Partnership, Corporation, Joint Venture and Cooperative:

CAO No. 10-2007, Section 7, Par. (b)

- Articles of Incorporation/Partnership and General Information Sheet;
- Special Power of Attorney (in case of partnership) or Secretary's Certificate (in case of corporation, joint venture and cooperative), evidencing authority of its representative to offer, enter into sale, and execute all necessary documents in behalf of the participant/offeror;
- Affidavit executed by the participant/offeror, through its duly authorized representative who shall be either an officer or director, declaring that none of its officers, directors, members, stockholders, and partners, as the case maybe, are related to any of the following:
 - The Chairperson, member and secretariat of the Negotiated Sale Committee, within third civil degree of consanguinity or affinity; and
 - The consignee (if applicable) of the seized and forfeited shipments.
- The documentary requirements and offer shall be signed in each page thereof and placed in an envelope to be sealed and signed by the participant/offeror.

Failure to submit any of the required enumerated above shall automatically disqualify the participant/offeror from participating further in the negotiated sale.

Submission of Offers

On the date and time for submission of offers as specified in the Notice of Negotiated Sale, the participants shall submit all the documentary requirements to be placed in one (1) main sealed long brown envelope.

On the face of the main sealed envelope, the following details must be clearly indicated:

- Name of the offeror;
- Name of the authorized representative (if applicable);
- Contact number;
- Email address; and
- The sale lot number/s of the good/s in which an offer is being made inside the main sealed envelope mentioned above, participants shall insert separate sealed envelopes, as follows:
 - The first sealed envelope shall contain the eligibility requirements enumerated above; and

- Succeeding sealed envelope/s shall contain the offer/s. The offer/s must be signed by the participant or the duly authorized representative indicating clearly the AMOUNT of the OFFER both in FIGURES and WORDS and the LOT NUMBER in which an offer is made.

Should the participant be interested in making an offer for more than one sale lot, each of the offers shall be made in separate sealed envelopes. The individual sealed envelope containing the offer must indicate in its outer portion, the sale lot of the goods in which an offer is being made.

Period to Submit Offer

The Offeror shall tender his sealed offer in a format designed for the purpose in a sealed drop box within the prescribed period of time indicated in the Notice of Negotiated Sale. No offer to buy shall be entertained if submitted after the said period of time.

Evaluation of the Documents Submitted

The eligibility requirements and sealed offers shall be opened and evaluated by the Committee in the presence of a representative of COA and the participants or their duly authorized representatives on the date, time, and place indicated in the Notice, and in the manner provided below:

- The Committee shall open the first sealed envelope containing the documentary requirements and shall then proceed to evaluate the completeness of the documents submitted by the participants. The Committee shall declare each submission as "Eligible" or "Ineligible" and inform the participants accordingly.
- The Committee shall return the eligibility documents and sealed offer/s of a participant if it is declared "Ineligible".
- The Committee shall then proceed to open the succeeding envelopes containing the sealed offers of participants with "Eligible" rating. The Committee shall evaluate the offers that are most advantageous to the interest of the government.
- Only one authorized person for each participant shall be allowed to participate during the negotiated sale proceeding. They shall only be allowed entry into the venue at the time when their sealed offer, including its attachments, is the subject of evaluation by the Committee. Failure of a

participant or the authorized representative to be present during the opening of the eligibility requirements and sealed offers shall automatically disqualify the participant from participating further in the negotiated sale.

- No minimum price shall be set; however, the government reserves the right to reject any or all offers, waive and require formalities, and accept offers that are most advantageous to the interest of the government pursuant to Custom Administrative Order Nos. 03-2020 and 10-2007.

In exceptional circumstances, offerors may be allowed to join and witness remotely, through an online platform, the opening of their offers. Provided, that their duly authorized representatives are physically present at the venue at the time of the opening of the offers.

Payment Procedure

The participants whose offer is considered the most advantageous to the interest of the government shall be required to pay a guarantee cash deposit in the amount equivalent to twenty percent (20%) of the offer within twenty-four (24) hours from receipt of the Notice of Acceptance of the offer by the Committee, which shall be deposited in a special trust account, prior to referral to the Secretary of Finance for consideration. For this purpose, the District Collector shall open a special trust account. Non-compliance herewith shall automatically disqualify the participant from participating further in the Negotiated Sale.

The eighty percent (80%) remaining balance shall be paid in full within forty-eight (48) hours from receipt of the notice from the Committee on Negotiated Sale of the approval of the offer by the Secretary of Finance.

In case of failed negotiated sale or failure to comply with any of the payment requirement provided under Section 8.5 of CAO 03-2020, the Offeror shall automatically be disqualified from participating further in any negotiated sale and public auction without prejudice to the forfeiture of any payment/s made thereon.

When the offer is rejected by the Secretary of Finance, the guarantee cash deposit shall be refunded.

Failed Negotiated Sale

A failed negotiated sale shall be declared by the Committee on Negotiated Sale when any of the following circumstances occurs:

- When there is no offer;
- When the highest offeror fails to comply with any of the payment required under Sec. 8.5 of CAO 03-2020, said Offeror shall be disqualified from participating further in the negotiated sale thereof, without prejudice to the forfeiture of the cash bond and any payment made and imposition of other sanctions as may be warranted; or
- When the Department of Finance disapproves or rejects the offer of the Offeror.

Awarding of Sale

Upon full payment and presentation of the official receipts evidencing payments of the accepted offer price subject of negotiated sale, the Secretariat shall issue a Notice of Award and shall forward the records of the District Collector having jurisdiction over the goods.

Approval by the Department of Finance

A Negotiated Sale shall be subject to the approval or disapproval of the Department of Finance.

Refund of Payment

Payments made by the Offeror which has been disapproved by the Department of Finance shall be refunded within fifteen (15) calendar days from receipt of Notice of Disapproval by the Offeror.

Disposition of Goods Which Have Undergone Failed Negotiated Sale

In case of a failed negotiated sale, the subject sale lot may be disposed of according to the other modes of disposition available under the CAO 03-2020.

Repealing Clause

All other rules and regulations issued by the Bureau which are inconsistent with this CMO are deemed repealed or modified accordingly.

Separability Clause

If any part of this CMO is declared unconstitutional or contrary to existing laws, the other part not so declared shall remain in full force and effect.

Effectivity

This Order shall take effect immediately and shall last until revoked.

CMO 28-2020

Date Issued: October 13, 2020

In order to effectively establish and maintain a comprehensive database of information related to pre-evaluation of exporters and their export products for certificate of origin issuance purposes, the TEMPORARY DELEGATION by Export Coordination Division (ECD) to Export Division (ED) of the above-mentioned subject function granted by CMO No. 11-2010 is hereby permanently withdrawn and revoked and shall now be reverted to the Export Coordination Division (ECD) as its original function as provided for under CMO No. 2-2010.

The Chiefs, Export Divisions are directed to immediately comply with this order and be under obligation to correspondingly apprise every exporter of this new guideline.

This Order shall take effect immediately and shall last until revoked.

AOCG MEMORANDUM NO. 180-2020

Issue Date: October 12, 2020

This is pursuant to the implementation of Customs Memorandum Order No. 04-2020 and based on the previous communication that another memorandum shall be issued to cover other economic zones. This Memorandum shall now include PEZA importations from the Port of Manila, Manila International Container Port and Port of Batangas bound to Cavite Economic Zone It (CEZ2).

All containers discharged from the above-mentioned seaports covered by transit SAD bound to CEZ2 must be sealed with Electronic Customs Seal under E-TRACC System starting on October 13, 2020.

Collection Districts and offices concerned are hereby directed to ensure that all containers processed for PEZA shall adhere to the following guidelines:

- **Destination** - during the trip booking process (www.ecms.ph) the stakeholder shall choose the economic zone where the locator is situated from the dropdown geozones.
- **Electronic GPS** — FCL containers bound to PEZA locator from Port of Discharge shall be sealed with Electronic GPS
- **Sealing** — The arming/affixing of electronic seal shall be undertaken by the Service Provider personnel under the supervision PID at the port of discharge.
 - They shall be responsible for checking the truck details and documents against the booking details.
 - They shall also take e visual evidence of the container wherein the container number, container seal number for the particular voyage and electronic Customs seal are visible as visual evidence and transmit to the control tower.
 - Once Start Trip Authorization is approved by the control tower, the procedures outlined in Sec. 10.10 of CMO No. 04-2020, the vehicle carrying the imported cargo can leave the vicinity to proceed to its destination.

- **Disarming** - Upon arrival of the vehicle and container at the destination (Tag Arrived upon entering the geozone), the Bureau's authorized personnel shall perform the following before removing/disarming the Electronic Customs Seal from the container:
 - They shall compare the container's visual evidence during sealing of Electronic Customs seal against the actual container that arrived and look for any discrepancy or signs of tampering (if there is any)
 - Compare if the container seal number for the particular voyage as well as the Electronic Customs seal number is the same as that indicated in the trip details.
 - The above information shall be transmitted to the control tower for the approval of the end trip.
 - Once end trip is authorized, the Bureau's authorized personnel shall disarm the container by removing the Electronic Customs Seal (cargo is Tag Received)

Shipments containing electronic materials shall not be covered but will later be issued a separate memorandum.

COO V will not approve any customs clearance without the required E-TRACC Booking as prescribed in Section 10.4 of CMO 04-2020.

Stakeholders are required to self-register in S-TRACC System at www.ecms.ph. ETRACC System is a web-based system that can be accessed through android phones, tablets, laptops, or desktop as long as internet connection is available. For further inquiries or concerns, please feel free to call Ascent Customer Support 88215691 , 0919-0793049, 09173887917, 09153333777, 09209732867.

The District Collectors are hereby reminded to inform their respective operating units and stakeholders affected by the implementation of the said CMO.

For strict compliance.

AOCG MEMORANDUM NO. 181-2020

Issue Date: October 13, 2020

Pursuant to Section 4.3.5 of Customs Memorandum Order (CMO) No. 4-2020 on the Transfer of Shipments for Further Verification and Monitoring in conjunction with CMO 27-2005 and the Memorandum dated August 7, 2018 issued by then Customs Commissioner Isidro S. Lapena on the Physical Examination of Agricultural Products in Reefer Containers, the following supplemental guidelines are hereby issued for the unsealing of the electronic Customs Seal attached to reefer or reefer vans transferred from the Port of discharge to consignee's warehouse:

- Disarming - to prevent delays in the disarming and/or unsealing of reefer vans that would adversely affect the condition of the goods, the assigned Security Guard on Duty at the Cold Storage shall be authorized to disarm the attached electronic seals following the steps below:
 - Take visual evidence of the container showing the container number and that the Electronic Customs Seal and the container seal either from the shipping line or terminal operator is still intact;
 - Transmit the information to the PID or equivalent office for the approval of the end trip. Prior to giving the authorization to end trip, the PID shall also get the name of the Security Guard on Duty requesting authorization, the time and date of the request and a picture taken of the latter's Identification Card or Security Guard License;
 - Once the authorization to End Trip is given, the Security Guard on duty shall disarm and manually remove the Customs Seal from the container and safekeep the same for retrieval by the E-TRACC Team of the port; and
 - Log the fact of disarming at the logbook being kept at the premises, including therein details of the day and time of disarming, container numbers, seal number of the electronic device and name of PID personnel who authorized the disarming.

Assignment of Customs Guards by PID for the disarming and unsealing of the electronic Customs Seal shall be dispensed with.

- **Examination** - The assigned examiner, prior to the conduct of the 100% physical examination shall check the integrity of the shipping or arrastre seal of the container if the same is still intact. In case the seal has been broken or shows any signs of tampering, the same must immediately be reported. The 100% examination shall be immediately conducted by the assigned Customs Examiner to be witnessed by representatives from concerned BOC offices and regulating agencies from the Department of Agriculture.
- **Collection of GPS Devices** — Disarmed electronic devices shall be collected from the Security Guard on duty at the cold storage and properly accounted by the E-TRACC Team.

Nothing in this Order shall be construed as a delegation of the Bureau's authority and control over imported goods entered through Ports of Entry nationwide.

This shall take effect on 13 October 2020.

For strict compliance.

ABOUT US

Nague Malic Magnawa & Associates Customs Brokers (NMM) is a general professional partnership of customs brokers duly registered by the Securities and Exchange Commission and the Bureau of Customs. As the first general professional partnership of customs brokers registered with SEC and BOC, it complies with RA 9280, or the Customs Brokers Act of 2004. It has offices in Metro Manila and Cebu, and brokers in Clark, Subic, Davao, Cagayan de Oro, Batangas, and other major ports and special economic zones in the Philippines.

To learn more about the company, please visit our website at:

<http://www.nmmcustomsbrokers.com/>

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