

NMM

NAGUE MALIC MAGNAWA & ASSOCIATES
Customs Brokers

COMPLIANCE BEYOND BORDERS

CUSTOMS GAZETTE

Updates on Customs-Related Matters

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In Brief

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CMO 13-2019

Issue Date: March 4, 2019
UP Law Center Received Date: March 5, 2019

Objectives

- Ease problems with port congestion or high yard utilization at the Port of Manila (POM) and Manila International Container Port (MICP) due to unreturned empty containers; overstaying imports stored in the premises of ATI at Port of Manila and ICTSI at MICP; and the truck ban in the City of Manila
- Resolve the delay in the discharge of containerized imported cargoes from the carrying vessels, and other related concerns generating unnecessary costs and charges on truckers, importers, brokers, and other port stakeholders

Guidelines

- Starting February 2019, the return of empty containers is temporarily disallowed until further notice from the BOC
- Shipping lines (*owning empty containers*) and/or their agents must coordinate with the importers, truckers, and brokers as to the return of their emptied containers to container yards, storage areas, or depots
 - The cost of returning empty containers and the corresponding storage fees, if applicable, shall be at the expense of the shipping lines and/or agents
 - Shipping lines and/or their agents must specify in the container delivery receipt/order or other similar documents the container yard or depot where the empty container/s will be returned
- Without the above-mentioned specifications, the importer, trucker, or broker may return said container/s to any storage area of their own choice
- Shipping lines and/or their agents are prohibited from imposing detention charges on the importer, broker, or trucker when the latter have returned to the former empty containers within the detention-free period, which is seventy-two (72) hours from pulling out laden containers at ATI for POM or ICTSI for MICP
- No detention charge will be imposed if there is no available space at the designated area (per the container

delivery/receipt order) for shipping lines and/or their agents to load their empty containers, and the importer, broker, or trucker signified their intention to return the same to the shipping lines and/or their agents within the detention-free period

CMO 14-2019

Issue Date: March 8, 2019
UP Law Center Received Date: March 12, 2019

Objectives

- Consolidate all issuances related to the applicable exchange rate for assessment purposes
- Establish a uniform application of conversion rates in harmony with the computerization program of the Bureau

Rules and Procedures

- The Exchange Rate officially disseminated to the public by the Bangko Sentral ng Pilipinas each Friday (formerly Wednesday) will be the exchange rate adopted by the following day (Saturday) up to Friday the following week.
- If there is no officially published exchange rate on a Friday, the latest rate published by the BSP prior to that Friday will apply. (Addendum: In case of holiday/non-working day on a Friday, the latest exchange rate issued on a working day prior to that Friday will apply.)
- When computing duties and taxes, the prevailing exchange rate for the week on the date of entry lodgment will be the basis for computing the duties and taxes of a particular shipment for Consumption and Warehouse entries.
- Foreign currencies will be converted directly to Philippine Pesos.

CMO 15-2019

Issue Date: March 18, 2019

Scope

- Governs the application, submission, and processing of all Electronic Certificates of Origin (e-CO) pursuant to the Operational Certification Procedure (OCP) of the ASEAN Trade in Goods Agreement (ATIGA) using the TradeNet.gov.ph platform

Objectives

- Facilitate the transmission of e-CO for export products and the receipt of the e-CO for imported products using available technologies and international best practices, in compliance with Republic Act No. 10863, or the Customs Modernization and Tariff Act (CMTA)
- Provide the procedures for the transmission of e-CO for export in accordance with the Rules of Origin (ROO) of the ATIGA and the OCP and its amendment
- Define the duties and responsibilities of the Bureau offices tasked with the processing of applications for pre-evaluation of export products and the issuance of e-CO using the Tradenet.gov.ph platform in accordance with the procedures outlined in the ASEAN Single Window e-ATIGA Form D Process Specification and Message Implementation Guideline
- Define the duties and responsibilities of Bureau offices tasked with the review and acceptance of e-CO for importations issued by ASEAN Member States (AMS), which is transmitted through the ASEAN Single Window (ASW) Gateway to the Tradenet.gov.ph platform

Definition of Terms

- **ASEAN Member States (AMS)** – any one of the ten member states of the Association of Southeast Asian Nations, namely:
 - Brunei
 - Cambodia
 - Indonesia
 - Lao PDR

- Malaysia
 - Myanmar
 - Philippines
 - Singapore
 - Thailand
 - Vietnam
- **ASEAN Single Window (ASW)** – the environment where the National Single Window (NSW) of AMS operates and integrates
 - **ASEAN Single Window e-ATIGA Form D Process Specification and Message Implementation Guideline** – the set of procedures and instructions the AMS agreed and conformed to, for a systematic exchange of regulatory documents in an electronic environment within the ASW
 - **ASEAN Single Window Gateway** – the platform for transmission and receipt of electronic messages and documents to the ASEAN Single Window
 - **ATIGA** – the ASEAN Trade in Goods Agreement which entered into force on May 17, 2010 and established the Rules of Origin for the trading of goods among AMS
 - **Bureau** – Bureau of Customs
 - **Electronic ATIGA Form D (e-ATIGA Form D) or Electronic Certificate of Origin (e-CO)** – the ATIGA Form D that is transmitted electronically between AMS through the ASEAN Single Window and bearing an electronic reference number
 - **Export Coordination Division (ECD)** – the office under the Port Operations Service (POS) of the Assessment and Operations Coordinating Group (AOCG) of the Bureau of Customs does the following:
 - coordinates and monitors export activities in all Collection Districts
 - exercises oversight function on all matters regarding CO and ROO
 - maintains a comprehensive database on all issuances and utilizations of Cos
 - performs other functions as provided for in this Order
 - **Export Division (ED) or equivalent unit** – the division or unit within any of the Collection Districts of the Bureau responsible for processing and approving export declarations and other export-related matters
 - **Exporter** – the natural or juridical person engaged in the exportation of any goods or commodities to the AMS from the Philippines and applying for a CO with the Bureau

- Article 1: Definition, Agreement to Establish and Implement the ASEAN Single Window, December 8, 2005

- See Preliminary Needs Assessment Report and Technical Specifications, ASEAN Connectivity Through Trade and Investment (US-ACTI)

- **Formal Entry Division or equivalent unit** – division or unit under any of the Collections Districts of the Bureau responsible for the examination, classification, and appraisal of imported goods covered by formal consumption entries and the assessment of customs duties, taxes, and other charges due thereon
- **Importer** – the natural or juridical person engaged in the importation of goods from the AMS into the Philippines
- **List of Pre-Evaluated Goods** – the list of successfully-evaluated goods contained in the Product Evaluation Report (PER), and serves as the basis for the issuance of e-COs to the Exporter
- **Origin Declaration** – the Exporter’s commercial invoice or any other document that may be agreed upon by the AMS to be used in lieu of the Paper ATIGA Form D to certify the origin of goods under ATIGA Self-Certification scheme
- **Paper ATIGA Form D** – the Certificate of Origin (CO) in the prescribed security paper, with declaration of the Exporter, and certified by the Bureau, that their export complies with the origin requirements specified under ATIGA; bears the manually executed signature and seal of the issuing authority
- **Product Evaluation Report (PER)** – the document containing the result/s of the pre-evaluation of export products applying for CO, after complying with the requirements of the Bureau
- **Rules of Origin (ROO)** – laws, regulations, and administrative determinations of general application applied by any member country of a free trade agreement to determine the country of origin of goods, for purposes of international trade
- **Single Administrative Document (SAD)** – the electronic representation of the Goods Declaration submitted electronically to the Bureau’s automated system, whereby the Importer, Exporter, or their duly authorized representative declares and certifies the full particulars of a shipment
- **System-generated ATIGA Form D** – the e-ATIGA Form D bearing an electronic reference number, which may be downloaded and printed by the Exporter from Tradenet.gov.ph
- **Tradenet.gov.ph** – the interoperable platform built, operated, and maintained by the Department of Information and Communication Technology (DICT) as part of the Government Operations Management Platform. It functions as:
 - the official government portal for electronic exchange of data on trade between and among various Philippine government agencies on one hand, and between the Philippines and other countries on the other

- WTO Agreement on ROO, Part I, Article I, par. 1-2

- GOMP refers to the technical environment dedicated to support software or database systems of different government collaborative groups intended to promote process and procedural interoperability.

- the official government portal for electronic exchange of data on trade between and among various Philippine government agencies on one hand, and between the Philippines and other countries on the other
- the portal or gateway where the automated licensing, permit, clearance, and certification systems of the Trade Regulatory Government Agencies are integrated
- the platform for issuance of the e-CO

Creation of User Account and Client Profile

- Use the TradeNet.gov.ph site for the application, processing, and issuance of e-COs for export, and utilization of e-COs for imports.
- To access TradeNet.gov.ph, Exporters and Importers must create a TradeNet Account and company profile with their respective Username and Passwords. The Exporter or Importer shall fill in all data fields required on all relevant pages.
- The procedures for using and accessing TradeNet.gov.ph accounts, whether by Exporter, Bureau, or other users of the platform are described in detail in the TradeNet Client User Manual for e-CO Issuance and TradeNet Agency User Manual.

Guidelines for the Application and Issuance of e-ATIGA Form D for Export Goods

1. PRE-EVALUATION OF EXPORT PRODUCT

1.1 For export products where the origin cannot easily be ascertained by its nature, Exporter must submit an application for pre-evaluation of every good for export.

1.2 Until such time the application and issuance of PER is done electronically, Exporters intending to export goods to AMS must first submit an application for pre-evaluation for every export product using the prescribed form to the Export Division of the port where they regularly process their export declarations, in case of POM, MICP or NAIA, and with the Export Coordination Division (ECD) for all other ports. The Exporter or their duly authorized representative

must submit their application for pre-evaluation of export products at least twenty (20) working days prior to the intended exportation of the products.

1.3 The following documents shall be submitted together with the application:

- Manufacturing flowchart
- Cost analysis
- List of Raw Materials including HS Code and Country of Origin, used in the production of the goods to be exported
- Copy of Import Documents, Invoice, and Certificate of Origin for imported raw materials
- Copy of sales invoice for local raw materials

1.4 The ECD/Export Division shall act on the application within ten (10) working days from the date of receipt of complete documents. Evaluation may be extended for another ten (10) working days in case plant visits and examination of office books of account and records are conducted.

1.5 In case of approved application, the ECD/Export Division will generate and issue a Product Evaluation Report (PER) containing the list of qualified products and bases for such findings. The Exporter will be given a copy of the PER.

1.6 In case the application does not qualify with the ROO and OCP of ATIGA, the ECD/Export Division will send a formal notice to the applicant, stating the reason for not qualifying, without prejudice to the Exporter filing a new application for PER.

2. APPLICATION AND ISSUANCE OF OUTBOUND E-CO

2.1 The Exporter or their duly authorized representative may apply for an e-CO by accessing their TradeNet account and filling up all relevant data fields.

2.2 For Wholly Obtained or Produced Good for which no PER is needed, the Exporter shall encode all information for each and every item or good into the relevant data field.

2.3 For goods which are NOT Wholly Obtained or Produced Goods, the Exporter shall input the information only for the goods indicated in the PER.

2.4 The Exporter shall upload the following documents as attachments to the application for e-CO:

- Approved Export Declaration
- Bill of Lading/Airway Bill
- Commercial Invoice
- Packing List
- Any other documentary requirements that may be required by the Bureau

2.5 Upon submission of the application, TradeNet.gov.ph will notify the Exporter via email once their application has been received, with each application receiving a unique tracking number.

2.6 The ECD/Export Division shall be notified by TradeNet.gov.ph once application has been submitted to the system. The application will be assigned to a customs officer who will validate the details and compare it with the uploaded documents attached to the same. The Assistant Chief of ECD/Export Division will then conduct a risk assessment review, who will recommend approval or disapproval of the application. Final approval or disapproval will be up to the Chief of ECD/Export Division.

2.7 TradeNet.gov.ph will notify the Exporter through a system generated email of the action of ECD/Export Division on the application. If approved, the email will contain a downloadable and printable file of the e-CO. If disapproved, the email will inform the Exporter of the reason for disapproval.

2.8 In cases where the application is disapproved, the Exporter may file another application for e-CO.

2.9 In exceptional cases, such as, but not limited to, technical failures, the Exporter may apply for and be issued a Paper ATIGA Form D in accordance with the existing laws, rules, and regulations.

3. PRINTING OF E-ATIGA FORM D

3.1 Until such time all AMS start the full electronic sharing of e-ATIGA Form D via the ASW Gateway, and all technical failures are addressed, the Exporter shall download then

print the e-ATIGA Form D, place their signature in the appropriate space, and submit the system-generated ATIGA Form D to the Bureau for manual execution of signature and seal.

3.2 The Bureau shall no longer accept the system-generated ATIGA Form D once the electronic transmission of e-ATIGA Form D is fully implemented.

Guidelines in the Appreciation and Acceptance of e-ATIGA Form D for Imported Goods Pending Full Implementation of e-CO

1. RECEIPT AND EVALUATION OF E-COS

1.1 For purposes of claiming preferential tariff treatment and securing the release of the goods, the Importer with an inbound e-ATIGA Form D shall present to the Entry Processing Unit - Formal Entry Division (EPU-FED) or equivalent unit a copy of the same showing the following:

- Electronic reference number of e-ATIGA Form D
- Printed copy of the SAD
- Other documents required by existing laws, rules, and regulations in the processing of goods declaration for consumption

1.2 Upon receipt by the assigned customs officer of the goods declaration, they will conduct the document examination and/or physical examination and indicate their findings therein. Then, they shall forward the goods declaration and the associated documents to the PRU.

1.3 The authorized PRU officer will acknowledge receipt of goods declaration and supporting documents, including e-ATIGA Form D. The PRU officer will search for the electronic equivalent of the ATIGA Form D received and stored in TradeNet.gov.ph using the electronic reference number. The PRU officer will verify whether the description or details of the commodities declared in the SAD are the same as reflected in the e-CO. They will then review the details of the e-CO and determine if they are compliant with the applicable ATIGA Rules of Origin.

1.4 If found compliant, the PRU will accept the e-CO and the corresponding preferential rate of duty. The customs officer or their equivalent will then do the final assessment of duties and taxes applying to the preferential rate of duty.

1.5 If the PRU officer finds that the e-CO is NOT compliant with the applicable Rule of Origin, they shall reject the e-CO, and the customs officer or their equivalent will then do the final assessment of duties and taxes applying the MFN rate of duty.

1.6 The Importer whose e-CO is rejected by the PRU may contest such findings in writing addressed to the District Collector thru Head, PRU-FED, and request for the release of their importation by posting a bond equivalent to the difference of the duties and taxes using the MFN rate of duty and the preferential rate sought for by the e-CO. Procedure on protests and retro-verification of inbound e-COs shall be governed by CMO 16-2011 until modified or superseded.

1.7 In exceptional cases, such as, but not limited to technical failures, the Importer can present the Paper ATIGA Form D to claim preferential treatment.

Submission to the ASEAN Single Window Gateway

- The Bureau, through the ECD, will send the e-CO to the ASW Gateway in Extensible Markup Language (XML) format.
- The ASW sends the XML file to the Importing AMS.
- The Importing AMS will notify the Bureau of the utilization status of the e-CO.

Full Implementation

Once full implementation starts for the ASEAN e-CO, no outbound and inbound Paper ATIGA Form D shall be processed or accepted, except for the following exceptions listed below:

- System downtime exceeding 2 hours
- Loss of network connectivity exceeding 2 hours

- Other service disruptions duly endorsed for manual processing and approval by the Deputy Commissioner, MISTG

All manually processed ATIGA Form D will be reprocessed in TRADENET once issues are resolved.

Miscellaneous Provisions

- All export products that have been evaluated and the corresponding PERs issued as of January 1, 2017 will be uploaded to the TradeNet.gov.ph platform. All concerned Export Divisions are required to submit to the ECD not later than March 31, 2019 the soft copy of all issued PERs as of January 1, 2019.
- Exporters with PERs issued prior to January 1, 2017 must file a new application for PER.
- PERs shall have a validity of five (5) years. Notwithstanding its validity, the Exporter must apply for a new PER for the same product in cases where the tariff rate of an export product is affected by the issuance of a new ASEAN Harmonized Tariff Nomenclature (AHTN).

Liability of Importer or Exporter for Presenting False or Spurious Printout of e-CO

Any Importer or Exporter who presents any false or spurious printout of e-CO shall be subject to administrative or criminal liability pursuant to existing laws, rules, and regulations.

CMO 16-2019

Issue Date: March 25, 2019

Objective

- Sets guidelines for compliance with the requirements for sending due notice under Section 1129 of the Customs Modernization and Tariff Act (CMTA) of 2016

Definitions and Guidelines

- **Service of notice** – the act of providing the owner, importer, consignee or interested party with a copy of the notice or paper concerned with the specific period provided for by law
- Service of notice shall be made through electronic notice or personal service. For non-regular importers, it shall be made through registered mail or personal service.
- **Electronic notice** – sending the notice via information and communication technologies
- **Personal service** – personally delivering the notice to the owner, importer, consignee or interested party, or leaving the notice at their office with the person in charge
- **Registered mail** – depositing the notice at the post office in a sealed envelope, with the name of the owner, importer, consignee or interested party on said envelope, along with their known address and with postage fully paid; instructions should be given to the postmaster to return the mail to the sender after ten (10) days if undelivered
- Personal service is complete upon actual delivery. Proof of receipt will consist of one of the following:
 - written acknowledgement of the owner, importer, consignee, or interested party served
 - the official return of the server
 - the affidavit of the party serving, containing a full statement of the date, place, and manner of service
- Service by registered mail is complete upon actual receipt by the owner, importer, consignee or interested party, or after five (5) days from the date they receive the first notice of the postmaster, whichever date is earlier. Proof for receipt includes the following:

- the affidavit of the party serving
- registry receipt issued by the mailing office
- Electronic service is complete upon successful sending of a notice via the internet to the designated email address of the owner, importer, consignee, or interested party. Proof of receipt includes any of the following:
 - acknowledgement of the owner, importer, consignee or interested party served
 - affidavit of the party serving
- Failure to comply will result in administrative liability against any employee or official of the Bureau and shall consider any action in relation thereto as null and void.

Addendum: In accordance with Section 1129 (b) of the CMTA, sending of due notice to consignee is within five (5) days from the date of discharge.

To avoid abandonment, please note the following:

- period of lodgment/filing - within fifteen (15) days from date of last discharge of last package
- period of payment of duties and taxes - within fifteen (15) days after date of final assessment notice
- period of release/claim of goods - within thirty (30) days after date of payment

Memoranda 2019-03-14 and 15

Issue Date of CMC 58-2019: February 22, 2019

Issue Date of Memorandum 2019-03-14: March 5, 2019

Issue Date of Memorandum 2019-03-15: March 11, 2019

Objective

- Provide guidelines on the implementation of Republic Act 11203: An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice and for Other Purposes (or: the Rice Tariffication Act)

Guidelines

- Per RA 11203, the NFA will no longer exercise regulatory functions over the international and domestic trading of rice. Thus, all rice importations shall now be processed under the regular customs cargo clearance procedure.
- Payment of Advance Customs Duty/Tariff for rice importations is no longer required. (Addendum: A letter of credit for Advance Customs Duty/Tariff is no longer required for rice importation.)
- All rice importers must secure a Sanitary and Phytosanitary Import Clearance (SPSIC) from the Bureau of Plant Industry (BPI) prior to importation in accordance with existing rules and regulations. Rice importations should arrive prior to the expiration of the SPSIC from the BPI.
- For rice importations originating from ASEAN member states, the import duty rate of 35% under the ATIGA shall apply.
- For rice importations originating from NON-ASEAN WTO member states, out-quota tariff rate of 180% shall apply in the e2M customs system effective March 11, 2019.

Memorandum 2019-03-21

Issue Date: March 15, 2018

Objective

- Clarify the application of the CMTA provision on abandonment (Section 1129) in order to avoid delaying of payment of duties and taxes

Clarification of Issue

- Interpreting the provision on abandonment as the period for making payment is incorrect. Said provision governs abandonment of cargoes and should be **interpreted separately** from lodgement and payment of duties and taxes.

Procedure for Processing of SGL Importations

From CMO 28-2003, Section 9

1. SGL user shall electronically lodge their Single Administrative Document (SAD) into the BOC-ACOS System through EDI via the BOC Gateway facility, or by such other facility as may be authorized by BOC for the purpose.
2. SAD declaration goes through the processing of BOC ACOS system, which (among others) assesses duties and taxes due on the shipment. Assessment shall be electronically transmitted to the SGL user via the same EDI facility referred to above.
3. **Upon receipt of the BOC-ACOS final assessment notice, SGL user shall make payment of the duties and taxes due with the Authorized Agent Bank (AAB).** (emphasis supplied)
4. Upon receipt of payment of duties and taxes for an SGL shipment, the concerned AAB shall immediately, as top priority, effect the electronic transmission of the payment information to BOC.
5. The payment is then verified through the BOC ACOS system whether the payment made matches the amount assessed.

If it does, the BOC-ACOS System shall generate and transmit an electronic cargo release message to the arrastre operator authorizing the release of the shipment to the duly authorized representative of the SGL user.

6. For purposes of identifying the SGL shipment of the importer for release, a SAD printout shall be presented to the Arrastre Operator.

Penalties

- The Bureau of Customs has the authority to suspend, cancel or revoke an SGL member company's certificate of accreditation as stated in Paragraph 8 of CMO 28-03.

Additional Directives

- All SGL member companies are directed to pay the duties and taxes immediately upon receipt of final assessment notice pursuant to CMO 28-03
- All ports are directed to submit the names of SGL member companies that delay payment of duties and taxes.

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 located in Clark, Subic, Cebu, Davao, Manila, Cagayan de Oro, Batangas, and other major ports and special economic zones in the Philippines.

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

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

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