

**NMM**

**NAGUE MALIC MAGNAWA & ASSOCIATES**  
Customs Brokers

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COMPLIANCE BEYOND BORDERS

# CUSTOMS GAZETTE

**Updates on Customs-Related Matters**

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# In Brief

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# **DTI MEMORANDUM CIRCULAR NO. 21-42, SERIES OF 2021**

**WHEREAS**, Section 8 of Republic Act No. 10697, otherwise known as the Strategic Trade Management Act (STMA) created the Strategic Trade Management Office (STMO) as a bureau under the administrative supervision of the Department of Trade and Industry (DTI) to serve as the executive and technical agency of the national government for the establishment of the management systems for the trade in strategic goods;

**WHEREAS**, Section 9 of the STMA vested the STMO with the powers and functions, among others, to ensure and operate end-use/end-user controls, establish compliance checks and exercise authority to enter premises for such purposes, and investigate violations committed under the said Act;

**WHEREAS**, Section 22 of the STMA and Rule VI of its Implementing Rules and Regulations (IRR), authorized the STMO to impose administrative penalties on any person found to have committed violations under the said Act, its IRR, and other issuances;

**WHEREAS**, STMO issued Guidelines on Warning Letters and Orders for Corrective Action (Memorandum Circular No. 20-40) as an alternative to the filing of administrative or criminal complaints;

**WHEREAS**, there is a need to issue guidelines to observe due process in the conduct of investigation and imposition of administrative fines and penalties under the STMA.

**NOW, THEREFORE**, this Circular is hereby issued for the information, guidance, and compliance of all covered persons.

## ***Purpose***

This Memorandum Circular (MC) is intended to serve as a guide to the STMO for the conduct of an investigation, administrative proceedings, and imposition of administrative fines and penalties. It is also intended as a reference for industry stakeholders and all persons engaged in or intending to engage in strategic trade activities.

## ***Scope and Coverage***

The herein guidelines shall apply to administrative proceedings under the STMA, its IRR, guidelines, and other issuances of the NSC-STMCom and/or the STMO.

It shall cover:

- Any person operating within the Philippines who engages or intends to engage in the export of strategic goods from the Philippines, including designated special economic and freeport zones; the import of strategic goods into the Philippines; or the transit or transshipment of strategic goods through Philippine territory; the provision of related services; and all Filipino persons providing these services wherever located;
- Any person engaged in the re-export of strategic goods that have been imported from the Philippines to a foreign country and the reassignment of strategic goods imported from the Philippines to a new end-user in the country of import subject to authorization under the STMA; and,
- Any person engaged in the activities that fall under any of the four (4) conditions set forth in Section 11 of the STMA.

## ***Administrative Violation***

Administrative violation refers to an act committed or omitted by any person in violation of the STMA, its IRR, and guidelines and issuances of the NSC-STMCom and/or the STMO.

## ***Administrative Investigation***

- Administrative investigation refers to the procedure conducted by the Investigation and Compliance Division (ICD) of the STMO to determine if an administrative violation has been committed as defined in above. It may arise from:

- The conduct of an audit, compliance visit, or on-site inspection by the STMO;
- Information acquired from the Registration and Authorization Division and/or Policy and Enterprise Relations Division of the STMO;
- A Voluntary Self-Disclosure by the respondent;
- Information, intelligence report received from, and/or request for an investigation by other government agencies;
- Information, intelligence report received from, and/or request for an investigation by other local and/or international counterparts;
- A complaint, information, and/or request for investigation from any person other than those mentioned in the preceding numbers; and,
- Any other analogous circumstance.
- The ICD conducts a preliminary fact-finding investigation to evaluate and determine if there is reasonable ground to warrant the filing of a Formal Charge.
- During the Preliminary Fact-Finding Investigation, the assigned ICD personnel/ investigator shall serve a Charging Letter to the respondent.
- A Charging Letter shall:
  - Contain the alleged specific violation referred to above;
  - Contain the date or period when the alleged violation is committed;
  - Contain a Statement of Facts;
  - Require the respondent to produce documents, i.e. company records and affidavit/s, etc., whenever necessary; and,
  - Be duly signed by the Chief of the ICD or his duly authorized representative.
- The respondent is given thirty (30) calendar days from receipt of the Charging Letter within which to file an Answer. A request for extension to file an Answer may be allowed on meritorious grounds.
- An Answer shall be in writing, verified, and shall contain the following:
  - Date of receipt of the Charging Letter;
  - Antecedent/ relevant facts;
  - Defenses/undertaking;
  - Certified true copies/Faithful reproduction of documents supporting the defenses; and,
  - Date and signature of the respondent.
- The Verification shall attest the following:

- The allegations in the pleading are true and correct based on his or her personal knowledge, or based on authentic documents;
- The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and,
- The factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

A pleading required to be verified that contains a verification based on information and belief, or upon knowledge, information, and belief, or lacks a proper verification, shall be treated as an unsigned pleading.

- Failure to file an Answer, files an Answer insufficient in form and substance, or files any document other than an Answer, within the reglementary period shall be considered as a waiver on the part of the respondent, and shall warrant the ICD to proceed with its investigation based on available records.
- After the Preliminary Fact-Finding Investigation, an Investigation Report with Recommendation shall be submitted by the ICD to the Office of Bureau Director (OBD). The Investigation Report shall indicate whether or not reasonable grounds exist and to recommend any of the following:
  - Filing of Formal Charge;
  - Termination of investigation; or,
  - Suspension/Archive.

## ***Formal Charge***

- Upon determination of reasonable grounds, the ICD shall file a Formal Charge against the respondent before the OBD. The Formal Charge shall indicate the following:
  - Name and address of respondent;
  - Specific violation of the STMA, and its rules or regulations;
  - Date or period when the violation is committed;
  - Statement of Facts;
  - Statement of Attendant Circumstances;
  - Statement of Findings; and
  - Relevant documents.
- The STMO shall immediately notify the respondent of the Formal Charge through a Charging Notice in a manner as herein prescribed.

## ***Comment***

- A Comment, to be considered by the STMO, shall be in writing, verified, and contain the following:
  - Date of receipt of the Charging Notice;
  - Antecedent/ relevant facts;
  - Defenses/ undertaking;
  - Certified true copies/Faithful reproduction of documents supporting the defenses; and,
  - Date and signature of the respondent /Person Responsible for STMA Compliance.
- Non-adherence to the requirements set out in the preceding number shall render the Comment insufficient in form and substance.
- All defenses not alleged in the comment will not be appreciated in favor of the respondent;
- The respondent shall be given thirty (30) calendar days from receipt of the Charging Notice and Formal Charge within which to file his Comment.
- Failure to file a Comment, files a Comment insufficient in form and substance, or files any document other than a Comment, within the reglementary period shall warrant the STMO to proceed with the Disposition of the case based on the available records.

## ***Clarificatory Meeting***

The Director may, at his/her discretion, call the parties to a clarificatory meeting, concerning the facts, evidence, issues, and other relevant matters.

## ***Disposition of the Case***

After allowing all the parties to be heard, the Director of the STMO shall, based on the records, proceed to resolve the case and impose administrative penalties and fine/s or the dismissal of the Formal Charge.

## ***Issuance of the Decision***

After finding substantial evidence that the respondent committed violations as charged, the Director of the STMO shall issue a Decision imposing administrative sanctions as may be proper, setting forth the factual and legal basis thereof. If the finding shows that there is no substantial evidence that the respondent committed the violations as charged, the Director shall dismiss the Formal Charge.



## ***Motion for Reconsideration***

- The respondent may file a motion for reconsideration of the STMO Decision within fifteen (15) days from receipt of the Decision.
- The filing of a motion for reconsideration shall stay the execution of the Resolution sought to be reconsidered.
- The motion for reconsideration shall be based on any of the following grounds:
  - Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the respondent has probably been impaired in his rights;
  - Newly-discovered evidence which could not have been discovered and produced at the time the respondent filed its Comment, and which if presented, would materially affect the Decision rendered;
  - Substantial mistake in the appreciation of evidence; or
  - Erroneous computation of assessment.
- Only one (1) MR shall be allowed and considered.

## ***Finality of Decision***

- The Decision shall immediately become final and executory if no motion for reconsideration is filed or no administrative appeal has been perfected within the prescribed period.
- If the Decision involves the payment of fines, the STMO Director shall issue a Notice of Execution directing the respondent to make payment within ten (10) working days from receipt thereof.
- In case of non-compliance with the Notice of Execution, The STMO Director shall issue an Order of Execution with the corresponding Writ of Execution requesting the proper Sheriff's Office to execute the said decision. No deputation is necessary.
- When there is a need to deputize and enlist the assistance of public officers and government agencies (other than Sheriff's Office), or private individuals and entities, the STMO Director may deputize any of them, and the deputation shall take effect as soon as said officers, agencies, individuals, and entities give their consent to their deputation.

## ***Administrative Appeal***

Any person upon whom administrative penalties have been imposed shall have the right to appeal in accordance with Rule VII of the STMA Implementing Rules and Regulations.

## ***Service and Filing of Processes and other Correspondences***

- All processes and other correspondences shall be served by the STMO upon the respondent by way of personal delivery, courier service or registered mail accredited courier, electronic mail, facsimile transmission, other electronic means may be authorized, or as provided for in international conventions to which the Philippines is a party. In case the whereabouts of the respondent cannot be reasonably determined, the service shall be made to the last known address or by a publication in a newspaper of general circulation.
- Service by electronic means and facsimile shall be made if the party concerned consents to such modes of service.
- There shall be presumptive receipt of processes and other correspondences if the same appears on the records to have been mailed at least twenty (20) calendar days prior to the reglementary period within which to file Answers, Comments, and/or Motion for Reconsiderations.
- Answers, Comments, and/or Motion for Reconsiderations shall be filed:
  - Personally;
  - Through courier service;
  - Through registered mail at 3rd Floor 389 Tara Bldg., Sen. Gil J. Puyat Avenue, Makati City; or,
  - Through email at [stmo@dti.gov.ph](mailto:stmo@dti.gov.ph) copy furnishing the STMO-Investigation and Compliance Division at [stmo\\_icd@dti.gov.ph](mailto:stmo_icd@dti.gov.ph). The date of electronic transmission shall be considered as the date of filing.

## ***Determination of Administrative Penalty***

- STMO shall impose on any person found to have committed violations under the STMA the following administrative penalties:

- Issuance of Warning Letter and/or Order for Corrective Action;
- Limitation, revocation, or annulment of any authorization and/or registration;
- Imposition of fines of up to two hundred fifty-thousand pesos (P250,000.00) or twice the value of the strategic good or related service under the contract or as assessed by the STMO; and,
- Upon request by the Securities and Exchange Commission and/or the Department of Trade and Industry or any other relevant agencies, order the cancellation or suspension of the registration and authorization/license to operate of the partnership, corporation, association, and other juridical entity.
- The imposition of an administrative penalty shall be without prejudice to the filing of appropriate criminal charges against the persons responsible for the violation.
- The penalty and fines to be imposed shall be based on the nature, gravity, frequency of the offense, and attending circumstances.

### ***Suppletory Application***

In the absence of applicable provisions in these guidelines, the pertinent provisions of the Rules of Court may be applied suppletorily.

### ***Effectivity***

This Circular shall take effect immediately upon its publication.

# MEMORANDUM

Issue Date: January 3, 2022

Please be informed that the updating of Excise Tax rates for the following products under Republic Act No. 11467 has been implemented in E2M System effective January 04, 2022:

## Alcohol, Heated Tobacco and Vapor Products

### As per Republic Act No. 11467

Description	Classification	2022
Fermented Liquors Specific Tax	All HS codes under heading 2203; 2206.00.10, 2206.00.20, 2206.00.41, 2206.00.49, 2206.00.91, 2206.00.99	Php 39.00/liter
Distilled Spirits Ad Valorem Tax Specific Tax	All HS codes under heading 2208	22% of NRP Php 52.00/PL (Proof Liter)
Wine Specific Tax	All HS codes under heading 2204 and 2205	Php 56.20/liter
Heated Tobacco Products	2403.99.90	Php 30/pack of twenty (20) units or packaging combinations of not more than twenty (20) units
Nicotine Salt or Salt Nicotine (Salt Nicotine Vape)	*3824.99.99 (Tariff Specification – 1002)	Php 47.00/ml
Conventional “Freebase” or “Classic” Nicotines	*3824.99.99	Php 55.00/10 ml or a fraction thereof

\*If goods are not intended for nicotine, please use AICODE 1001.

Examiners are advised to do SAD Update for all goods declaration that were not processed prior to the system update.

Note: Due to systems limitation, Ad Valorem Tax for Distilled Spirits is computed manually since it depends on the Net Retail Price (NRP).

For your information.

# MEMORANDUM

Issue Date: January 3, 2022

Please be informed that the updating of Excise Tax rates for the following products under Republic Act No. 11346 has been implemented in E2M System effective January 04, 2022:

Description	Classification	Tax Rate
Cigarettes packed by hand	2402.20.10	Php 55.00 per pack
	2402.20.20	
Cigarettes packed by machine	2402.20.90	Php 55.00 per pack
	2402.90.20	

Examiners are advised to do SAD update for all goods declaration that were not processed prior to the system update

For your information.

# CMO NO. 37-2021

Date Issued: December 13, 2021

## ***Introduction***

This memorandum mandates the use of geotagging mobile applications in taking photos and videos, using smartphones, in the exercise of Customs police authority and other aspects of operations and shall complement the use of Body-Worn Camera (BWC) or Alternative Recording Device under Customs Memorandum Order (CMO) No. 33-2021.

## ***Scope and Applicability***

This Order shall govern the use of geotagging applications in taking photos and videos, using smartphones, in the exercise of Police Authority as defined and prescribed under Title II: Chapter 3 of Republic Act (R.A.) No. 10863 otherwise known as the Customs Modernization and Tariff Act (CMTA) and in the conduct of other customs operations.

## ***Objective***

To institutionalize geotagging of photos and videos taken in the herein specified customs operations as a complement to the BWC and to prescribe the mandatory use of geotagged photos and videos in the submission of reports.

## ***Definition of Terms***

**Alternative Recording Device** — shall refer to an electronic camera system which is not a Body-Worn Camera, that is capable of creating, generating, sending, receiving, storing, displaying, and processing audio-visual Recordings, and may be worn or used during customs operations and in the exercise of Police Authority. It may be used as a substitute for Body Worn Cameras in case of unavailability.

Section 3.1 of Customs Memorandum Order (CMO) No. 33-2021.

**Body-Worn Camera** — shall refer to an electronic camera system designated to the Bureau's law enforcement units and other authorized customs officials for creating, generating, sending, receiving, storing, displaying, and processing audiovisual Recordings that may be worn during customs operations and in the exercise of Police Authority.

Section 4, Rule 1 of Supreme Court Administrative Matter (A.M.) No. 21-06-08-SC

**Bureau** – shall refer to the Bureau of Customs

**Data Custodian** — shall refer to an authorized customs officer who has the sole responsibility of storing and safekeeping of data recorded from Body-Worn Cameras or Alternative Recording Device and those geotagged photos and videos taken using smartphones of customs officers.

**Geotagging** — the process of adding geographical information to various media in the form of metadata. The metadata usually consists of coordinates like latitude and longitude, but may even include bearing, altitude, distance and place names.

Department of Environment and Natural Resources' National Greening Program (DENR-NGP) Geotagging Manual, Series of 2013

**Metadata** - shall refer to information within the recording file containing any digital identifiers that are captured as part of the actual recording, such as the recording date, time, GPS coordinates, etc.

Section 4, Rule 1 of Supreme Court A.M. No. 21-06-08-SC

Mobile Application (Mobile App), 2020, n.a., last accessed on 05 October 2021 at CENTRAL  
<https://www.techopedia.com/definition/2953/mobile-application-mobile-app>

**Mobile Applications** — type of application software designed to run on a mobile device, such as a smartphone or tablet computer.

**Police Authority** — shall refer to the authority granted to specific regular government employees, to effect search, seizure, and arrest in places where the authority may be exercised arising from the implementation of the CMTA and other related laws.

Section 3.23 of Customs Administrative Order (CAO) No. 3-2019

## ***Mandatory Use of Geotagging Mobile Applications***

The use of geotagging mobile applications in taking photos and videos using smartphones, in complement to the Body-Worn Camera or Alternative Recording Device, of customs officers shall be mandatory under the following instances:

Section 3.4 of CAO No. 3-2019

- Approved controlled delivery operation;
- Boarding formalities;
- Conduct of auction sales;

- Destruction or condemnation of goods, including the transport thereof to the designated facility;
- Electronic Tracking of Containerized Cargo (E-TRACC)-related operations, particularly the conduct of investigation upon report of violation of E-TRACC rules and regulations;
- Fuel marking operations;
- Guarding duty at customs import exit gates for containers/cargoes, if applicable;
- Hot pursuit;
- Inspection of consignees' offices;
- Non-intrusive examination of goods;
- Physical examination of goods within and/or outside of customs zone;
- Search of persons arriving from foreign countries;
- Service of Letter of Authority;
- Search of vehicles, other carriers, persons, and animals;
- Search on vessels or aircrafts and persons or goods conveyed therein; or
- Covert and overt operations of the Intelligence Group and Enforcement Group.

Section 223 of Republic Act (R.A.) No. 10863 (CMTA)

Section 224 of RA 10863 (CMTA)

Section 222 of RA No. 10863 (CMTA)

Section 221 of RA 10863 (CMTA)

## ***Operational Provisions***

- All reports in the exercise of the customs operations enumerated under in this Order shall be accompanied by a printout of geotagged photos taken during the said operations.
- Customs Officers and employees involved in the conduct of the covered operations shall download a geotagging mobile application that must show the following information, but not limited to:
  - Location address;
  - Latitude;
  - Longitude; and
  - Date and Time
- All geotagged photos and videos taken shall also be submitted to the designated Data Custodian within twenty-four (24) hours after the completion of the operation.
- Only geotagged photos, videos, and those recorded by BodyWorn Camera or Alternative Recording Device shall be accepted as proof of conduct of the abovementioned operations. In case of Alternative Recording Device, the same must be geotagged.
- Sections 9 to 16 of Customs Memorandum Order No. 33-2021 are hereby made part of this Order.



### ***Administrative Liability***

Any act in violation or failure to comply with this Order shall be a ground for administrative liability.

The administrative penalty arising from this Order shall be without prejudice to other criminal, administrative, or civil liability that may arise pursuant to the provisions of the applicable law violated.

### ***Repealing Clause***

Provisions of other CMOS, orders and issuances in conflict with this CMO are hereby repealed or amended accordingly.

### ***Separability Clause***

Provisions of other CMOS, orders and issuances in conflict with this CMO are hereby repealed or amended accordingly.

### ***Effectivity***

This Order shall take effect on 13 December 2021.

# CMO NO. 38-2021

Issue Date: December 20, 2021

Pursuant to Department Administrative Order (DAO) No. 21-07 issued last 29 November 2021, Letter dated 29 November from the Department of Trade and Industry (DTI) and in view of the directive dated 16 December 2021 from the Secretary of Finance, provisional anti-dumping duties for Ordinary Portland Cement Type 1 (**AHTN 2523.29.90**) and Blended Cement Type 1P (**AHTN 2523.90.00**) imported from Viet Nam are hereby imposed.

DAO No. 21-07 highlighted that the abovementioned products are being dumped, causing material injury to the domestic cement industry. Thus, provisional anti-dumping duties in the form of cash bond shall be imposed for four (4) months from the date of effectivity of DAO 21-07 on importations of Type 1 and Type IP cement originating from Viet Nam.

Further, pursuant to the directive of the Secretary of Finance, Section 3(f) of RA 8752 mandates the DTI Secretary, in instances where DTI's preliminary finding is affirmative, to immediately issue, through the Secretary of Finance, a written instruction to the Commissioner of Customs to **impose within three (3) days** from receipt of instructions a cash bond equal to the provisionally estimated anti-dumping duty but not greater than the provisionally estimated margin of dumping in addition to any other duties, taxes and charges imposed by law on like articles."

For strict compliance.

# CMO NO. 39-2021

Issue Date: December 20, 2021

Pursuant to the Letter dated 26 November from the Department of Trade and Industry (DTI) and in view of the directive dated 16 December 2021 from the Secretary of Finance, the previously determined definitive safeguard duty of **P200/MT or P8.00/40 kg bag** under DTI DAO No. 19-13 for the third, and last year of implementation of the safeguard duty on imported cement, classified under AH TN Codes 2523.29.90 and 2523.90.00 from covered countries starting October 22, 2021 is hereby imposed.

Importers of cement originating from the countries excluded from the imposition of the definitive safeguard duty shall submit a Certificate of Country of Origin (CO) issued by the authorized agency/office in the country of manufacture subject to affixation of "Apostille" to the document or authenticated by the Philippine Embassy/Consulate general, as applicable.

Furthermore, all other provisions of DAO 19-13 shall remain in force and effect, except as expressly modified under DAO 20-08 (as implemented under CMO No. 292020) and DAO 21-02 (as implemented under CMO No. 11-2021).

This Order shall take effect immediately.

# CMC NO. 261-2021

Issue Date: November 22, 2021

This is with reference to an email dated November 11, 2021 from Pia Francesca A. Ang, Agricultural Specialist, USDA Foreign Agricultural Service, U.S. Embassy, Manila with attached copy of the Revenue Memorandum Circular (RMC) No. 112-2021 with subject: Clarifying The List Of Imported Articles That No Longer Require The Issuance Of Authority To Release Imported Goods (ATRIG) From The Bureau Of Internal Revenue (Bir) Prior To Release From The Custody Of The Bureau Of Customs.

RMC No. 112-2021 clarifies that the issuance of an ATRIG shall no longer be necessary for the importation of perishable agricultural products such as unprocessed vegetable, fruits and nuts which are exempt from VAT pursuant to Sec. 109 (1) (A) of the Tax Code, amending the following provisions of RMC No. 482002, to read as follows:

“xxx xxx

C. UNPROCESSED VEGETABLES PRODUCTS (Whether whole, cut, sliced, broken, dried, fresh, chilled, frozen, shelled, skinned or split), **SUCH AS BUT NOT LIMITED TO:**

xxx xxx

D. UNPROCESSED EDIBLE FRUITS AND NUTS (Whether fresh or dried, shelled or peeled), BUT NOT BOTTLED, POWDERED OR CANNED), **SUCH AS BUT LIMITED TO:**

In addition, pending resolution on the taxability of certain imported articles and the issuance of clear policies and procedures on the issuance of certifications from concerned regulatory government agencies, the appropriate ATRIG shall still be secured from the BIR on the following articles until such time that a supplemental Circular expanding the coverage of the above list shall have been issued:

- Feed and feed ingredient;
- Fertilizers; AND
- Articles subject to excise tax as well as on the raw materials, apparatus, or mechanical contrivances, and equipment specially used for the manufacture thereof.

For information and guidance.

# CMC NO. 266-2021

Issue Date: December 15, 2021

This is with reference to the letter from from Rosalina L. Tan, Officer-in-Charge, International Operations Department, Bangko Sentral ng Pilipinas (IOD-BSP) regarding the revised list of regulated and prohibited commodities under the Foreign Exchange Transactions (FX Manual), as amended, which only includes those involving the BSP. Pursuant to BSP Circular No. 1124 dated August 10, 2021 (which became effective on September 13, 2021), with details as follows:

Import	Export
<b>A. Regulated Commodities</b>	
Legal tender Philippine notes and coins, checks, money order and other bills of exchange drawn in pesos against banks operating in the Philippines in an amount exceeding PHP50,000	
Coin blank essentially of gold, steel, copper, nickel, zinc, tin, aluminum, brass, bronze, all with diameter of less than 30.00 mm and weight of less than 11.50 grams per piece; Coin blank essentially of silver with diameter of 36.8 mm +/- 0.05 mm and weight of 28.28 grams per piece; Nordic gold coin metal with diameter of 33.35 mm +/- 0.05 mm and weight of 15 grams per piece	
Color reduction machines with 2,400 dots per inch (dpi) or higher (excluding printers)	

Import	Export
<b>B. Prohibited Commodities</b>	
Any goods manufactured in whole or in part of gold, silver or other precious metals or alloys and the stamp, brand or mark does not indicate the actual fineness of quality of the metals or alloys	
Unissued Philippine banknotes, except those authorized by the BSP	Gold from small scale-mining, including panned gold

On the other hand, commodities that are not under the BSP's purview shall be covered by applicable laws, rules and regulations and governed by the respective trade regulatory government agencies (TRGAs).

For this purpose, stakeholders may refer to the Philippine National Trade Repository's (PNTR) website (<https://www.pntr.gov.ph>) and/or coordinate with the relevant TRGAs regarding the requirements (e.g., permits/clearances), if any, on trade transactions involving said commodities.

For information and guidance.

# OCOM MEMO NO. 162-2021

Issue Date: November 22, 2021

## References

- Customs Administrative Order (CAO) No. 03-2019 on "CUSTOMS JURISDICTION AND EXERCISE OF POLICE AUTHORITY";
- Customs Memorandum Order (CMO) No. 33-2021 on "RULES ON THE USE OF BODY-WORN CAMERAS IN THE EXERCISE OF CUSTOMS POLICE AUTHORITY AND OTHER CUSTOMS OPERATIONS";
- CMO No. 22-2017 on "INSTITUTIONALIZATION OF COMPLETED STAFF WORK IN THE BUREAU OF CUSTOMS", as amended;
- OCOM Memorandum No. 71-2021 on "REITERATION ON THE SUBMISSION OF REPORTS IN IMPLEMENTING LETTERS OF AUTHORITY (LOA) AND THE FORMALITY TO BE OBSERVED FOR ITS CLOSURE/TERMINATION";
- CMO No. 12-2021 on "GUIDELINES ON THE IMPOSITION OF PENALTIES RELATIVE TO THE CUSTOMS ACCREDITATION OF IMPORTERS AND BROKERS";
- CMO No. 09-2017 on "STRENGTHENING THE LEGAL SERVICE BY CONSOLIDATING ITS FUNCTIONS UNDER E. O. 724 AND OTHER PERTINENT LAWS, RULES AND REGULATIONS AND CREATING UNITS UNDER THAT SERVICE TO INTENSIFY ITS ROLE IN THE ANTI-SMUGGLING EFFORTS OF THE BUREAU OF CUSTOMS"
- Customs Special Order (CSO) No. 55-2021 on "CREATION OF LOA CLEARING HOUSE (LCH)"

In reference to CAO No. 03-2019, the following supplemental guidelines shall be observed on the request, issuance, implementation, and closure/termination of a LOA:

- All request for the issuance of a LOA and the subsequent reports shall adhere to the Completed Staff Work (CSW) doctrine as discussed extensively in CMO No. 22-2017.
- A LOA is issued based on a derogatory information gathered and/or received by the Bureau that imported goods, which are probably smuggled, regulated, prohibited, or restricted, are being openly offered for sale or kept in a particular store, stalls, exhibition places, warehouses, and/or enclosures such places not being used principally as a dwelling house.
- Upon receipt of above-mentioned information, the office concerned shall prepare a Disposition Form (DF), with attached draft LOA and Mission Order (MO), discussing the derogatory information and the necessity of subjecting the same to the visitorial power of the Commissioner.

- The said DF and its attachments shall be classified as "CONFIDENTIAL" and shall have a cover sheet. It shall be hand carried by trusted personnel, with proper security clearance, of the requesting office/unit to prevent unauthorized leakage.
- The draft LOA and MO shall identify the composition of the implementing team and the place where the same will be exercised. The implementing team/unit shall be accompanied by the following:
  - Two (2) or more customs examiners, who shall be in charge in the inventory of the goods;
  - Other deputized members of National Law Enforcement Agencies (NLEAs), as defined under CAO 3-2019; and
  - Any member of the Legal Service duly designated by the Director of the Legal Service.
- Once approved by the Commissioner, the same shall be forwarded to the LOA Clearing House (LCH) for recordation and monitoring purposes.
- The approved LOA and MO shall then be given immediately by the LCH to the requesting office/unit.
- The team leader shall then conduct a pre-operation briefing with all the members of the implementing team and discuss the procedures to be observed for an effective and efficient implementation of the LOA. He/she must also ensure that Body-Worn Cameras (BWC) shall always be used during the implementation of the LOA. At least two (2) personnel shall be tasked to coordinate with the local police force and to the concerned barangay which has jurisdiction over the place where the LOA will be implemented.
- The LOA and MO must be shown or exhibited immediately at the start of the exercise thereof. The implementing team shall then enter the subject premises in the presence of the lawful occupant or any person in possession of the goods, or in their absence, any two (2) witnesses who are residents of the same locality, or barangay officials or any representative from the building management or other responsible officers.
- The implementing team must determine whether the subject goods are of foreign or local origin. If the subject goods are of foreign origin, the following protocols shall be observed:
  - Prohibited goods should be confiscated/seized under the "plain view doctrine";
  - Regulated or restricted goods with no import permits/clearances and/or proof of payment of duties and/or taxes should immediately be accounted for and be recommended for issuance of Warrant of Seizure and Detention (WSD); and

- Freely importable goods with no proof of payment of duties and/or taxes adduced within 15 calendar days from the service of LOA, should likewise be recommended for the issuance of WSD.
- If the subject goods are found to be of local origin or if the owner, occupant, or person in possession of the goods was able to present within the 15-day period the required import documents evidencing payment of duties and taxes, the implementing team shall then make a report to the Commissioner with a recommendation for termination of the LOA and MO.
- The implementing team must also determine the identity of the lawful occupants, claimants or owners of the warehouse, goods, or premises duly supported by evidence such as but not limited to government issued identification cards, contract of lease, government permits, or such other documents that is sufficient to establish ownership of the subject premises and goods. In the absence of which, the same shall be properly stated in the report including the reason for the non-identification.
- Pending presentation of proof of payment of duties and/or taxes and, if applicable, import permits/clearances, Customs Examiners must commence the inventory in the presence of the owner, occupant, or person in possession of the subject imported goods. The same shall be deemed to be under customs custody and the premises where the goods are stored may be padlocked or sealed by the implementing team if the owner, occupant or person in possession of the goods refuses to cooperate and execute an Undertaking stating that the goods will not be removed, sold, or disposed of without prior authority from the Bureau. The warehouse/storage space must be guarded by the Customs Police from the ESS District Office of the Customs District concerned.
- An Inventory Report shall be accomplished by the Customs Examiners with the concurrence of the witnesses, and/or the owner, occupant, or person in possession of the goods. The latter's signature is not necessary if the goods are regulated, prohibited, or restricted: however, he or she is entitled to receive a copy of the Inventory Report and must acknowledge the receipt thereof. In case of refusal to receive the said report, a copy thereof shall be posted in any conspicuous space in the building or premises.
- Upon failure of the owner to present the import documents within the 15-day period, the implementing team must recommend to the concerned District Collector, the issuance of WSD against the subject imported goods.



- Upon issuance of the corresponding WSD, the team leader shall immediately submit a report for the Commissioner with a recommendation for the termination of the LOA and the filing of appropriate cases against the owner/claimant and other persons involved (see annex B for the necessary attachment). Upon approval, it shall be the responsibility of the District Collector concerned to immediately cause the hauling/delivery of the goods into Customs custody, which activity shall be witnessed by the members of the implementing team. For this reason, District Collectors are hereby directed to secure and maintain enough warehouses for storing seized articles.
- Further, upon issuance of the WSD, the concerned District Collector shall regularly submit reports to the Commissioner, copy furnished the LOA Clearing House, on the forfeiture proceedings.
- After completion of the transfer of goods, the implementing team shall remove permanently the seals or padlocks placed on the store, stalls, exhibition, places, warehouses, and/or enclosures subject of LOA. A corresponding report must also be submitted to the Commissioner. At this stage, the LOA and MO shall be deemed functus officio.

Photos taken in the implementation of the LOA and during the conduct of an inventory must be geotagged and shall be attached to every report that will be submitted. The member of the implementing team who took the photo must duly certify the same.

The following reports, in DF format, must be submitted to the Commissioner from the date of implementation and up to its termination:

- Spot/Initial Report
- Progress/Development Report on the following, but not limited to:
  - Status of inventory/presentation of import entries and proof of payment of duties and taxes;
  - Issuance of Warrant of Seizure and Detention (WSD);
  - Identity of the other claimants/owners of the goods;
  - Status of warehouse or storage space and the goods seized;
  - Remedies under the CMTA availed by the owner of the goods;
  - Status of proceedings in the Law Division of the Customs District concerned;
  - Issuance of forfeiture order; and
  - Other salient developments;

- Final Report

All the above-mentioned reports, after it has been acted upon by the Commissioner, will be forwarded to the LOA Clearing House for recordation and monitoring purposes.

All LOA that resulted to a seizure of imported goods worth Php5 million and above and/or contrabands shall be reported to the Secretary of Finance (SOF) and the President. Hence, reports shall be accompanied by a draft of letters for the SOF and the President.

The duration of a LOA, from its implementation to its termination, should not be more than 30 days. Any office/unit causing unnecessary delays in the resolution of a LOA, shall be held liable for administrative offense(s).

For immediate and strict implementation.

# AOCG MEMO NO. 623-2021

Issue Date: December 6, 2021

Pursuant to the provisions of Section 1603 (f) of the Customs Modernization and Tariff Act (Republic Act 10863) and Section 4.9 of Commission Order No. 2017-1 (Procedure on Application for an Advance Ruling on Tariff Classification related to Importation of Goods), the Tariff Commission furnished copies of the Advance Ruling (AR) on Tariff Classification with Tariff Classification Circulars (TCC/AR) issued on 02 December 2021 and the same having been reviewed and summarized as follows:

TCC NO.	DESCRIPTION OF ARTICLES	2017 AHTN CODE	2020 RATES OF DUTY
21-286	"EMBORG MOZZARELLA, 40% F.I.D.M. 20% TOTAL FAT"	0406.90.00	MFN - 7% Ad Valorem
21-285	"EMBORG EASY STRETCH WITH MOZZARELLA, MIN. 46% F.I.D.M., TOTAL FAT 25%"	0406.90.00	MFN - 7% Ad Valorem
<b><i>*Subject to submission of their corresponding CERTIFICATE OF ORIGIN (CO).</i></b>			

# AOCG MEMO NO. 624-2021

Issue Date: December 9, 2021

Pursuant to the provisions of Section 1603 (f) of the Customs Modernization and Tariff Act (Republic Act 10863) and Section 4.9 of Commission Order No. 2017-1 (Procedure on Application for an Advance Ruling on Tariff Classification related to Importation of Goods), the Tariff Commission furnished copies of the Advance Ruling (AR) on Tariff Classification with Tariff Classification Circulars (TCC/AR) issued on 03 December 2021 and the same having been reviewed and summarized as follows:

TCC NO.	DESCRIPTION OF ARTICLES	2017 AHTN CODE	2020 RATES OF DUTY
21-297	"PREMIX WHITE"	2106.90.99	MFN - 7% Ad Valorem ATIGA - Zero*
21-298	"PREMIX STRONG"	2106.90.99	MFN - 7% Ad Valorem ATIGA - Zero*

***\*Subject to submission of their corresponding CERTIFICATE OF ORIGIN (CO).***

# AOCG MEMO NO. 638-2021

Issue Date: December 23, 2021

Pursuant to the provisions of Section 1603 (f) of the Customs Modernization and Tariff Act (Republic Act 10863) and Section 4.9 of Commission Order No. 2017-1 (Procedure on Application for an Advance Ruling on Tariff Classification related to Importation of Goods), the Tariff Commission furnished copies of the Advance Ruling (AR) on Tariff Classification with Tariff Classification Circulars (TCC/AR) issued on 20 December 2021 and the same having been reviewed and summarized as follows:

TCC NO.	DESCRIPTION OF ARTICLES	2017 AHTN CODE	2020 RATES OF DUTY
21-294	"SORBITOL LIQUID 70%"	2905.44.00	MFN - 3% Ad Valorem ACFTA - Zero*
21-309	"CENTRUM SILVER ADVANCE (BULK)"	3004.50.21	MFN - 5% Ad Valorem ACFTA - Zero*
21-311	"CALTRATE PLUS CALCIUM + VITAM D3 + MINERALS (BULK)"	3004.50.99	MFN - 5% Ad Valorem ACFTA - Zero*
21-314	"CENTRUM ADVANCE TABLET (BULK)"	3004.50.21	MFN - 5% Ad Valorem ACFTA - Zero*
21-270	"SCOTT'S VITAMIN C PASTILLES ORANGE FLAVOUR (12X15s)"	2106.90.72	MFN - 7% Ad Valorem ATIGA - Zero*

***\*Subject to submission of their corresponding CERTIFICATE OF ORIGIN (CO).***

# AOCG MEMO NO. 639-2021

Issue Date: December 21, 2021

Pursuant to the provisions of Section 1603 (f) of the Customs Modernization and Tariff Act (Republic Act 10863) and Section 4.9 of Commission Order No. 2017-1 (Procedure on Application for an Advance Ruling on Tariff Classification related to Importation of Goods), the Tariff Commission furnished copies of the Advance Ruling (AR) on Tariff Classification with Tariff Classification Circulars (TCC/AR) issued on 16 December 2021 and the same having been reviewed and summarized as follows:

TCC NO.	DESCRIPTION OF ARTICLES	2017 AHTN CODE	2020 RATES OF DUTY
21-231	"MIRTOGENOL"	3824.99.70	MFN - 3% Ad Valorem
<b><i>*Subject to submission of their corresponding CERTIFICATE OF ORIGIN (CO).</i></b>			

## **ABOUT US**

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