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Proposed Pre-shipment Inspection for Containerized Cargo

Report Categories:

Trade Policy Monitoring

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Report Highlights:

The Philippine Bureau of Customs (BOC) has circulated a draft Customs Administrative Order (CAO) expanding the Advance Clearance System and Load Port Survey Requirement (LPSR) or Pre-Shipment Inspection (PSI) to include all imported containerized cargoes. The draft CAO expands CAO 243 (implemented in 2009) which required only bulk and break-bulk shipments to conduct a Load Port Survey (LPS) at the country of export. The BOC has stated that hard implementation of the new CAO will begin July 1, 2014 and be temporarily in place for two years.

General Information:

The Philippine Bureau of Customs (BOC) has circulated a draft Customs Administrative Order (CAO) expanding the Advance Clearance System and Load Port Survey Requirement (LPSR) or Pre-Shipment Inspection (PSI) to include all imported containerized cargoes. The draft CAO expands CAO 243 (implemented in 2009) which required only bulk and break-bulk shipments to conduct a Load Port Survey (LPS) at the country of export. The BOC has stated that hard implementation of the new CAO will begin July 1, 2014 and be temporarily in place for two years.

The BOC has stated that the draft LPSR regulation seeks to streamline the customs clearance process and address rampant corruption.

According to the proposed CAO, the new LPS submitted by an Accredited Cargo Surveyor (ACS) must have the following information:

- a. Description of goods
- b. Shipper or supplier
- c. Importer or consignee
- d. Other intervening parties
- e. Date of inspection
- f. Quantity and quality of the cargo (brand, grade, etc. as applicable)
- g. Price or value (as declared by Supplier)
- h. Classification (as declared by the Supplier)
- i. Port of Loading
- j. Name of Vessels
- k. Hatch or old number
- l. Estimated or actual date and time of departure of the vessel from port of loading
- m. Bill of Lading Number and other details
- n. Surveyor seal details (where applicable)
- o. Port of call of vessels (as declared by the vessel)
- p. Additional information as determined during the survey or as declared by the shipper and other parties

The draft CAO exempts the following shipments from the LPSR:

- Air shipments
- Containerized shipments of Super Green Lane (SGL) members
- Consolidated shipments or loose container load shipments with 3 or more consignees
- Importations of Customs Bonded Warehouses
- Importations covered by an import or admission permit and bound for Philippine Economic Zone Authority
- Importations by government agencies, government owned and controlled corporations (GOCCs) and other government instrumentalities, except importation of rice by the National Food Authority

For the inspection, the ACS will be allowed to charge up to one-half of one percent of the FOB value of the cargo. The fees shall be payable by the supplier or exporter, unless otherwise agreed upon between the supplier or exporter and the importer.

All bulk, break-bulk and containerized cargoes arriving without a LPSR shall be subject to a Discharge Port Survey (DPS) to be conducted by an ACS at the port of entry at the expense of the importer and will be subject to the following administrative penalties: 1st offense – fine equivalent to 10% of the FOB value; 2nd offense - fine equivalent to 10% of the dutiable value plus 30 day suspension to be effective 30 days from issuance of the ruling; 3rd offense - fine equivalent to 10% of dutiable value plus 60 day suspension to be effective 30 days from issuance of the ruling; and 4th offense - fine equivalent of 10% of the dutiable value plus 1-year cancellation of importer's accreditation.

Currently, the Philippine Bureau of Customs has accredited the following surveyors:

- Cotecna
- SGS
- Intertek
- Bureau Veritas
- Inspectorate
- Admiral Testing

The most recent draft order follows:



**REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS
MANILA 1099**

DRAFT FOR DISCUSSION

5 May 2014

CUSTOMS ADMINISTRATIVE ORDER

NO. _____

**SUBJECT: ADVANCED CLEARANCE SYSTEM (ACS) AND LOAD PORT SURVEY (LPS)
REQUIREMENT FOR IMPORTED BULK, BREAK-BULK, CONTAINERIZED AND NON-
CONTAINERIZED CARGOES**

SECTION 1. OBJECTIVES. The following objectives are herein provided:

1. To implement AO 243 – 2009, as amended, and to streamline existing rules on the requirement for load port survey on imported cargoes;

1. To promote trade facilitation for cargoes with LPS report by providing an advance clearance system;

1. To secure advance and reliable information for the examination and assessment of cargoes; and

1. To promote revenue protection and to ensure the correct weight, quantity, quality, origin and description of cargoes.

SECTION 2. DEFINITION OF TERMS. For purposes of this Order, the following terms as used herein shall be defined as follows:

- 2.1 **Accredited Cargo Surveyor (ACS)** – is a company duly-accredited by CACSC and engaged in the business of surveying cargo shipments.

- 2.2 **Bulk Cargo** – refers to cargoes in a mass of one commodity not packaged, bundled, bottled or otherwise packed.

- 2.3 **Break-bulk Cargo** – refers to non-containerized general cargo stored in boxes, bales, pallet or other individual units.

- 2.4 **Cargo Surveying** – is inspection, analysis, and identification of, containerized cargo, for the purpose of determining the correct weight, quantity, quality, origin and description of goods in tariff terms for the correct assessment of duties thereon.

- 2.5 **Committee on Accreditation of Cargo Surveyor Companies (CACSC)** – is the Committee tasked and authorized to grant and approve the accreditation of cargo surveying companies/surveyors and to periodically review the performance thereof as provided in AO243 – 2009, as amended.

- 2.6 **Containerized Cargo** – is cargo that is transported by sea using standard ISO containers, with common standards lengths of 10 feet (3.048 meters) 20 feet (6.1 meters), 40 feet (12.2 meters) and 45 feet (13.7 meters), and including open top or closed top, flat rack, Full Container Load (FCL) and Loose Container Load (LCL).

- 2.7 **Discharge Port Survey (DPS)** – is a cargo survey conducted by an ACS at the Port of

Discharge or Destination.

2.8 **Discharge Port Survey Report (DPSR)** – is a report issued by ad ACS for the survey of imported cargoes at the Port of Discharge and submitted to the Bureau of Customs (BOC).

2.9 **Load Port Survey (LPS)** – is a cargo survey conducted by an ACS at the Country of Supply or Export and in the case of containerized cargo inspection, cargo survey is conducted at the place of container stuffing which will allow an ACS to affix its security seal.

1. **Load Port Survey Report (LPSR)** – is a report issued by ACS for the survey of imported cargoes at the Port of Supply or Export and submitted to the Bureau of Customs (BOC).

SECTION 3. COVERAGE.

3.1 Unless exempted under this Order, all bulk, break-bulk, containerized and non-containerized cargoes arriving and entering in any port of entry of the Philippines shall be subject to a Load Port Survey (LPS) at the Country of Supply or Export.

3.2 Importers shall be responsible in obtaining from the BOC the names and overseas addresses of all ACS and in communicating this information to the supplier or exporter. Suppliers or exporters shall coordinate with the ACS and ensure the conduct of an LPS in accordance with this Order. For this purpose, all ACS shall submit a list of ACS services, overseas and domestic offices and other information necessary for the conduct of an LPS and DPS to the Port Operation Service, Assessment and Operation Coordination Group (POS-AOCG).

3.2 Bulk and break-bulk cargoes may include but are not limited to the following:

- a. Liquids
- b. Chemicals
- c. Petroleum Products
- d. All other cargo shipped in bulk and break-bulk (e.g. wood, iron, steel, coal, grains, motor vehicles, etc.)

3.3 Imported cargoes surveyed by an ACS at the Country of Supply or Export shall be covered by a Load Port Survey Report (LPSR) and Summary Report (SR) which shall include details of the ACS security seal, whenever applicable.

3.4 Cargoes entered into free ports and bound for the customs territory shall be subject to the requirement of LPSR as provided in this Order.

3.5 Vehicles for special purpose (e.g. cranes, backhoes, bulldozers, ambulances, trucks, buses and

the like) entered into the free ports for conversion or retooling and not previously covered by an LPSR, shall be subject to the conduct of Discharge Port Survey (DPS) prior to withdrawal from the free port into the customs territory. The provision on the imposition of the administrative penalties under Section 8 of this Order shall not apply in this particular case.

SECTION 4. EXEMPTIONS.

4.1 The following shipments are exempted from securing a Load Port Survey (LPSR) requirement as provided in this Order:

- a. Air shipments transported by air;

- a. Containerized shipments of Super Green Lane (SGL) members;

- a. Importation of personal effects and household goods of a balikbayan and his/ her family under R.A. No. 6768, as amended, Overseas Contract Workers and other returning residents;

- a. Importation of personal effects and household goods of foreign workers and consultants, and officials and employees of foreign embassies, legations, consular officers and other representatives of foreign governments;

- a. Consolidated shipments or Loose Container Load (LCL) shipments with 3 or more consignees;

- a. Official importations of foreign embassies, legations, missions, consular offices, and other agencies of foreign governments in the Philippines;

- a. Human remains and personal effects of the decedent accompanying the human remains;

- a. Importation of vehicles and motorcycles of balikbayan and returning residents;

- a. Cargoes transiting the Philippines and intended for a foreign destination, including shipments which are discharged from the carrying vessel for its final destination abroad; provided that the stay of the transit cargo in the Philippines shall not exceed thirty (30) days from the date of discharge;

- a. Explosives and pyrotechnic products;

- a. Importations by government agencies, government-owned-and-controlled corporations (GOCCS) and other government instrumentalities, except importation of rice by the National Food Authority (NFA);

- a. Relief consignments as provided under Section 105(h) of the TCCP, as amended;

- a. Importations of Customs Bonded Warehouses (CBWs); and

- a. Importations covered by an import or admission permit and bound for Philippine Economic Zone Authority (PEZA) zones and duly chartered or legislated freeports under Republic Act No. 9400, the Aurora Special Economic Zone under Republic Act No. 9490, the Cagayan Special Economic Zone and Freeport under Republic Act No. 7922, the Zamboanga City Special Economic Zone under Republic Act No. 7903, and Freeport Area of Bataan under Republic Act No. 9728 and such other freeports as established or created by law.

4.2 The Commissioner of Customs shall conduct a regular review of the exemptions provided herein and based on the review, the Commissioner may expand or limit the exemptions provided herein. The Commissioner shall inform the Secretary of Finance of any expansion or limitation to the exemptions provided in this Section and shall issue a memorandum to that effect which shall be valid after thirty (30) days from issuance.

SECTION 5. LOAD PORT SURVEY REPORT AND SUMMARY REPORT (SR)

5.1 An LPSR submitted by an ACS after the conduct of a cargo survey shall provide the following information:

- a. Description of the Goods
- b. Shipper or Supplier
- c. Importer or Consignee
- d. Other Intervening Parties
- e. Date of Inspection
- f. Quantity and Quality of the Cargo (brand, grade, etc., as applicable)
- g. Price or Value (as declared by Supplier)
- h. Classification (as declared by the Supplier)
- i. Port of Loading
- j. Name of Vessel
- k. Hatch or hold number
- l. Estimated or actual date and time departure of the vessel from port of loading
- m. Bill of Lading Number and other details
- n. Surveyor seal details (where applicable)
- o. Port of call of vessel (as declared by the vessel)
- p. Additional information as determined during the survey or as declared by the shipper and other parties

The LPSR shall be accompanied by a Summary Report (SR) which shall contain information as the BOC may require.

5.2 The LPSR and SR must be submitted by the ACS to the secured and authorized website of the BOC-MISTG at least twelve (12) hours prior to arrival of the cargo in any port of entry of the Philippines. The LPSR and SR shall be submitted in a secure electronic format with security features in the form of a hologram, micro-print, encrypted grid or equivalent.

5.3 The LPSR and SR shall be used by the Formal and Informal Entry Divisions of the port concerned in the processing of the import entries and in the assessment of the duties and taxes due on the imported cargo.

5.4 BOC-MISTG shall ensure that the electronic copies of all LPSR and SR are accessible to the following offices:

- a. All District Collectors and Deputy Collectors for Assessment
- b. All Deputy Commissioners
- c. Commissioner

SECTION 6. DESTINATION PORT SURVEY.

6.1 All bulk, break-bulk, containerized and non-containerized cargoes not otherwise exempted under Section 4 of this Order and which arrived without the required LPSR shall be subject to a Discharge Port Survey (DPS) to be conducted by the ACS.

6.2 Any expense or charges arising from the conduct of the DPS on the cargo shall be for the account of the importer.

6.3 All Importers who failed to secure a LPSR as required in this Order shall notify the District Collector, through the Deputy Collector for Operations, of the concerned port and shall arrange for the conduct of a DPS by an ACS as selected by the importer. Upon proper notice, the District Collector shall ensure the payment of the fine, conduct of the DPS and submission of a DPSR before the cargo is released from customs custody.

6.4 In the event an importer is exempt from the imposition of fine as provided under Section 9 of this Order, the importer may resort to the payment under protest of the applicable fine or the tentative release of the shipment upon posting of a sufficient guaranty equivalent to the applicable fine after filing a request for exemption from the imposition of a fine with the Port Operation Service (POS), AOCG. The request from exemption shall be filed within ten (10) days from arrival of the cargo, otherwise, the request shall automatically be denied.

6.4 The District Collector concerned shall submit a weekly electronic report of all cargoes subject of a DPS (including payment of any fine) and any other violation of this Order to the following offices:

- a. BOC-MISTG
- b. Port Operations Service (POS), AOCG
- c. Deputy Commissioner, EG
- d. Deputy Commissioner, IG
- e. Office of the Commissioner

6.5 All ACS shall submit a DPSR to the secured and authorized website of the BOC-MISTG within twelve (12) hours from the conduct of the cargo survey in the port of entry concerned. The DSR shall be submitted in a secured electronic format with security features in the form of a hologram, micro-print, encrypted grid or equivalent and shall be made available to the following offices:

- a. All District Collectors and Deputy Collectors for Assessment
- b. All Deputy Commissioners
- c. Commissioner

SECTION 7. ADVANCE IMPORT CLEARANCE.

7.1 All cargoes covered by an LPSR shall be automatically exempted from physical and x-ray inspection, except in following instances:

a. The LPSR or security seal has been tampered or shows signs that the same has been tampered;

a. The shipment is subject of an Alert Order;

a. The importer disagrees with the findings of the LPSR and requests that a DPS be conducted in the presence of customs officers; and

a. If the Commissioner or District Collector has derogatory information against the shipment.

7.2 Any importer shall be allowed to file an import entry declaration and to pay the duties, taxes and other fees prior to arrival of the cargo subject of an LPSR and SR as submitted to BOC-MISTG. After verification of the LPSR and SR and upon arrival of the cargo, the importer may immediately cause the discharge and release of the cargo from customs custody.

SECTION 8. SCHEDULE OF CARGO SURVEY FEES.

8.1 The services of the ACS pursuant to this Order shall entail no cost or charge to the government of the Republic of the Philippines.

8.2 The ACS shall be allowed to charge fees as provided in the rules issued by the Committee on Accreditation of Cargo Surveying Companies (CACSC) and based on international standards and practices, but in no case exceeding one-half of one percent (.05%) of the FOB value of the cargo. The fees shall be payable by the supplier or exporter, unless otherwise agreed upon between the supplier or exporter and the importer.

SECTION 9. VIOLATION AND PENALTIES.

9.1 It is the duty of importers or consignees to make sure that imported cargoes undergo the required LPS, with the corresponding LPSR and SR issued. After the transition period provided in this Order, all importers who failed to secure a LPSR for their imported cargoes shall be subject to the following administrative penalties:

1st Offense - Fine equivalent to 10% of the FOB value

2nd Offense - Fine equivalent to 10% of the dutiable value plus 30-day suspension to be effective 30 days from issuance of the ruling

3rd Offense - Fine equivalent to 10% of the dutiable value plus 60-day suspension to be

effective 30 days from issuance of the ruling

4th Offense - Fine equivalent to 10% of the dutiable value plus 1-year cancellation of importer's accreditation to be effective 30 days from issuance of the ruling and without prejudice to the re-application for accreditation after the period of cancellation

9.2 The imposition of any fine or penalty under this Order shall be without prejudice to the imposition of applicable administrative and criminal penalty arising from any finding of violation of other customs laws, rules and regulations as a result of the conduct of the DPS or the physical inspection.

SECTION 10. IMPOSITION OF PENALTIES.

10.1 The Port Operations Service (POS), AOCG shall monitor all cargoes not covered by an LPSR and other violations under this Order. POS-AOCG shall likewise perform the following functions to implement this Order:

- a. To recommend to the Deputy Commissioner, AOCG the imposition of the penalty of suspension or cancellation for violations of this Order; and
- b. To recommend to the Deputy Commissioner, AOCG, the non-imposition of the penalty of fine, suspension or cancellation where the violation resulted from force majeure, there is no ACS service available in the port of origin as certified by all accredited ACS, when all ACS certifies as to the extreme difficulty of conducting an LPS in the port of origin, or in case where there is a change in the buyer of the goods while in transit (with the original buyer located offshore and the new buyer located in the Philippines) .

10.2 Upon submission of the recommendation, the Office of the Deputy Commissioner for AOCG shall issue a notice of ruling to the importer concerned. The notice may be sent by e-mail to the e-mail address provided by the importer in its application for accreditation. It shall be the responsibility of the importer to check its e-mail to ensure that it receives all communication from the BOC. The importer shall have 15 days to submit an appeal from the ruling, otherwise, the ruling shall be deemed final. The Office of the Commissioner and the Chief, Accreditation Management Office (AMO) shall be notified of ruling imposing the penalty of suspension or cancellation of importer's accreditation.

SECTION 11. ONLINE SUBMISSION. Pending the development of the appropriate functionality under the BOC E2M system, all ACS, in coordination with the MISTG, shall adopt an automated system for the online submission of the LPSR, SR and DPSR to the secured and authorized website of the BOC. The online submission shall be submitted in a secure electronic format with security features in the form of a hologram, micro-print, encrypted grid or equivalent.

SECTION 12. ADDITIONAL RULES AND REGULATIONS. The Commissioner of Customs may issue additional rules and regulations to further implement the Implementing Rules and Regulations (IRR) of this Order.

SECTION 13. TRANSITORY PROVISION. Following the effective date of this Order, the BOC shall not impose the requirement for the conduct of a DPS and the imposition of the applicable fine

within thirty (30) days from effective date of issuance of the Order or on imported cargoes loaded in the port of loading fifteen (15) days from said effective date.

SECTION 14. SEPARABILITY CLAUSE. If any provision or part hereof is held invalid or unconstitutional, the remainder of the order or the provision not otherwise affected shall remain valid and subsisting.

SECTION 15. REPEALING CLAUSE. All other orders issuances, rules and regulations or parts thereof which are inconsistent with this Administrative Order are hereby repealed or modified accordingly.

SECTION 16. EFFECTIVE DATE. This Order shall take effect fifteen (15) day after its publication.

JOHN P. SEVILLA
Commissioner

APPROVED:

CESAR V. PURISIMA
Secretary, Department of Finance