

[BOC MEMORANDUM ORDER NO. 3-95, January 24, 1995]

REVISED PROCEDURES ON THE RELEASE OF SHIPMENTS THRU TENTATIVE LIQUIDATION PURSUANT TO JOINT ORDER NO. 1-91

I.

Objectives

1. To avoid delays in the processing and releasing of shipments occasioned by disputes arising from the SGS-CRF in relation to Joint Order No. 1-91.
2. To expedite the resolution of cases referred to the Customs-SGS Imports Valuation and Classification Committee (hereinafter referred to as the Appeals Committee).
3. To further facilitate trade and at the same time provide adequate security to government revenue.
4. To enable the prompt collection of revenue due the government.

II.

Coverage

This Order shall cover shipments where:

1. The importer contests the valuation, classification, freight and/or dutiable charges reflected in the SGS-CRF.
2. The Examiner/Appraiser has sufficient justification to doubt/question the correctness of the SGS-CRF valuation and/or classification which would result to a lower assessment of duties and taxes.

III.

Administrative Provisions

3.1 Approving Authority for Tentative Releases

- 3.1.1 There is hereby created an Appeals Committee (Secretariat) which shall be composed of evaluating officers with technical background headed by an Executive Director. For shipments entered at the NAIA, MICP and POM, the Secretariat shall receive request for tentative releases pursuant to the order and process the same for approval of the Executive Director.
- 3.1.2 For shipments entered other than at NAIA, MICP and POM, the Chief of the Formal Entry Division (FED) or equivalent unit shall evaluate requests for approval by the Collector of Customs or his duly designated representative. After approval, the duly accomplished

application, certified true copy of the Official receipt evidencing payment of filing fee (CAO 8-94 and CMO 48-94) and supporting documents required under 3.2.3 must be submitted to the Secretariat for study by the ACS which will send advisory on the final disposition to be undertaken on the request.

3.2 When Tentative Releases may be allowed

3.2.1 Tentative releases pursuant to this order may only be allowed when there is strong *PRIMA FACIE* case that the CRF findings is grossly inaccurate or is totally wrong.

3.2.2 There is NO *PRIMA FACIE* case of gross inaccuracy or wrong findings whenever the following are obtaining:

3.2.2.1 The commodity involved has a similar case already previously decided by the Appeals Committee where the decision on value is within (+) or (-) 20% of the CRF findings at hand or the classification in the decision file is the same as the CRF classification being questioned.

3.2.2.2 Where there is a value on file with the Valuation Center and Library not more than six (6) months old and which is not less than 80% of the CRF value.

3.2.3 Prima Facie proof must be presented by the applicant showing data supporting his application. However, only proofs that are VERIFIABLE and are of the nature of public documents/materials are admissible such as:

3.2.3.1 Printed domestic price list in the country of export

3.2.3.2 Value Information from the Philippine Commercial Attache in the country of supply

3.2.3.3 Printed schedule of discount

3.2.3.4 Proof that questioned item is not being sold domestically in the country of export

3.2.3.5 Previous Clean Report of Findings (CRF) on the same or identical articles from the same country of exportation

3.2.3.6 Customs, DOF, Tariff Commission rulings

3.2.3.7 Court rulings

3.2.3.8 Customs published value which is not otherwise covered by 3.2.2.2

3.2.3.9 Previous committee decisions otherwise not covered by 3.2.2.1

3.2.4 Documents to be submitted:

3.2.4.1 Importer's Referral/Information Sheet

3.2.4.2 Position Paper

3.2.4.3 Entry and Supporting Documents as mentioned in 3.2.3 above.

3.3 Grounds for Withdrawal of Tentative Release - Tentative release of shipments earlier approved by the Secretariat shall be deemed automatically withdrawn and the shipment proceeded against in accordance with existing applicable rules and regulations under the following circumstances:

3.3.1 When upon examination of the shipment by the Formal Entry Division or equivalent unit the article/s whose CRF value and/or classification being contested is substantially different from or is/are not materially comparable with that described in the application for tentative release.

3.3.2 When upon examination of the shipment and/or review of import documents by FED, a violation of the TCCP, as amended or other related laws, has been established, such as misdeclaration, underevaluation, overquantity, misclassification or lack of requisite import authority which constitutes a prima facie basis for the issuance of a Warrant of Seizure and Detention.

3.3.3 Refusal to comply on the form of the security - If the importer fails to put up the required manager/s cashier's check within 15 days from the determination by the Chief of the Collection Division of the form of the security which period may be extended for another 15 days upon written request of the importer, the approval of tentative release by the Appeals Committee shall be deemed withdrawn and the shipment proceeded against pursuant to existing laws, rules and regulations without the benefit of tentative release.

3.4 Government Security on Tentative Releases

3.4.1 Form of the Security - To secure government revenue pending resolution of an appeal, the importer shall be required a guarantee which may take the form of either Manager's /Cashier's check or a company post-dated check subject to the determination of the Chief, Collection Division following the guidelines in 3.4.2 below.

3.4.2 Determination of the Form - In determining the form of the guarantee, the Chief Collection Division of the port shall limit acceptance of a company post-dated check to the following cases:

3.4.2.1 Companies in the top 3,000 corporations list of the Securities and Exchange Commission.

3.4.2.2 Companies that can prove themselves to be "GOING CONCERNS" because their audited financial statements for the last 5 years shows 5-year continuous operations with assets of at least P 15 million and net profits in percent of asset of at least 5%.

3.4.3 Disqualification from PDCS - The provisions of 3.4.2 notwithstanding, companies with delinquent accountabilities with the Bureau by virtue of their inclusion in a blacklist or Hold Order List to be provided and maintained by the Office of the Commissioner of Customs shall not

be allowed to post-date checks to secure the tentative release of their shipment.

3.4.4 Amount of the Security - The amount of the security (managers/cashier's check or PDC shall be determined as follows:

3.4.4.1 Where the issue is valuation and/or classification, it shall be equivalent to the difference in the duties, taxes and other charges as between that due on the CRF and the lower value and/or classification as claimed by the importer.

However, the importer shall not be required to put up such security where the valuation issue is raised at the instance of the Examiner/Appraiser, but the import entry in such cases shall be marked and so considered as one under Tentative Liquidation.

This means that a security is also necessary should the appraiser dispute the CRF classification with the appraiser's classification having a higher rate of duty.

3.4.5 Issue Date of PDC - In cases where PDCs are accepted as the security, the issue date appearing thereon must be within 30 days from date of approval by the Secretariat of the tentative release in case of NAIA, POM and MICP and within 60 days from date of approval by the Chief, FED or equivalent unit in case of outports.

3.5 Period to Resolve Appeals and Action on Delayed Cases.

3.5.1 Cases elevated to the Appeals Committee must be resolved within sixty (60) days from date of provisional receipt.

3.5.2 If for any reason the case is not resolved within 60 days, a report must be submitted to the Commissioner stating the reason for the delay. The Committee shall schedule a special session once a month to resolve delayed cases with the Commissioner of Customs in attendance.

3.5.3 List of PDCs about to become stale - If 120 days from the date of PDC issue, there are still no decisions on the case, a list of cases with PDCs about to become stale must be generated and submitted to the Chairman, Appeals Committee. The Chairman must cause the posting of such a list with a call to the concerned importers to replace the check within 15 days, otherwise the cases shall be resolved immediately in favor of the government.

3.5.4 List of PDCs for Mandatory Deposit - A PDC becomes stale 180 days from issue date. If 150 days from issue date and the PDC has not been replaced as provided for in 3.5.3 and there is yet no decision on the case that would render the PDC unnecessary, the PDCs must be mandatorily deposited to an appropriate government depository bank. To insure that such is done, a list of PDCs for mandatory