



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

**CUSTOMS ADMINISTRATIVE ORDER (CAO)
NO. _____**

**SUBJECT: FINES AND SURCHARGES FOR CLERICAL ERRORS,
MISDECLARATION, MISCLASSIFICATION AND UNDER
INVOICING OR UNDER DECLARATION OF VALUE**

INTRODUCTION. This CAO implements Section 108, Chapter 2, Title I and Section 1400, Chapter 1, Title XIV of Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA).

Scope. This CAO covers all goods found in violation of either Section 108 or Section 1400 of Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA).

Section 1. Objectives.

- 1.1.** To clarify the provisions of Sections 108 and 1400 of Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA);
- 1.2.** To set imposable fine(s) in case of clerical errors in accordance with the standards provided for under Section 108 of Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA); and
- 1.3.** To provide clear and concise rules and guidelines for the proper implementation of Sections 108 and 1400 of Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA).

Section 2. Definition of Terms. For the purposes of this CAO, the following terms are defined accordingly:

- 2.1. Amendment of Goods Declaration**– shall refer to any change or alteration after lodgement of the Goods Declaration but prior to examination of the goods or final assessment.
- 2.2. Difficult or Highly Technical Issue on Classification** – shall refer to a classification issue wherein the goods are classifiable under more than one ASEAN Harmonized Tariff Nomenclature (AHTN) Chapters, headings or sub-headings or the product description is not specifically provided for in any AHTN heading or sub-heading, and will need the opinion of a technical expert or a person who has a comprehensive

and authoritative knowledge of or a skill in a particular field for the determination and resolution thereof.¹

2.3. Difficult or Highly Technical Issue on Valuation – shall refer to a valuation issue wherein the goods in question cannot be accurately be valued under ordinary or regular circumstances and will need the opinion of a technical expert or a person who has a comprehensive and authoritative knowledge of or a skill in a particular field for the determination and resolution thereof.²

2.4. Final Assessment - assessment shall be deemed final fifteen (15) days after receipt of the notice of assessment by the importer or consignee.³

2.5. Fraud – shall refer to acts knowingly, voluntarily and intentionally committed or omitted which prejudice the interest of the government, e.g. submitting fake or spurious document, making material untruthful statement(s) or committing any other analogous act(s) or omission(s).⁴

It must be intentional, consisting of deception, willfully and deliberately done or resorted to in order to deceive the government of duties and taxes due, or circumvent pertinent regulatory laws, rules and regulations.⁵

2.6. Goods – shall refer to articles, wares, merchandise and any other items which may include Philippine and foreign notes and coins imported or exported.⁶

2.7. Goods Declaration – shall refer to a statement made in the manner prescribed by the Bureau and other appropriate agencies, by which the persons concerned indicate the procedure to be observed in the application for the entry or admission of imported goods and the particulars of which the customs administration shall require;⁷

2.8. Gross Negligence – When a deficiency results from an act or acts of omission or commission done with actual knowledge or wanton disregard for the relevant facts and with indifference to or disregard for offender's obligation under the statute.⁸

¹ Section 5.1.3., Draft CAO on Dispute Settlement.

² Draft CAO on Seizure and Forfeiture Proceedings.

³ CMTA, Title IV, Chapter 3, Section 429.

⁴ Cf. CMTA, Title X, Section 1005 (b).

⁵ www.lawphil.net. G.R. No. 42204 Hon. Ramon J. Farolan Jr. vs Court of Tax Appeals and Bagong Buhay Trading.

⁶ Cf. CMTA, Title I, Chapter 2, and Section 102.

⁷ CMTA, Title I, Chapter 2, Section 102 (y).

⁸ cf. TCCP, Section 3611 (b).

- 2.9. Highly Technical Question** – shall refer to a tariff issue or a valuation issue wherein the goods in question cannot be accurately be classified or valued under ordinary or regular circumstances and will need the opinion of a technical expert or a person who has a comprehensive and authoritative knowledge of or a skill in a particular field for the determination and resolution thereof;⁹
- 2.10. Inadvertent Error** – shall refer to a mechanical, electronic or clerical error made by an importer, broker or declarant which was not intentional, while drafting, copying or transposing a document, including but not limited to spelling of consignee(s)' name, importing vessel or aircraft, port of departure, port of destination and date of arrival, the number and marks of packages, or the quantity, if in bulk, the nature and correct commodity description of the goods contained therein, its value as set forth in a proper invoice, packing list and such other information as may be required by rules and regulations.
- 2.11. Lodgement** – shall refer to the registration of a goods declaration with the Bureau;¹¹
- 2.12. Seizure** – shall refer to the actual or constructive taking or bringing into custody the goods, things or chattels by virtue of a Warrant of Seizure and Detention issued by the Collector of Customs for violation of the CMTA;¹²
- 2.13. Under invoicing or Under declaration of value (Undervaluation)** – shall refer to wrongful declarations committed when: (a) the declared value fails to disclose in full the price actually paid or payable or any dutiable adjustment to the price actually paid or payable; or (b) when an incorrect valuation method is used or the valuation rules are not properly observed, resulting in a discrepancy in duty and tax to be paid between what is legally determined as the correct value against the declared value.¹³

Section 3. General Provisions.

- 3.1. Fine(s) for Clerical Error(s) in Goods Declaration.** To discourage repetition, the concerned District Collector, through the Deputy Collector for Assessment, shall, in addition to the assessed duties, taxes, fees, fines or surcharges due, collect a fine of Five Hundred Pesos (Php500.00) for every Clerical Error determined to have been committed in the covering Goods Declaration upon the lodgement thereof.

⁹ Draft CAO on Seizure and Forfeiture Proceedings.

¹¹ *cf.* CMTA, Title I, Chapter 2, Section 102(dd).

¹² *cf.* (draft CAO) Customs Jurisdiction and Exercise of Police Authority.

¹³ *Cf.* CMTA, Title XIV, Chapter 1, Section 1400.

3.1.1 Condition for Assessment of Fine(s) for Clerical Error(s). Fine(s) for Clerical Error(s) shall be assessed upon determination of the following requisites:

- a. Existence of Inadvertent Error;
- b. Inadvertent Error was not attendant with fraudulent intent; and
- c. Inadvertent Error was not due to Gross Negligence.

3.1.2 The Five Hundred Pesos (Php500.00) fine as provided under Section 4.1. of this CAO shall be without prejudice to the imposition of additional fines or penalties for other inadvertent errors discovered in the Goods Declarations of shipments after release from Customs.

3.2. Imposition of Surcharge equivalent to Two Hundred Fifty Percent (250%) of the duty and tax due in cases of Misdeclaration, Misclassification and Under Invoicing or Under Declaration of Value. The Bureau shall, in addition to the assessed duties, taxes, fees and other charges, impose a surcharge equivalent to Two Hundred Fifty Percent (250%) of the amount of duties and taxes due where the discrepancy in duties and taxes to be paid between what is legally determined upon assessment and what is declared is more than Ten Percent (10%) arising from misdeclaration, misclassification or under invoicing or under declaration of value.

3.2.1. Conditions for Imposition of Two Hundred Fifty Percent (250%) Surcharge in case of Misdeclaration. The surcharge equivalent to Two Hundred Fifty Percent (250%) of the duties and taxes due shall be imposed for the Misdeclaration on the following:

- a. **Misdeclaration as to Quantity of Goods.** There is a misdeclaration in the quantity of goods when there is a difference in the number of the goods as declared in the Goods Declaration and the quantity as found after physical examination of the goods.
- b. **Misdeclaration as to Quality of Goods.** There is a misdeclaration in the quality of goods when there is a difference in the characteristics of the goods (*e.g. declared as USED but found out as BRAND NEW or declared as Off-Quality, Remnants Fabrics but found as Whole, First Class, Best Quality Fabrics, among others*) as declared in the Goods Declaration and the quality as found after physical examination of the goods.

- c. Misdeclaration as to Description of Goods** - There is a misdeclaration in the description of goods when there is a difference in the descriptive nature and identity of the goods (*e.g. product code, item code, make, model, series, displacement, version, among others*) as declared in the Goods Declaration and the description as found after physical examination of the goods.
- d. Misdeclaration as to Weight of Goods** - There is a misdeclaration in the weight of goods when there is a discrepancy in the actual weight as declared in the Goods Declaration and the weight as found after physical examination and magna scale of the goods.
- e. Misdeclaration as to Measurement of Goods** – There is a misdeclaration in the measurement of goods when there is a difference in the size, length, width or height of goods as declared in the Goods Declaration and the measurement as found after physical examination of the goods.
- f. Supporting commercial documents attached and/or submitted in support of the Goods Declaration** - The supporting commercial documents attached and/or submitted in support of the Goods Declaration, including but not limited to *Commercial Invoice, Bill of Lading/Airway Bill, Packing List, Safety Data Sheet, Certificate of Origin, Survey Reports of Accredited Surveyors, Import Permits*, shall form part of the goods declaration, and shall be considered in the determination of whether or not a shipment is misdeclared or misclassified and in the imposition of applicable surcharges.

3.2.2. Conditions for Imposition of Two Hundred Fifty Percent (250%) Surcharge in case of Under Invoicing or Under Declaration of Value (Undervaluation). The surcharge equivalent to Two Hundred Fifty Percent (250%) of the duties and taxes due shall be imposed for the Under Invoicing or Under Declaration of Value (Undervaluation) on the following:

- a.** There is Under Invoicing or Under Declaration of Value resulting to a discrepancy in duty and tax to be paid between what is legally determined upon assessment by the port and what is declared, either:

- i. The declared value fails to disclose in full the Price Actually Paid or Payable for the goods, including adjustment pursuant to Section 701 of the CMTA; or
 - ii. Rules on Valuation was not properly observed in the Goods Declaration as provided under Chapter 1, Title VII of the CMTA;
- b. The Under Invoicing or Under Declaration of Value was found without the need to go through the formal dispute settlement process involving difficult or highly technical questions relating to the application of customs valuation rules; and
- c. The discrepancy in Duty as declared and as found is Ten Percent (10%) or more.

3.2.3. Conditions for Imposition of Two Hundred Fifty Percent (250%) Surcharge in case of Misclassification. The surcharge equivalent to Two Hundred Fifty Percent (250%) of the duties and taxes due shall be imposed for Misclassification arising from the following:

- a. When the goods are intentionally misdescribed in such a way as to make them classifiable under a tariff heading with a lower rate of duty resulting to a discrepancy in duties and taxes to be paid between what is legally determined upon assessment by the port and what is declared;
- b. The Misclassification was found without the need to go through the formal dispute settlement process involving difficult or highly technical question of tariff classification; and
- c. The resulting discrepancy in Duty as declared and as found is Ten Percent (10%) or more.

3.3. Conditions for Non-Imposition of Surcharge. No surcharge shall be imposed against the goods if the Misdeclaration, Under Invoicing or Under Declaration of Value (Undervaluation) or Misclassification was subjected to timely Amendment and corrected prior to Final Assessment or examination of the goods pursuant to Section 408 of the CMTA.

3.4. Imposition of Surcharge equivalent to Five Hundred Percent (500%) of the duties and taxes due in cases of intentional

or fraudulent Misdeclaration, Misclassification And Under Invoicing or Under Declaration of Value. When the misdeclaration, misclassification or under invoicing or under declaration of value is intentional or fraudulent, in addition to the seizure of subject shipment, a surcharge shall be imposed equivalent to Five Hundred Percent (500%) of the duties and taxes due.

Misdeclaration, Misclassification or Under Invoicing or Under Declaration of Value is considered intentional or fraudulent when:

- i. False or altered document is submitted; or
- ii. False statements or information are knowingly made.

Section 4. Release of Goods. Goods subject to any fine or surcharge shall be released only after the payment of the fine or surcharge.¹⁴

Section 5. Prima Facie Evidence of Fraud. In case of Misdeclaration, Under Invoicing or Under Declaration of Value or Misclassification, where the resulting discrepancy in duty and tax to be paid between what is legally determined and what is declared amounted to more than thirty percent (30%), the same constitute a *prima facie* evidence of fraud for purposes of initiating corresponding seizure and forfeiture proceedings.

Section 6. Goods Liable for Seizure. When the misdeclaration, misclassification or under invoicing or under declaration of value is intentional or fraudulent, regardless of the amount of the discrepancy, the goods shall be liable for seizure under Section 1113 of the CMTA.

The seizure of the goods shall be without prejudice to the application of fines or penalties provided under Section 1401 of the CMTA against the importer and other person or persons who willfully participated in the fraudulent act.

Section 7. Penal Provision. Any violations of this CAO committed by any person, officer or employee shall be penalized in accordance with Title XIV of the CMTA and other applicable penal laws or provisions.

Section 8. Transitory Provision. Pending full implementation of comprehensive legal docketing and management system that will establish and provide electronic monitoring of seizure and forfeiture cases, the Bureau shall implement the provisions of this CAO. The Management Information and System Technology Group (MISTG) shall devise an Information Communication Technology (ICT) enabled system for the docketing, reporting and monitoring of forfeiture cases.

Section 9. Periodic Review. Unless otherwise provided, this CAO shall be reviewed every three (3) years and may be amended, if necessary.

¹⁴ Cf. CMTA, Title IV, Chapter 4, Section 436.

Section 10. Repealing Clause. This CAO specifically amends or repeals previous issuances which are inconsistent with the provisions hereof.

Section 11. Separability Clause. If any part of this CAO is declared unconstitutional or contrary to existing laws, the other parts not so declared shall remain in full force and effect.

Section 12. Effectivity. This CAO shall take effect after thirty (30) days from publication at the Official Gazette or a newspaper of national circulation.

The Office of National Administrative Register (ONAR) of the UP Law center shall be provided three (3) certified copies of this CAO.

ISIDRO S LAPEÑA, PhD, CSEE
Commissioner

Approved:

SEC CARLOS G DOMINGUEZ
Secretary, Department of Finance

Informational Section. As the title denotes this section only provides information and does not give rise to any substantive or formal rights or obligations.

1. History. This is the first CAO dealing exclusively on Fines and Surcharges for Clerical Errors, Misdeclaration, Misclassification and Under Invoicing or Under Declaration of Value.

2. Related Policies.

- Section 5.1.3., Draft CAO on Dispute Settlement.
- Draft CAO on Seizure and Forfeiture Proceedings.
- CMTA, Title IV, Chapter 3, Section 429.
- CMTA, Title X, Section 1005 (b).

- CMTA, Title I, Chapter 2, Section 102.
- CMTA, Title I, Chapter 2, Section 102 (y).
- TCCP, Section 3611 (b).
- Draft CAO on Seizure and Forfeiture Proceeding3s.
- CMTA, Title I, Chapter 2, Section 102(dd).
- CMTA, Title XIV, Chapter 1, Section 1400.
- CMTA, Title XIV, Chapter 1, Section 1400.
- Draft CAO on Customs Jurisdiction and Exercise of Police Authority.
- CMTA, Title XIV, Chapter 1, Section 1400.
- CMTA, Title IV, Chapter 4, Section 436.

3. Webpage, Forms, Handbooks and other References.

- www.lawphil.net. G.R. No. 42204 Hon. Ramon J. Farolan Jr. vs Court of Tax Appeals and Bagong Buhay Trading.