

[BC CUSTOMS ADMINISTRATIVE ORDER NO. 10-93, November 16, 1993]

GUIDELINES IN THE IMPOSITION OF SURCHARGE UNDER SECTION 2503 OF THE TARIFF AND CUSTOMS CODE, AS AMENDED

By authority of Section 608 of the Tariff and Customs Code as amended, and in order to ensure a uniform implementation of Section 2503 of the same Code and to make the penalty of misclassification, undervaluation and misdeclaration more effective in discouraging and/or checking fraud against revenue, the guidelines as published in Customs Administrative Order 2-86 are hereby republished, incorporating thereto the amendments as provided for by R.A. 7651.

**I
The Law**

The pertinent provisions of the Tariff and Customs Code, as amended, read as follows:

"*SEC. 2503. Undervaluation, Misclassification and Misdeclaration in Entry.* - When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by ten percent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: Provided, That an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement, or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute a *prima facie* evidence of fraud penalized under Section 2530 of this Code: Provided, further, That any misdeclared or undeclared imported articles/items found upon examination shall *ipso facto* be forfeited in favor of the Government to be disposed of pursuant to the provisions of this Code.

When the undervaluation misdescription, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to the penal provision

under Section 3602 of this Code."

II Surcharge

Paragraph 1. Imposition of Surcharge. - Surcharge on imported articles shall be imposed in the following cases:

a) **Undervaluation.** - There is undervaluation when the dutiable value of the imported article shall be so declared that the duties, based on the declaration of the importer/broker on the face of the entry, would be less by at least ten per cent (10%) than should be legally collected.

The percentage difference in undervaluation shall be determined by dividing the difference between the duty as found and the duty as declared, by the duty as found.

b) **Misclassification.** - There is misclassification when the imported article shall be so described and entered that the duties, based on the importer's/broker's description on the face of the entry, would be less by at least ten per cent (10%) than should be legally collected on the basis of the correct tariff classification.

The percentage difference in misclassification shall be determined by dividing the difference between the duty as found and the duty as declared by the duty as found.

c) **Misdeclaration in Weight, Measurement or Quantity.** - There is misdeclaration in weight, measurement or quantity when the dutiable weight, measurement or quantity of imported article is found upon examination to exceed by ten per cent (10%) or more than the entered weight, measurement or quantity.

The percentage difference in misdeclaration shall be determined by dividing the difference between the weight, measurement or quantity as found, and the weight, measurement or quantity as declared in entry, by the weight, measurement or quantity as declared.

Paragraph 2. Amount of Surcharge. - The Collector of Customs shall impose the surcharge in accordance with the following:

a) **For Misclassification.** - Where the percentage difference in misclassification is ten per cent (10%) or more but not exceeding thirty per cent (30%) the amount of surcharge shall be as follows:

a.1 When the percentage difference is ten per cent (10%) or more but not exceeding twenty per cent (20%), a one time surcharge of the difference in customs duty shall be imposed.

a.2 When the percentage difference is twenty per cent (20%) or more but not exceeding thirty per cent (30%) a two times surcharge of the difference in customs duty shall be imposed.

b) **For Undervaluation, Misdeclaration in Weight, Measurement or Quantity.** - When the percentage difference in undervaluation/misdeclaration in