

CUSTOMS TARIFF ACT

Revised to 29th January 2010

UPDATED BY :-

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Unit**



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CHAPTER 197

CUSTOMS TARIFF

AN ACT RELATING TO THE CUSTOMS TARIFF ¹

Act No. 12 of 1986

[1st November 1986]

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¹ This Law was enacted through Act No. 12 of 1986 and came into force on 1st November 1986 through Legal Notice No. 106 of 1986. The Law was subsequently amended by Acts No. 22 of 1995, 27 of 1996 and No. 32 of 1996, Decree No. 35 of 2000, Acts No. 7 of 2001, 10 of 2002, 23 of 2005, Promulgations No. 18,19 and 33 of 2008, Decree No. 15 of 2009 and Decree No.10 of 2010.

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Part 1—Preliminary

Short title

- 1. This Act may be cited as the Customs Tariff Act.

Acts to be read as one

- 2. This Act shall be read as one with the Customs Act, 1986.

Part 2—Customs Duties

Duties to be collected and paid

- 3. Except as otherwise provided by this Act, there shall be raised, levied and collected—

- (a) on imported good:-
 - (i) fiscal duty;
 - (ii) import excise duty; and
 - (iii) value added tax;

(Substituted by Act No. 23 of 2005 s. 2)

and
- (b) on exported goods produced or manufactured in Fiji—export duty, at the rates specified in Schedule 2.

Amendment of duties

- 4.—(1) Where a Bill for an Act is published which, if passed, would alter a duty set out in Schedule 2, the Comptroller shall, with effect from that date of publication, or, if a later date is specified in the Bill, that later date, collect duties under this Act as if that Bill had been passed.

(2) If a Bill referred to in subsection (1) is not passed within 6 months of it being published or is passed with amendment, duty collected in excess of that authorised by this Act or this Act, as amended by that Bill as passed, shall be repaid to the importer or the exporter, as the case may be, and the repayment of the duty collected in excess of the authorised amount shall be a charge on the Consolidated Fund.

- (3) No action shall lie against the Comptroller for any action taken by him under subsection (1) to protect the revenue.

Mode of ascertaining value for purposes of ad valorem duties

- 5. The value of goods in respect of which ad valorem duty is payable shall be ascertained—
 - (a) in the case of imported goods—in accordance with Part 1 and Part 2; and
(Amended by Act No. 22 of 1997 s. 3(a))
 - (b) in the case of exported goods—in accordance with Part 2 and Part 3.

(Amended by Act No. 22 of 1997 s. 3(b))

Rates of exchange for purposes of ad valorem duty

6. For the purposes of levying *ad valorem* duty in respect of imported goods, the rate of exchange with regard to the value of those goods expressed in the currency of the country from which they were imported shall be the selling rate for sight drafts in Fiji as last notified before the time when the goods are entered or at the discretion of the Comptroller as may be expedient for computer processing, a mean rate calculated over a period of 5 working days or such further period as may be convenient as basis for an application of a single rate for the calculation of Value For Duty over a period of time. However, in the event of devaluation or revaluation of Fiji dollar by Reserve Bank of Fiji, the rate shall revert to the current selling rates for sight drafts in Fiji as last notified before the time when the goods are entered and continue for such further period as determined by the Comptroller.

(Substituted by Act No. 22 of 1995 s. 3)

Alternate rates of duty

7. If alternative rates of duty are applicable in respect of goods the higher of those rates applies.

Time tolerance for the acceptance of invoice prices paid or payable

7A.—(1) Time tolerance for the acceptance of invoice prices paid or payable may be accepted where the contract is dated not more than 3 months before the date specified.

(2) The Comptroller may extend the time limit referred to in subsection (1) in respect of—

- (a) goods of a kind usually sold for delivery more than 3 months after the date of the contract; and
- (b) goods manufactured to a special order, provided the delivery is made within the contractual period.

(3) In periods of abnormal price fluctuations the periods of tolerance referred to in subsection (1) and subsection (2) may be suspended by the Comptroller.

(Inserted by Act No. 32 of 1996 s. 3)

Provisions for the valuation of Imported Goods for Value Added Tax purposes

7B. For the purposes of subsection (1) of Section 14 of the Value Added Tax Decree 1991, the value of goods imported into Fiji shall be the sum of the amount of—

- (a) the value of the goods determined in accordance with Part 1 and 2 of the First Schedule of this Act (whether or not duty is payable under this Act); and
- (b) any duty, tax other than tax levied or charged under the Value Added Tax Decree 1991 and other charges that are charged, paid or payable on goods upon the importation or removal from a bonded or customs warehouse for home consumption in Fiji.

(Inserted by Act No. 32 of 1996 s. 3)

Derelict goods, etc. liable to duty

8. Duty is payable in respect of derelict goods, flotsam, jetsam or wreckage brought or coming ashore, and enemy ships or other enemy goods sold in Fiji at the rate of duty that would have been applicable if those goods had been imported in the normal course of commerce.

Re-importation of excisable goods

9. Where exported goods, manufactured or produced in Fiji, are re-imported and, at the date of their re-importation, are excisable goods under the Excise Act, they shall, on re-importation, be delivered for home consumption upon payment of the appropriate excise duty but without payment of duty under this Act, and the provisions of the Excise Act shall apply to those goods.

Part 3—Exemptions, Remissions, Reductions and Refunds of Duty

Minister may grant remission or refund of duty in certain case

10.—(1) The Minister may after receiving recommendation to do so from the Comptroller and subject to such conditions as the Minister may consider necessary, reduce or refund the whole or part of fiscal duty and import excise duty paid or payable by a person or organisation in respect of goods imported into Fiji, if the Minister is satisfied that—

(Inserted by Decree No.10 of 2010 s.10(i))

- (a) the goods imported or being imported act as a relief in the event of a disaster declared by the Government as a national disaster;
- (b) the importer of the goods is a person or organisation covered under any International Agreement or Convention between the respective Governments or Parties;
- (c) The importer of the goods is a registered religious or charitable organisation and that any reduction or refund of such duty is, in the circumstances, justifiable having regard to the purpose for which the organisation was established;
- (d) The reduction or refund of fiscal duty will contribute an identifiable benefit to the country.

(2) Unless otherwise indicated by the Minister, the reduction or refund approved under subsection (1)(d) shall remain in force for a period of 12 months after approval.

(3) For the purposes of subsection (1)(d), the applicant for a concession must:

- (a) make application in writing to the Comptroller;
- (b) set out in the application the detail of the concession sought and its fiscal duty value; and
- (c) outline the benefit to the country that the concession will provide.

*(Substituted by Act No. 7 of 2001 s. 2, Amended by Act No. 10 of 2002 s. 2(a))**Minister to consider remission or refund of duty paid on the recommendation of the Comptroller*

10A.—(1) The Minister may after receiving recommendation to do so from the Comptroller, and, subject to such conditions as the Minister may consider necessary, remit or refund the whole or part of any duty paid or payable by a person in respect of goods exported from Fiji, if the Minister is satisfied that—

- (a) The goods were or are wholly produced or manufactured in Fiji;
- (b) That the exporter is a registered entity in Fiji and possess authority to deal in such goods for the purpose of exports;
- (c) The exporter has a general bond or other security with the Comptroller as required under section 35 of the Customs Act.
- (d) That the goods exempted from Export tax are not diverted to any other destination or used contrary to any conditions imposed.

(2) A person who fails to comply with a condition imposed under subsection (1), is guilty of an offence and liable to a fine not exceeding \$10,000.00.

*(Inserted by Act No. 22 of 1995 s. 4, Substituted by Decree No.10 of 2010 s.10A)**Minister may grant remission or reduction of duties to assist industries*

11.—(1) The Minister may, subject to such conditions as he may consider necessary, remit or reduce duty payable in respect of imported machinery and equipment (including parts and materials) if he is satisfied it is to be used in a manufacturing or production process which will promote or create the development of industry in the country.

(2) A person who fails to comply with a condition imposed under subsection

(1), is guilty of an offence and is liable to a fine not exceeding \$10,000.00.

(Substituted by Promulgation No. 33 of 2008, s.2(a), Amended by Decree No.10 of 2010, s.11))

Exemption by Minister

11A. — (1) The Minister may, subject to such conditions as he considers necessary, exempt from payment of duty on the importation or purchase ex - bond of machinery, equipment and materials if he or she is satisfied that they are to be used by any company licensed under Tax Free Zone Decree 1991.

(2) A person who fails to comply with a condition imposed under subsection (1) commits an offence and is liable to a fine not exceeding \$1,000.

(Inserted by Promulgation No. 33 of 2008 s.2(b))

Minister discretion relation to Twelfth Schedule

11B. — (1) The Minister may, subject to such conditions as he considers necessary, exempt from payment of duty on the importation or purchase ex - bond of machinery, equipment and materials if he or she is satisfied that they are to be used by any company licensed under the Twelfth Schedule of the Income Tax Act.

(2) A person who fails to comply with a condition imposed under subsection (1) commits an offence and is liable to a fine not exceeding \$1,000.

(Inserted by Promulgation No. 33 of 2008 s.2(b))

Exemption from duty of goods remaining on board

12. No duty is payable in respect of goods that are brought in to Fiji, remain on the aircraft or vessel that brought them in, and are then exported.

Exemption from duty of goods entered for exportation, etc

13. No duty is payable in respect of—

- (a) goods entered under bond for transshipment; or
- (b) warehoused goods entered for exportation or for use as stores for an aircraft or ship, if the Comptroller is satisfied the goods have been shipped, exported, or taken into use as such stores, as the case may be.

Exemption from duty of goods imported under the duty suspension scheme

13A—(1) The Minister may, subject to such conditions as the Minister may consider necessary, exempt from payment of duty the importation or purchase ex-bond of goods or materials if the Minister is satisfied that such goods or materials are to be used by a person licensed under section 36G of the Customs Act.

(Inserted by Act No. 10 of 2002 s. 40)

Relief from duty of certain re-imported goods

14.—(1) Where goods are re-imported they shall be released for use where so eligible, without duty being paid in respect of them if the Comptroller is satisfied that—

- (a) any duty payable in respect of their exportation has been paid;
- (b) no drawback of any such duty was allowed on exportation, or that any drawback so allowed has been repaid; and
- (c) the goods—

- (i) have not been subjected to a process outside Fiji since their exportation; or
- (ii) if they have been so subjected, have not undergone a change in their form or character and are not at the time of their re-importation chargeable with *ad valorem* duty.

(2) Where, but for subparagraph (c)(ii), subsection (1) would otherwise apply in respect of goods, the value and the rate of duty applicable in respect of those goods shall be taken to be the value and the rate of duty applicable in respect of any article or material which has been incorporated into those goods, and, where a part of the goods has been replaced, the value and the rate of duty applicable in respect of the new part.

Exemption from duty of temporary imports

15.—(1) Subject to subsection (2) and any Regulations made under the Customs Act, 1986, if the Comptroller is satisfied that goods have been imported solely for a temporary use or for a temporary purpose he may remit or reduce the duty payable in respect of those goods subject to such conditions as he considers appropriate.

(2) The Comptroller shall not be required to remit or reduce duty under subsection (1) unless, if requested to do so by the Comptroller, the owner of the goods deposits with the Comptroller or gives security acceptable to the Comptroller for the amount of the duty to which the goods would otherwise be liable.

(3) A person who fails to comply with a condition imposed under subsection (1), is guilty of an offence and is liable to a fine not exceeding \$10,000.00.

(Substituted by Decree No.10 of 2010 s.15)

Remission or refund of duty on goods not in accordance, with contract

16.—(1) Subject to subsection (2), if—

(a) the Comptroller is satisfied that goods were imported in pursuance of a contract of sale and that the description, quality, state or condition of the goods was not in accordance with that contract; and

(b) the importer has given notice to the Comptroller that, with the consent of the seller, he intends either—

(i) to return the goods unused to the seller; or

(ii) to destroy the goods unused, the Comptroller may, subject to such conditions as he considers appropriate remit the import duty payable on the goods, or refund duty already paid.

(2) Subsection (1) shall not have effect unless a written application for the remission or refund is made to the Comptroller either before the goods are delivered out of customs control or within 2 months of such delivery.

(3) Subsection (1) shall not apply to goods imported on approval, or on sale or return, or other similar terms.

(4) A person who fails to comply with a condition imposed under subsection (1) is guilty of an offence and is liable to a fine not exceeding \$10,000.00.

(Substituted by Decree No.10 of 2010 s.16)

Refund of duty, charge or fee to be paid into a bank account

16A.—(1) The Comptroller shall require that any applicant for refund of any duty, charge or fee must have a bank account in a commercial trading bank in Fiji Islands.

(Inserted by Decree No.10 of 2010 s.16A(i))

(2) The Comptroller shall refrain from refunding any duty, charge or fee directly to claimants.

(Inserted by Decree

No.10 of 2010 s.16A(ii))

Part 4—Miscellaneous

Disposal or use of goods for a purpose other than that for which freedom from duty was granted or refund or remission of duty made

17.—(1) Where imported goods chargeable under Schedule 2 with duty or other goods entered under the duty suspension scheme—

(Amended by Act No. 10 of 2002 s. 5(a))

(a) have been imported into Fiji or delivered from a warehouse free of duty or at a reduced rate of duty or where any remission or refund of any duty

payable on any goods has been made under the provisions of Part 3 of this Act or of any other customs law; and

- (b) are, at any time within five years from the date of importation or delivery from a warehouse, disposed of or used for any purpose other than that for which such freedom from duty or reduction of duty was granted or such refund or remission was made, such goods shall thereupon become liable to duty- at the rate and upon the value subsisting at the date of such disposal, or of the goods being put to such other use, as determined by the Comptroller.

(1A) Where imported goods chargeable under Schedule 2 with duty are subject to the duty suspension scheme and are, at any time within 2 years from the date of importation or delivery from a warehouse, disposed of or used for any purpose other than that for which the duty was suspended under the duty suspension scheme, such goods shall thereupon become liable to duty at the rate and upon the value subsisting at the date of such disposal, or of the goods being put to such other use, as determined by the Comptroller;

- (2). A person to whom subsection (1) or (1A) applies shall pay the duty on such goods and shall, not less than 14 days before the date of such disposal, or of the date of the goods being put to such other use, make a report to the Comptroller in such manner as the Comptroller may require to enable duty to be levied; and

(Substituted by Act No. 10 of 2002 s. 5(c))

(3) A person who fails to report in accordance with the provisions of subsection (2) or who fails to pay such debt within 14 days of being so requested by the Comptroller in writing, is guilty of an offence and is liable to a fine not exceeding \$10,000.00 and the goods the subject matter of the offence are liable to forfeiture.

(Substituted by Decree No.10 of 2010 s.17(i))

(4) Any other person who knowingly acquires, uses or otherwise deals with goods in respect of which freedom from duty or reduction of duty was granted, for any purpose other than that for which such freedom from duty or reduction of duty was granted, within 5 years of the date of the importation of such goods or in the case of goods subject to the duty suspension scheme within 2 years from the date of the importation is guilty of an offence and is liable to a fine not exceeding \$10,000.00 and the goods the subject matter of the offence are liable to forfeiture.

(Amended by Act No. 10 of 2002 s.5(b), Substituted by Decree No.10 of 2010 s.17(ii))

Diversion of goods from TFZ for home consumption

17A—(1) Subject to subsection (2) of this Section, products manufactured in a Tax Free Zone and approved for consumption within Fiji shall become liable for duty on the imported articles or raw materials which have been incorporated into such goods at the rate subsisting at the time of disposal of the products and the value for duty of the articles or materials shall be calculated in accordance with Part 1 and Part 2 of Schedule 1.

(2) Products manufactured in a Tax Free Zone and approved for consumption within Fiji, and which, if they had been manufactured outside a Tax Free Zone, would have been excisable goods under the Excise Act, 1986, shall become liable for duty on the finished product at a rate equivalent to the rate of excise duty for such products under the Excise Act, 1986 subsisting at the time of disposal, and the value for duty of the products shall be calculated in accordance with the Excise Act, 1986.

(Substituted by Acts No. 22 of 1995 s. 5., No. 22 of 1997 s. 4)

Diversion of goods from TFR for home consumption

17B. — (I) Subject to subsection (2) of this section, products manufactured in a Tax Free Region and consumed within Fiji shall become liable for duty on the imported articles or raw materials which have been incorporated into such goods at the rate subsisting at the

time of disposal of the products and the value for duty of the articles or materials shall be calculated in accordance with Part 1 and Part 2 of Schedule!

(2) Products manufactured in Tax Free Region and consumed within Fiji, and which, if they had been manufactured outside a Tax Free Region, would have been excisable goods under the Excise Act, 1986. shall become liable for duty on the finished product at a rate equivalent to the rate of excise duty for such products under the Excise Act, 1986. subsisting at the time of disposal, and the value for duty of the products shall be calculated in accordance with the Excise Act, 1986.

(Inserted by Promulgations No. 33 of 2008 s. 3)

Weights and measures

18. Where a duty is imposed according to a weight or measure, the weight or measurement of goods shall be ascertained according to the weights and measures applicable in Fiji and, where a duty is imposed according to a specific weight, quantity, size or value, it shall apply proportionately to any greater or lesser weight, quantity, size or value.

Value to be stated to nearest whole dollar

19. The value of goods in an entry presented to the Comptroller for the purpose of calculating duty on those goods shall be calculated to the nearest dollar, so that in any value an amount being 50c or less shall be disregarded and in any value an amount in excess of 50c shall be taken to be one dollar.

Duty is debt due to Government

20. Duty payable under this Act is a debt due to the Government and may be dealt with in accordance with section **95** of the Customs Act, 1986.

Power of Comptroller to compound offences

21. -The power granted to the Comptroller by section **155** of the Customs Act, 1986 to compound offences shall apply to the compounding of offences under this Act.

Regulations

22.—(1) The Minister may make regulations providing for—

- (a) the form of certificates and other documents to be used in relation to goods imported into or exported from Fiji and intended to be used as materials in the manufacture of goods in Fiji;
- (b) the rebate, suspension or refund of the whole or any part of the duty payable or paid on any goods imported for use as—
 - (i) machinery, equipment or parts thereof; and
 - (ii) materials, to be used in manufacture or production in Fiji and the withdrawal wholly or in part of any such rebate, suspension or refund;
- (c) the better carrying out of the provisions of this Act.

(2) Regulations made under this section may provide that any breach thereof shall be punishable by a fine not exceeding \$10,000.00 and that the goods, if any, forming the subject matter of the breach may be forfeited.

(Substituted by Decree No.10 of 2010 s.22)

Repeal and saving

23.—(1) The Customs Tariff Act, 1979 is repealed.

(2) Notwithstanding subsection (1) and without prejudice to section 18 of the Interpretation Act, any instrument made or other thing done under the revisions of the Customs Tariff Act, 1979 shall continue in force and shall, so far as it could have been made or done under this Act, have effect as if made or done under the corresponding provision of this Act.

SCHEDULE 1²

VALUATION OF GOODS

PART 1

VALUATION OF GOODS FOR THE PURPOSES OF THE CUSTOMS TARIFF ACT, 1986

Interpretation, application, etc.

1.—(1) In this Schedule, unless the context otherwise requires—

"computed value" means the value determined in accordance with Clause 7 of Part 2 of this Schedule;

"customs value of imported goods" means the value of goods for the purposes of levying *ad valorem* duties of Customs on imported goods;

"country of export" or "the country from which goods are exported", means the country from which the goods are shipped directly to Fiji or, as the case may be, goods exported to Fiji from any country but passing through any other country on their voyage to Fiji (whether transhipped in that other country or not) shall be deemed to be shipped direct from the first mentioned country;

"country of importation" means country or Customs territory of importation;

"deductive value" means the value determined in accordance with Clause 6 of Part 2 of this Schedule;

"effective date" means 1 January 1997;

"generally accepted accounting principles" refers to any generally recognised consensus or substantial authoritative support regarding—

- (a) which changes in assets and liabilities should be recorded;
 - (b) how the assets and liabilities and changes in them should be measured;
 - (c) what information should be disclosed and how it should be disclosed;
- and
- (d) which financial statements should be prepared;

"goods of the same class or kind", means imported goods that—

- (a) are within a group or range of imported goods produced by a particular industry or industry sector that includes identical goods or similar goods in relation to the goods being valued; and
- (b) for the purposes of -
 - (i) Clause 6 of this Schedule, were exported from any country; and
 - (ii) Clause 7 of this Schedule, were produced in and exported from the country in and from which the goods being valued were produced and exported;

"identical Goods" means imported goods that—

- (a) are the same in all respects, including physical characteristics, quality, and reputation, as the goods being valued, except for minor differences in appearance that do not affect the value of the goods; and
- (b) were produced in the country in which the goods being valued were produced; and
- (c) were produced by or on behalf of the person who produced the goods being valued, but does not include imported goods where engineering, development work, artwork, design work, plans, or sketches" undertaken in Fiji were supplied, directly or indirectly, by the buyer of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;

² The initial Schedules were revoked and substituted with this Schedules by Act No. 22 of 1999

"packing costs" means the cost of all containers (exclusive of instruments of international traffic) and coverings of whatever nature and of packing, whether for labour or materials, used in placing goods in condition, packed ready for shipment to Fiji;

"price actually paid or payable" means the total payment (whether direct or indirect, and inclusive of any charges, costs, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the goods from the country of exportation to the place of importation in Fiji made, or to be made, for imported goods by the buyer to, or for the benefit of, the seller;

"produced" includes grown, manufactured or mined;

"similar goods" means imported goods that—

- (a) closely resemble the goods being valued in respect of component materials and parts and characteristics and are functionally and commercially interchangeable with the goods being valued having regard to the quality and reputation of the goods and the goods being valued; and
- (b) were produced in the country in which the goods being valued were produced; and
- (c) were produced by or on behalf of the person who produced the goods being valued,—

but does not include imported goods where engineering, development work, artwork, design work, plans, or sketches undertaken in Fiji were supplied, directly or indirectly, by the buyer of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;

"sufficient information", in respect of the determination of any amount, difference, or adjustment, means objective and quantifiable information that clearly establishes the accuracy of the amount, difference, or adjustment;

"to produce" includes to grow, to manufacture, or to mine;

"transaction value" means the value determined in accordance with Clauses 2 and 3 of this Schedule.

(2) In this Schedule, unless the context otherwise requires "assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported goods for use in connection with the production or the sale for export to Fiji of the goods:

- (i) materials, components, parts and similar items incorporated in the imported goods;
- (ii) tools, dies, moulds, and similar items incorporated in the imported goods;
- (iii) goods consumed in the production of the imported goods;
- (iv) engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in Fiji and are necessary for the production of the imported goods.

(3) No service or work to which sub-clause (2) (iv) of this clause applies is to be treated as an assist if the service or work is—

- (i) performed by an individual domiciled within Fiji;
- (ii) performed by that individual while acting as an employee or agent of the buyer of the imported goods; and
- (iii) incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within Fiji.

(4) The following apply in determining the value of assists described in sub-clause (2) (iv) of this clause—

- (i) the value of an assist that is available in the public domain is the cost of obtaining copies of the assist;

(b) were produced in the country in which the goods being valued were produced; and

(c) were produced by or on behalf of the person who produced the goods being valued,—

but does not include imported goods where engineering, development work artwork, design work, plans, or sketches undertaken in Fiji were supplied, directly or indirectly, by the buyer of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;

"sufficient information", in respect of the determination of any amount, difference, or adjustment, means objective and quantifiable information that clearly establishes the accuracy of the amount, difference, or adjustment;

"to produce" includes to grow, to manufacture, or to mine;

"transaction value" means the value determined in accordance with Clauses 2 and 3 of this Schedule.

(2) In this Schedule, unless the context otherwise requires "assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported goods for use in connection with the production or the sale for export to Fiji of the goods:

- (i) materials, components, parts and similar items incorporated in the imported goods;
- (ii) tools, dies, moulds, and similar items incorporated in the imported goods;
- (iii) goods consumed in the production of the imported goods;
- (iv) engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in Fiji and are necessary for the production of the imported goods.

(3) No service or work to which sub-clause (2) (iv) of this clause applies is to be treated as an assist if the service or work is—

- (i) performed by an individual domiciled within Fiji;
- (ii) performed by that individual while acting as an employee or agent of the buyer of the imported goods; and
- (iii) incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within Fiji.

(4) The following apply in determining the value of assists described in sub-clause (2) (iv) of this clause—

- (i) the value of an assist that is available in the public domain is the cost of obtaining copies of the assist;
- (ii) if the production of an assist occurred in Fiji and one or more foreign countries, the value of the assist is the value added outside Fiji;
- (iii) if the assist was purchased or leased by the buyer from an unrelated person, the value of the assist is the cost of the purchase or of the lease.

(5) For the purposes of this Schedule, persons shall be deemed to be related only if—

- (a) they are offices of directors of one another's business
- (b) they are legally recognised partners in business;
- (c) they are employer and employee;
- (d) any person directly or indirectly owns, controls or holds 5 percent or more of the outstanding voting stock or shares of both of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they direct or indirectly control a third person;
- (h) they are members of the same family.

(6) For the purposes of this Schedule, persons shall be deemed to be members of the same family if—

- (a) they are connected by blood relationship within the fourth degree of relationship;
- (b) they are married to one another or if one is married to a person who is connected within the fourth degree of relationship to the other; or
- (c) one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other.

(7) For the purposes of this Schedule, where there are no goods that were produced by or on behalf of the person who produced the goods being valued and that are otherwise identical goods or similar goods, goods that were produced by or on behalf of a different person and that are otherwise identical goods or similar goods shall be deemed to be identical goods or similar goods, as the case may be.

(8) For the purposes of this Schedule, charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the Customs value in any case where—

- (a) the charges are distinguished from the price actually paid or payable for the goods;
- (b) such goods are actually sold at the price declared as the price actually paid or payable; and
- (c) the buyer, if required, can demonstrate that—
 - (i) the financing arrangement was made in writing;
 - (jj) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.

(9) The provisions of this Schedule shall apply to the appraisal of goods imported into Fiji on or after the effective date.

(10) Imported goods will be appraised on the basis, and in the order, of the following :

- (a) the value for duty of imported goods shall be determined in accordance with Clauses 2 to 9 of this Schedule;
- (b) the Customs value of goods shall if possible be appraised on the basis of the transaction value of the goods in accordance with conditions set out in Clause 2 of this Schedule.
- (c) where the value for duty of goods cannot be appraised in accordance with Clause 2 of this Schedule, it shall be appraised in the following order and on the following bases :-
 - (i) the transaction value of identical goods that meet the requirements set out in Clause 4 of this Schedule;
 - (ii) the transaction value of similar goods that meet the requirements set out in Clause 5 of this Schedule;
 - (iii) the deductive value of the goods as set out in Clause 6 of this Schedule;
 - (iv) the computed value of the goods as set out in Clause 7 of this Schedule.

(11) Upon receipt of a written request from the importer to the Comptroller, the order of consideration of the valuation basis provided for in paragraphs (iii) and (iv) of sub-clause (10) shall be reversed and confirmed in writing by the Comptroller. .

(12) Where the value for duty of goods is not appraised on the basis .of any of the methods referred to paragraphs (i) to (iv) of sub-clause (10), the Customs value of those goods shall be appraised under Clause 8 of this Schedule.

(13) Information submitted by an importer, buyer, or producer in regard to the appraisal of goods may not be rejected by Customs because of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles.

PART 2**VALUATION OF GOODS FOR THE PURPOSES OF THE CUSTOMS TARIFF ACT
RULES ON CUSTOMS VALUATION***Transaction Value as primary basis of Customs Valuation*

2.—(1) The Customs value of imported goods shall be the *transaction value*, that is the price actually paid or payable for the goods when sold for export to Fiji adjusted in accordance with Clause 3 of this Schedule, if:

- (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which :
 - (i) are imposed by law;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
- (b) the sale of the goods or the price paid or payable for the goods is not subject to some condition or consideration in respect of which a value cannot be determined;
- (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly, to the seller, the price paid or payable for the goods includes the value of that part of the proceeds or can be adjusted in accordance with Clause 3 of this Schedule; or
- (d) the buyer and the seller of the goods are not related to each other at the time the goods are sold for export or, where the buyer and the seller are related to each other at that time,—
 - (i) their relationship did not influence the price paid or
 - (ii) payable for the goods or
 - (iii) the importer of the goods demonstrates that the transaction value of the goods meets the requirement set out in sub-clause (3) to this Clause.

(2) In application of sub-clause (1) (d) of this Clause, where the buyer and the seller of goods being appraised are related to each other at the time the goods are sold for export and the officer who is appraising the value for duty of the goods has grounds to believe that the requirements set out in sub-clause (1) (d) (i) of this Clause are not met, the officer shall notify the importer of the goods of such grounds and, on the written request of the importer, the notification shall be in writing.

(3) For the purpose of sub-clause (1) (d) (ii) of this Clause, the transaction value of goods being appraised shall taking into consideration relevant factors including such factors and differences as may be determined that closely approximates the Customs value of other goods exported at the time or substantially at the same time as the goods being valued, being -

- (a) the transaction value of identical goods or similar goods in respect of a sale of those goods for export to Fiji between a seller and a buyer who are not related to each other at the time of the sale.
- (b) the deductive value of identical goods or similar goods; or
- (c) the computed value of identical goods or similar goods.

(4) Where sub-clause (3) of this Clause applies, the importer shall, without limiting the generality of sub-clause (3), provide the following information:

- (a) the nature of the goods being valued;
- (b) the nature of the industry that produces the goods being valued;
- (c) the season in which the goods being valued are imported;
- (d) whether a difference in values is commercially significant;
- (e) the trade levels at which the sales take place;

- (f) the quantity levels of the sales;
- (g) any of the amounts referred to in Clause 3 of this Schedule.

(5) .Where in the opinion of the Comptroller, the Customs value cannot be determined under this Clause, or the Comptroller has reason to doubt the truth or accuracy of the declared Customs value and, after having sought further explanation or other evidence that the declared Customs value represents the total amount actually paid or payable for the imported goods, the Comptroller is still not satisfied that the Customs value can be determined under this Clause - the Comptroller may determine the Customs value of the goods by proceeding sequentially through Clause 4 to 8 of the Schedule to the first such Clause of this Schedule under which the Customs value can, in the opinion of the Comptroller be determined.

Adjustment of price paid or payable

3.—(1) The price paid or payable in respect of goods sold for export to Fiji shall be adjusted—

- (a) by adding thereto amounts, to the extent that each such amount is not already included in the price paid or payable for the goods equal to—
 - (i) commissions and brokerage in respect of the goods incurred by the buyer other than fees paid or payable by the buyer to his agent for the service of representing the buyer overseas in respect of the purchase of the goods;
 - (ii) the packaging costs and charges incurred by the buyer in respect of the goods, including the cost of cartons, cases and other containers and coverings that are treated for Customs purposes as being part of the imported goods and all expenses of packing incidental to placing the goods in the condition in which they are shipped to Fiji, and the value of any of the following goods and services determined in the manner prescribed, that are supplied directly or indirectly by the purchaser of the goods free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods, apportioned to the imported goods in a reasonable manner in accordance with the generally accepted accounting principle:
 - (A) material components, parts and other goods incorporated in the imported goods;
 - (B) Tools, dies, moulds, and other goods utilised in the production of imported goods;
 - (C) any materials consumed in the production of the imported goods, and
 - (D) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Fiji and necessary for the production of the imported goods, .
 - (iv) royalties and licence fees, including payments for patents, trademarks and copyrights in respect of the imported goods that the buyer must pay directly or indirectly as a condition of the sale of the goods for export to Fiji exclusive of charges for the right to reproduce the imported goods in Fiji;
 - (v) the value of any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer that accrues or is to accrue directly or indirectly to the seller; and
 - (vi) the cost of transportation and insurance and the loading and unloading and handling charges and other charges and expenses associated with the transportation of the imported goods to Fiji.
- (b) by deducting therefrom amounts to the extent that each such amount is included in the price paid or payable for the goods equal to –

- (i) any of the following costs, charges or expenses
 - (A) any reasonable, cost charges or expenses that is incurred for the construction, erection, assembly or maintenance of, or technical assistance provided in respect of the goods after the goods are imported:
 - (B) any reasonable cost, charge or expense that is incurred in respect of the transportation or insurance of the goods within Fiji and any reasonable cost, charge or expense associated therewith:
 - (C) any Customs duties or other taxes payable in Fiji by reason of the importation or sale of the goods, if the cost, charge or expense is identified separately from the balance of the price paid or payable for the goods.

(2) The price paid or payable in respect of goods sold for export to Fiji shall not be adjusted to take account of any rebate of or other decrease in, the price paid or payable for the goods that is effected after the goods are imported:

(3) Where there is not sufficient information to determine any of the amount required to be added to the price paid or payable because of lack of sufficient information, the transaction value of the goods being valued cannot be determined under Clause 2 of this Schedule.

Transaction Value of Identical Goods as Customs value

4.—(1) Subject to sub-clauses (2) to (4) of this Clause, where the Customs value for duty of imported goods cannot in the opinion of the Comptroller be determined under Clause 2 of this Schedule, the Customs value of the goods shall be determined by the transaction value of identical goods in a sale of those goods for export to Fiji if that transaction value is the value for duty is the Customs value of the identical goods and the identical goods were exported at the same or substantially the same time as the goods being valued and was sold under the following conditions :

- (a) to a buyer at the same or substantially trade level as the buyer of the goods being valued; and
- (b) in the same or substantially same quantities as the goods being valued.

(2) Where the value for duty of goods being valued cannot be determined under sub-clause (1) above because identical goods were not sold under the condition described in sub-clauses 1 (a) and (b), there shall be substituted therefor identical goods sold under any of the following conditions:

- (a) to a buyer at the same or substantially same trade level as the buyer of the goods being valued but in quantities different from the quantities in which those goods were sold; to a buyer at a trade level different from that of the buyer of the goods being valued but in the same or substantially the same quantities as the quantities in which those goods were sold; or
- (b) to a buyer at a trade level different from that of the buyer of the goods being valued and in quantities different from the quantities in which those goods were sold; or
- (c) to a buyer at a trade level different from that of the buyer of the goods being valued and quantities different from the quantities in which those goods were sold.

(3) For the purpose of determining the value for duty of goods under sub-clause (1) of this Clause, the transaction value of identical goods shall be adjusted by adding thereto or deducting therefrom as the case may be, amounts to account of-

- (a) commercially, significant differences between the cost, charges and expenses referred to in Clause 3 (1)(a)(vi) of this Schedule in respect of the identical goods and those costs, charges and expenses in respect of the goods

being valued that are attributable to differences in distances and modes of transport;

- (b) where the transaction value is in respect of identical goods sold under the condition described in any of paragraphs (a) to (c) of sub-clause (2) of this Clause, differences in the trade levels of buyers of the identical goods and the goods being valued or the quantities in which the identical goods and the goods being valued were sold or both as the case may be, if each such amount can, in the opinion of the Comptroller be determined on the basis of sufficient information. Where any such amount cannot be determined, the value for duty of goods being valued shall not be determined on the basis of the transaction value of those identical goods under this Clause.

(4) Where, in relation to imported goods being valued, there are two or more transaction values of identical goods that meet all the requirements set out in sub-clauses (1) and (3) of this Clause or where there is no such transaction value but there are two or more transaction values of identical goods sold under the condition described in any of the paragraphs (a) to (c) of sub-clause (2) of this Clause that meet all the requirements set out in this Clause that are applicable by virtue of sub-clause (2) of this Clause, the Customs value of goods being valued shall be determined on the basis of the lowest such transaction value.

Transaction Value of Similar Goods as Customs Value

5—(1) Subject to sub-clause (2) of this Clause and sub-clauses (2) to (4) of Clause 4 of this Schedule where the Customs value of imported goods cannot, in the opinion of the Comptroller be determined under Clause 4 of this Schedule, the Customs value of the goods shall be the transaction value of similar goods in a sale of those goods for export to Fiji if that transaction value is the Customs value of the similar goods and the similar goods were exported at the same or at substantially the same time as the goods being valued and were sold under the following conditions -

- (a) to a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and
- (b) in the same or substantially the same quantities as the goods being valued.

(2) Sub-clauses (2) to (4) of Clause 4 of this Schedule shall apply to this Clause in respect of similar goods and wherever in those sub-clauses the expression "*identical goods*" is referred to, there shall be substituted therefor the expression "*similar goods*".

Deductive Value as Customs Value

6.—(1) Subject to sub-clauses (4) and (5) of Clause 2 of this Schedule where the value for duty cannot, in the opinion of the Comptroller, be determined under Clause 5 of this Schedule, the Customs value of the goods shall be the deductive value in respect of the goods.

(2) Where the goods being valued or identical goods or similar goods are sold in Fiji in the condition in which they were imported at the same or substantially the same time as the time of importation of the goods being valued, the price per unit in respect of sales described in sub-clause (5) of this Clause, determined in accordance with that sub-clause and adjusted with sub-clause (6) of this Clause at which the greatest number of units of the goods being valued or identical goods or similar goods are so sold.

(3) Where the goods being valued or identical goods or similar goods are sold in Fiji in the condition in which they were imported before the expiration of 90 days after the time of importation of the goods being valued, but are not sold at the same or substantially the same time as the time of that importation, the deductive value of the goods being valued shall be the price per unit in respect of sales described in sub-clause (5) of this Clause determined in accordance with that sub-clause and adjusted in accordance with sub-clause (6) of this Clause, at which the greatest number of units of the goods being valued or identical goods or similar goods are so sold at the earliest date after the of importation of the goods being valued.

(4) Where the goods being valued, or identical goods or similar goods are not sold in Fiji in the circumstances described in sub-clause (2) or sub-clause (3) of this Clause but the goods being valued after being assembled, packaged or further processed in Fiji are sold in Fiji before the expiration of 90 days after the importation thereof and the importer of the goods being valued request that this sub-clause be applied in the determination of the Customs value of those goods, the deductive value of the goods being valued shall be the price per unit in respect of sales described in sub-clause (5) of this Clause determined in accordance with that sub-clause and adjusted in accordance with sub-clause (6) of this Clause at which the greatest number of units of the goods being valued are so sold.

(5) For the purpose of sub-clauses (2) to (4) of this Clause, the price per unit in respect of any goods being valued or identical goods or similar goods, shall be determined by ascertaining the unit price in respect of sales of the goods at the first trade level after importation thereof to persons who -

- (a) are not related to the persons from whom they buy the goods at the time the goods are sold to them; and
- (b) have not supplied directly or indirectly free of charge or at a reduced cost for use in connection with the production and sale for export of the goods any of the goods or services referred to in Clause 3 (1) (a) (iii) of this Schedule, at which the greatest number of units of the goods is sold where in the opinion of the Comptroller a sufficient number of such sales have been made to permit a determination of the price per unit of the goods.

(6) For the purpose of sub-clauses (2) to (4) of this Clause, the price per unit in respect of any goods being valued shall be adjusted by deducting therefrom an amount equal to the aggregate of—

- (a) an amount determined in accordance with sub-clause (7) to this Clause, equal to—
 - (i) the amount of commission generally earned on a unit basis; or
 - (ii) the amount for profit and general expenses, including all costs of marketing the goods considered together as a whole that is generally reflected on a unit basis - in connection with sales in Fiji of goods of the same class or kind of those goods;
- (b) the costs, charges and expenses incurred in respect of the transportation and insurance of the goods in Fiji and the cost, charges and expenses associated therewith to the extent that an amount for such costs, charges and expenses is not deducted in respect of general expenses under paragraph (a);
- (c) the costs, charges and expenses referred to in Clause 3 (1) (b) (i) of this Schedule incurred in respect of the goods to the extent that an amount for such costs, charges and expenses is not deducted in respect of general expenses under paragraph (a) of this sub-clause;
- (d) any Customs duty or any other taxes payable in Fiji in respect of the goods to the extent that an amount for such duties and taxes is not deducted in respect of general expenses under paragraph (a) of this Sub-clause, and
- (e) where sub-clause (4) applies, the amount of value added to the goods that is attributable to the assembly, packaging or further processing in Fiji of the goods.

(7) The amount considered to be equal to the amount of commission or the amount for profit and general expenses referred to in sub-clause (6)(a) shall be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally accepted accounting principles that is supplied—

- (a) by or on behalf of the importer of the goods being valued; or
- (b) where the information supplied by or on behalf of the importer of the goods being valued is not sufficient information, but an examination of sales in Fiji of the narrowest group or range of goods of the same class or kind as the goods being valued from which sufficient information can, in the opinion of the Comptroller, be obtained.

(8) Where in the opinion of the Comptroller, there is not sufficient information to determine the amount referred to in sub-clause (6) (e) to this Clause in respect of any goods being valued, the Customs value of the goods shall not be determined under sub-clause (4) of this Clause.

Computed Value as Customs Value

7.—(1) Subject to sub-clauses (3) and (4) of this Clause where the Customs value of imported goods cannot, in the opinion of the Comptroller be determined under Clause 6 of this Schedule, the Customs value of the goods shall be the computed value in respect of the goods.

(2) The computed value of the goods being valued is the aggregate of amounts equal to—

(a) the cost, charges and expenses in respect of, or the value of—

(i) materials employed in producing the goods being valued; and

(ii) the production or other processing of the goods being valued, determined on the basis of -

(A) the commercial accounts of the producer of the goods being valued; or

(B) any other sufficient information relating to the production of the goods being valued - that are supplied by or on behalf of the producer of the goods and prepared in a manner consistent with the generally accepted accounting principles of the country of production of the goods being valued, including, without limiting the generality of the foregoing;

(iii) the costs, charges and expenses referred to in Clause 3(1)(a)(ii) to this Schedule;

(iv) the value of any goods and services referred to in Clauses 3(1)(a)(iii) and 3(1)(a)(vi) of this Schedule, determined and apportioned to the goods being valued as referred to in that Clause, whether or not such goods and services have been supplied free of charge or at a reduced-cost;

(v) the costs, charges and expenses incurred by the producer in respect of engineering, development work, artwork, design work, plans, or sketches undertaken in Fiji that were supplied, directly or indirectly by the buyer of the goods being valued in connection with the production and sale for export of those goods to the extent that such elements are charged to the producer of the goods, apportioned to the goods being valued as referred to in Clause 3 (1)(a)(iii) of this Schedule; and

(b) the amount, determined in accordance with sub-clause (4) of this Clause, for profit and general expenses considered together as a whole, that is generally reflective in sales for export to Fiji of goods of the same class or kind as the goods being valued, made by producers of the goods for buyers in Fiji who are not related to the producers from whom they buy the goods at the time the goods are sold to them.

(3) For the purpose of this Clause, "general expenses" means the direct and indirect costs, charges and expenses of producing goods for export other than the cost charges and expenses referred to in sub-clause (2) (a) of this Clause.

(4) The amount of profit and general expenses referred to in sub-clause (2)(b) of this Clause shall be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally acceptable accounting principles of the country of production of the goods being valued and that is supplied—

(a) by or on behalf of the producer of the goods being valued; or where the information supplied by or on behalf of the producer of the goods being valued is not sufficient information, by an examination of sales for export to Fiji of the narrowest group or range of goods of the same class or kind from which

sufficient information can, in the opinion of the Comptroller be obtained.

Residual Value of Valuation

8—(1) Where the value of goods cannot in the opinion of the Comptroller be determined under Clause 7 of this Schedule, it shall be determined on information available in Fiji on the basis of value derived from the methods of valuation set out in Clauses 2 to 7 of this Schedule interpreted in a flexible manner and reasonably adjusted to the extent necessary to arrive at a value for duty of the goods.

- (2) A Customs value shall not be determined on the basis of—
- (a) the selling price in Fiji of goods produced in Fiji;
 - (b) a basis which provides for the acceptance of the higher of the two alternative values;
 - (c) the price of goods on the domestic market -"of the country of exportation; or the cost of production, other than computed values that have been determined for identical or similar goods in accordance, with Clause 7 of this Schedule;
 - (e) the price of goods for export to a country other than Fiji; or
 - (f) minimum Customs value; or
 - (g) arbitrary or fictitious values.

Supply of Information

9—(1) Upon written request by any importer of any goods, the Comptroller shall within 30 days give notice to that importer in writing of the Customs value of the goods and the basis of the determination of that Customs value including the provisions of the Act applying thereto.

(2) A notice under sub-clause (1) will apply only to the imported goods being valued and will not serve as authority with respect to the "sufficient information", in respect of the determination of any amount, difference, or adjustment, means objective and quantifiable information that clearly establishes the accuracy of the amount, difference, or adjustment;

"to produce" includes to grow, to manufacture, or to mine;

"transaction value" means the value determined in accordance with Clauses 2 and 3 of this Schedule valuation of any other goods.

Time Tolerance for the acceptance of invoice prices

10—(1) Time tolerance for the acceptance of invoice prices paid or payable may be accepted where the contract is dated not more than 3 months before the date specified.

(2) The Comptroller may extend the time limit referred to in sub-clause (1) in respect of—

- (a) goods of a kind usually sold for delivery more than 3 months after the date of the contract; and
- (b) goods manufactured to a special order, provided the delivery is made within the contractual period.

(3) In periods of abnormal price fluctuations the periods of tolerance referred to in sub-clause (1) and (2) may be suspended by the Comptroller.

PROVISIONS FOR THE VALUATION OF THE IMPORTED GOODS FOR VALUE ADDED TAX PURPOSES

11. For the purposes of sub-section (1) of Section 14 of the Value Added Tax Decree 1991, the value of goods imported into Fiji shall be the sum of the amount of—

- (a) the value of the goods determined in accordance with Part 1 and Part 2 of this Schedule (whether or not duty is payable under this Act); and
- (b) any duties, taxes (other than tax levied or charged under the Value Added Tax Decree 1991) and other charges that are charged, paid or payable on

goods upon the importation or removal from a bonded or customs warehouse for home consumption in Fiji.

PART 3
PROVISION FOR THE VALUATION OF EXPORTED GOODS
FOR CUSTOMS PURPOSES

Value of exported goods

The value of goods which, on exportation, are liable to *ad valorem* rates of duty shall be taken to be the price which a purchaser would be prepared to give for the goods on board on an aircraft or ship in any airport or port in FIJI prior to the exportation of such goods or, where such value is not easily ascertainable, the Comptroller may estimate such value "

SCHEDULE 2³
CUSTOMS TARIFF

SECTION 191—CUSTOMS TARIFF CLASSIFICATION OPINION
 FEES REGULATIONS⁴

Legal Notice No. 95 of 1991

TABLE OF PROVISIONS
 REGULATION

1. Short title
2. Application and fees

Short title

1. These Regulations may be cited as the Customs Tariff Classification Opinion Fees Regulations.

Application and fees

2.—(1) Applications for Tariff Classification Opinions shall be made in writing accompanied by the fee prescribed in this Regulation.

(2) A fee of \$25.00 shall be payable to the Comptroller of Customs for each written request for tariff classification opinion.

(Amended by Legal Notice No. 104 of 2004 r. 2)

(3) Where before the Comptroller has prepared a tariff classification opinion the applicant notifies in writing to the Comptroller that the opinion is no longer required, the Comptroller may, at the Comptroller's discretion, refund or remit in whole or in part the Fee paid or payable pursuant to this Regulation.

³ It should be noted that, the Customs Tariff stipulated under this Schedule is usually varied annually. At every new financial year, new customs tariff is stipulated under the Schedule. Since the Schedule becomes spent at the end of every financial year, it is more convenient to publish it separately in Gazette as part of the Act. Hence it would not be published together with the Act.

⁴ These Regulations were made through Legal Notice No. 95 of 1991 and were subsequently amended by Legal Notice No. 104 of 2004

SECTION 22—CUSTOMS TARIFF (INDUSTRIAL REBATES) REGULATIONS ⁵*Legal Notice No. 110 of 1986*TABLE OF PROVISIONS
REGULATION

1. Short title
2. Interpretation
3. Grant of rebate of excise duty
4. Rebate certificates
5. Variation and revocation of grant of rebate
6. Obligations of manufacturers
7. Offences
8. Revocation

Short title

1. These Regulations may be cited as the Customs Tariff (Industrial Rebates) Regulations, 1986.

Interpretation

2. In these Regulations—

" manufacturer ", means a person approved by the Minister and who by any means makes or produces or causes to be made or produced any goods approved by the Minister under regulation 3 and the expression "manufacture" has a corresponding meaning;

" rebate certificate " means a certificate issued under sub-regulation 4(1).

Grant of rebate of excise duty

3.—(1) The Minister may, following receipt of an application made to him under sub-regulation (4), grant with or without conditions to a manufacturer a rebate of the whole or a part of the import duty payable by him in respect of—

- (a) machinery, equipment or parts thereof;
- (b) materials;

imported or removed from bond by or on behalf of such manufacturer and intended to be used in the manufacture of goods.

(2) The grant of a rebate of import duty under sub-regulation (1) shall be in respect of a period determined by the Minister.

(3) An application for the grant of a rebate of import duty under sub-regulation (1) shall—

- (a) be made on a form provided for the purpose by the Minister; and
- (b) be accompanied by such information and particulars as the Minister may require.

(4) An application for the grant of a rebate of import duty under sub-regulation (1) shall be accompanied by the fee prescribed in sub-regulation (6) of this regulation.

(5) A fee of \$12.00 shall be payable to the Comptroller in respect, of each rebate certificate issued under sub-regulation (1) of this regulation.

(6) The grant of a rebate of import duty under sub-regulation (1) has no effect unless the manufacturer to whom it is granted is the holder of a valid certificate issued in respect of that grant.

(Substituted by Legal Notice No. 93 of 1991 r. 3, Amended by Legal Notice No. 103 of 2004 r.2)

⁵ These Regulations were made through Legal Notice No. 110 of 1986 and were subsequently amended by Legal Notices No. 93 of 1991 and No. 103 of 2004

Rebate certificates

4.—(1) Where the Minister has granted a manufacturer a rebate of import duty under sub-regulation 3(1), the Comptroller shall, as soon as practicable after the grant of that rebate, issue to the manufacturer a rebate certificate

(2) A rebate certificate shall state—

- (a) the name of the manufacturer ;
- (b) the address of the premises at which the goods are to be manufactured
- (c) the machinery, equipment, parts thereof or materials in respect of which the rebate has been granted, and the goods in the manufacture of which that machinery, equipment, parts thereof or materials are intended to be used ;
- (d) the rate of the rebate ;
- (e) the period in respect of which the rebate has been granted ; and
- (f) any conditions subject to which the rebate was granted.

(3) Subject to sub-regulation 5(5), a rebate certificate ceases to be valid at the end of the period specified in that certificate in accordance with paragraphs (2)(e).

Variation and revocation of grant of rebate

5.—(1) Where the Minister is satisfied—

- (a) that a manufacturer to whom a rebate of import duty has been granted under sub-regulation 3(1) has failed to comply with—
 - (i) a provision of regulation 6 ; or
 - (ii) any condition subject to which the rebate was granted ; or
- (b) that it is expedient for any other reason to do so, having regard to any consideration relating to the protection of the revenue or otherwise, he may revoke the grant of the rebate or vary any of the conditions subject to which it was granted.

(2) The Minister may take the action referred to in sub-regulation (1) irrespective of whether or not proceedings have been brought against the manufacturer in respect of any offence alleged to have been committed by him under regulation 7.

(3) Where a rebate certificate is revoked or amended the manufacturer shall, if required to do so by a written notice served on him by the Comptroller, return that certificate to the Comptroller within the time specified in the

(4) Where a rebate certificate is returned to the Comptroller in accordance with sub-regulation (3), he shall cancel it, and, if it was returned following a variation under sub-regulation (1) of a condition subject to which the rebate in question was granted, he shall issue a new rebate certificate amended accordingly.

(5) Notwithstanding sub-regulation 4(3), a rebate certificate ceases to have effect at the end of the period specified in any notice served in respect of that certificate under sub-regulation (3).

Obligations of manufacturers

6.—(1) Unless the Comptroller otherwise directs, a manufacturer shall, when taking delivery of any machinery, equipment or parts thereof or any materials in respect of which he claims a rebate of import duty, make a written declaration, in a form approved by the Comptroller, stating that those materials are not to be used except in the manufacture of goods of the kind specified in the relevant rebate certificate.

(2) A manufacturer shall not store or use any machinery, equipment or parts thereof or any materials referred to in sub-regulation (1) except—

- (a) at the premises specified in the relevant rebate certificate ; or
- (b) at other premises approved by the Comptroller for the purpose.

(3) Except with the Comptroller's written permission and in accordance with any conditions the Comptroller imposes, a manufacturer shall not—

- (a) use any machinery, equipment or parts thereof or any materials in respect of which he has obtained a rebate of import duty except in the manufacture of goods of the kind specified in the relevant rebate certificate ; or
 - (b) sell or otherwise dispose of that machinery, equipment or parts thereof or materials or remove them from the premises referred to in. subregulation (2) before they have been used in the manufacture of goods of the kind specified in the relevant rebate certificate.
- (4) A manufacturer shall, if required to do so by the Comptroller—
- (a) keep at the premises referred to in sub-regulation (2) accurate records and accounts showing full particulars of all receipts and disposals of materials in respect of which the manufacturer has obtained a rebate of excise duty in a manner that will allow the materials to be readily accounted for to the satisfaction of an officer ; and
 - (b) carry out, under an officer's supervision, at times directed by the Comptroller, any manufacturing operation involving the use of those materials.
- (5) A manufacturer shall ensure that—
- (a) records and accounts required to be kept by him under sub-regulation (4) shall be available for inspection by an officer at all reasonable times ; and
 - (b) the premises referred to in sub-regulation (2) are open for inspection by an officer at all reasonable times.

Offences

7.—(1) A manufacturer is guilty of an offence if he—

- (a) fails to comply with a notice served on him under sub-regulation 5(3) (6) contravenes a provision of regulation 6 ; or (c) fails to comply with a condition specified in a rebate certificate and is liable to a fine not exceeding \$10,000.00.

(Substituted by Legal Notice No.2 of 2010 r.7)

(2) Goods forming the subject matter of an offence under sub-regulation (1) are liable to be forfeited.

Revocation

- 8.—(1) The Customs Tariff (Industrial Concessions) Regulations 1970 are revoked.
(2) The Customs Tariff (Industrial Rebates) Regulations 1968 are revoked.

Controlled by Ministry of Finance