



**NATIONAL PARLIAMENT OF SOLOMON ISLANDS
BILLS AND LEGISLATION COMMITTEE**

**Report on the Customs
Valuation Bill 2009**

NP-Paper No. 33/2009

Presented on 17 August 2009

National Parliament Office

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1 INTRODUCTION

The Bills and Legislation Committee (Committee) has completed its review of the Customs Valuation *Bill 2009* (“**Bill**”) introduced in the House during the current (10th) meeting of Parliament by the Minister for Finance and Treasury. The Bill was submitted to the Speaker through the Clerk to Parliament as required under the *Standing Orders*¹. The Speaker examined the Bill² and authorised it to be introduced in the current Parliament meeting.

The Bill was read the first time on Monday 10 August 2009 and read the Second time on Thursday 13 August during which the Second Reading debate was adjourned to Monday 17 August to allow the Committee to complete its report and give Members adequate time to review the report. On 13 August 2009, the Bills and Legislation Committee considered the Bill and heard evidence from a range of stakeholders. The Committee met again on Monday 17 August before the House Sat and following its deliberations the Committee makes this report to Parliament, with recommendations, for the information of Members and for Parliament’s consideration.

Terms of Reference

Pursuant to its mandate under the *Standing Orders*, the terms of reference of the Committee in this instance is to examine the Bill and to report its observations and recommendations on the Bill to Parliament.

Functions of the Committee

The Bills and Legislation Committee is established under *Standing Order 71*, an Order made pursuant to the *Constitution*³, and under that Order has the functions, together with the necessary powers to discharge such, to:

- (a) examine such matters as may be referred to it by Parliament or the Government;
- (b) review all draft legislation prepared for introduction into Parliament;

¹ *Standing Order 44* (1).

² As required by *Standing Order 45* (1).

³ Section 62, *Constitution of Solomon Islands 1978*.

- (c) examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- (d) monitor all motions adopted by Parliament which require legislative action;
- (e) review current or proposed legislative measures to the extent it deems necessary;
- (f) examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
- (g) make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

Membership

The current members of the Bills and Legislation Committee (9th Parliament) are:

Hon. Severino Nuaiasi, MP (Chair)

Hon. Manasseh Sogavare, MP

Hon. Siriako Usa, MP

Hon. Isaac Inoke Tosika, MP

Hon. Augustine Taneko, MP

Hon. Nelson Ne'e, MP

Hon. Japhet Waipora, MP

2 POLICY BACKGROUND

Purpose of the Bill

The Customs Valuation *Bill 2009* seeks to:

“Institute a method of customs valuation that is consistent with international obligations to which Solomon Islands is a party. The Bill will also reform and modernize a number of customs offences which have recently been shown to be inadequate to operate as a significant deterrent to people committing Customs offences such as smuggling goods into Solomon Islands”.

Background

Customs valuation

Customs valuation is a customs procedure applied to determine the customs value of imported goods. If the rate of duty is ad valorem, the customs value is essential to determine the duty to be paid on an imported good. Under an ad valorem system, the customs valuation is multiplied by an ad valorem rate of duty (e.g. 5 per cent) in order to arrive at the amount of duty payable on an imported item.

Thus the ability to value goods traded internationally is an essential function in the assessment of duties and taxes payable.

The Agreement to Implement Article VII of the World Trade Organisation General Agreement on Tariffs and Trade (GATT) is used worldwide as a model for Customs organisations to value and assess goods. The Agreement is designed to –

- provides a neutral, fair and precise system of customs valuation which eliminates uncertainty and arbitrariness; and
- facilitates customs clearance operations; and
- minimise disputes between the importer and the Customs Administration; and
- create a climate of confidence.

Adopting legislation based on the GATT model will have direct and immediate positive effects on revenue collection, assist in the investigation of undervaluation offences,

contribute to regional harmonisation in acceptance of the GATT Valuation Code and will support ongoing reform efforts.

Article VII of the GATT stipulates that the value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values. The current valuation provisions in the Customs and Excise Act provide little scope for Customs to challenge the values that are notified by the importer. In addition, the current valuation method is not in line with GATT valuation requirements.

Consequently there is currently a potential for significant loss of revenue. The Bill stipulates that customs valuation shall, except in specified circumstances, be based on the actual price of the goods to be valued, which is generally shown on the invoice. This price, plus adjustments for certain listed elements equals the transaction value, which will constitute the first and most important method of valuation. For cases in which there is no transaction value, or where the transaction value is not acceptable as the customs value because the price has been distorted as a result of certain conditions, the legislation will lay down five other methods of customs valuation to be applied in a prescribed order.

These methods of customs valuation are –

- Method 2: transaction value of identical goods
- Method 3: transaction value of similar goods
- Method 4: deductive method
- Method 5: computed method
- Method 6: fall-back method

Customs offences

The penalty regime in the Customs and Excise Act has not been revised for a considerable time and recent examples have shown that the levels of penalty in the Act are inadequate to act as a significant deterrent to Customs offences. This Bill will introduce a range of customs offences with realistic significant that will operate outside the Customs and Excise Act.

The Bill imposes significant penalties for customs offences created under the Bill. There are greater penalties for corporations and for second and subsequent offences. The range of penalties under the Bill are –

- in the case of a natural person:

- (i) for a first offence, to a fine not exceeding 50,000 penalty units or to a term of imprisonment not exceeding 5 years, or both; and

- (ii) for a second or subsequent offence, to a fine not exceeding 100,000 penalty units or to a term of imprisonment not exceeding 10 years, or both; and

- in the case of a company or other entity:

- (i) for a first offence, to a fine not exceeding 500,000 penalty units; and

- (ii) for a second or subsequent offence, to a fine not exceeding 1,000,000 penalty units.

For a range offences, in addition to the above penalties there is also the penalty of a fine not exceeding treble the value of the relevant goods.

3 REVIEW OF THE BILL

In its review of the Bill, the Committee considered secondary materials and also heard from certain key witnesses.

Secondary Material

In order to review the Bill in its proper context, the Committee received briefings from the Committee Secretariat on the General Agreement on Trade and Tariffs. The Committee also received briefings on customs valuation and issues relating to tariffs.

Public Hearing

The Committee held a public hearing on Thursday 13 August 2009, with the view to hear from relevant officials of the Ministry and key stakeholders. The following witnesses appeared before the Committee at the hearings:

- Permanent Secretary, Ministry of Finance and Treasury
- Legal Draftsman, Attorney General's Chamber;
- Comptroller of Customs & Excise, Ministry of Finance and Treasury;
- President , Solomon Islands Chinese Association
- Technical Director of Small and Medium Enterprises Council ;
- Director Corporate, BJS Agencies Ltd.

A complete list of witnesses who appeared at the hearing is annexed as **Appendix 2**.

4 ISSUES ARISING

From its preliminary research and evidence gathered at the hearing, the Committee identified a number of issues arising from its review of the Customs Valuation Bill 2009. These are considered in this Chapter, together with responses from witnesses and, where necessary, recommendations of the Committee on a specific issue.

Consultation on the Bill

The Committee questioned the Permanent Secretary of the Ministry of Finance regarding the level of consultation involved in the development of the Bill. The Committee would like to see active public involvement in law making processes, as a matter of accountability, transparency, openness and public information and awareness on legislations. According to the Permanent Secretary, consultations were limited to the Ministry of Finance, Ministry of Justice and Legal Affairs, and the Ministry of Police and National Security, the Attorney General's Chambers, Law Reform Commission, Foreign Affairs, , as well as immigration. Major importers, Business houses, and the Public have not been consulted on the issue.

In presenting his statement, Mr Quan, the managing director of QQQ and president of the SI Chinese Association argued that the Bill failed to address existing problematic processes in Customs and Excise Division (*Issues raised will be discussed in detail later in this report*). Evidently, the issue arise as a result of lack of consultations with importers—the class of people directly involved in importation. Had consultations been extended to these important stakeholders, the Bill could perhaps contain some inputs from the business communities.

Obligation to international trade agreements

Solomon Islands became a member of World Trade Organisation (WTO) in 1996 and as a member it is obligated to follow the General Agreement on Trade and Tariffs (GATT) which seeks to harmonise trade between member countries.

More specifically, the Committee notes that one of the driving forces behind the bill is that Solomon islands under an obligation to implement the WTOGATT valuation. And within that scope that is one of also the reasons why Solomon Islands is also moving into this new valuation process.

Further the committee was informed that the GATT valuation system was introduced to member countries because it provides for Customs officers a better way to understand the

values that Customs place on items. The GAT Valuation Agreement will provide steps and procedures which Customs officers can apply when valuing transactions as well it is also about bringing the standard to international standards.

The Committee is concerned that legislations related to such agreements although the positive reforms need to be considered in a broader economical and social context. Solomon Islands as member of WTO has a very small economy and there its needs and interests should be at the heart of any trade agreement. Solomon Islands is facing a rapidly changing international environment therefore the Committee is of the view that the process of reform and liberalisation of trade should promote growth, development and employment. Small economies face specific challenges in their participation in world trade hence current reforms should also address present obstacle to trade and not only focus on revenue collection but also sustainably development.

Storage charges and delayed customs clearance

The Committee heard that certain witness had several reservations with the implementation of the Bill. One particular issue was the storage charges incurred by local business due to time taken for customs to assess goods which have entered the country.

Local importers are pleased with the governments' current reforms and support the intentions of the bill; however they would also like the government to address current procedure which causes delays in customs clearance. It was stated that customs seem to take a while to once the entries are made into customs it takes a several days for the entry to come back. As a result of the delays fees are paid to Ports because of storage. The current system somehow takes too long to get those goods cleared and therefore importer fear that the new valuation process may.

The Ministry assured the Committee that the implementation of this bill will not add any pressure nor change the processing time for customs entries. Since the adoption of the PC Trade System, processing time has significantly reduced from 4 days to a day, the Ministry will ensure that the processing time of entries meets the obligation the ports authority as well as customs on the number of days, grace period that goods can remain at the wharf before port charges will be added.

The ministry further assured the Committee that training and public awareness will be done to ensure that all stakeholders understand all processes and how the bill will be implemented but at the same time importers may expect delays especially during the early

stages of implementation. The Committee strongly believes in consultation and would like to encourage all stakeholders and responsible bodies to co operate and be open to feedback and review.

Customs valuation and its effects on prices of goods

One of the issues raised by the Committee was affordability of consumable goods. The committee sought clarification on the effect of the customs valuation on the prices of consumable goods. The current practice is, customs impose a customs value on all imported goods. For Solomon Islands, the customs value is determined based on the Cost Insurance Freight (CIF) process. Importers pay the required customs value in customs clearance processes and remove these goods to be sold at higher price to cover the incurred cost.

Due to the location of the Solomon Islands, goods imported into the country bears high freight cost, which affects the selling prices of goods. According to the Technical Advisor to Customs Mr David Saldler;

“Freight cost is all going to be a problem for Solomon Islands because of the location. The current legislation we charge duty on the freight cost involved with the unit value of the goods. And new legislation would be the same as well, but the new legislation, what it is going to do is create a level playing field for all importers”

Protection of local industries

Another area of concern which the Committee noted was in relation to the protection of local industries. The Committee strongly urges the Ministry to ensure that the concerns raised by the important stakeholders are taken into consideration so that once the Bill is implemented it will not adversely affect their operations.

In response the Ministry stated that local industries are currently protected, for instance local importers are given an import rate that is imposed on the tariff on manufactured goods which is equivalent in Solomon Islands. There is also under the Customs Act an exemption given to importers of raw materials. There are essentially certain measures and incentives in place that protects local importers as well as the industry as a whole.

Despite this the Committee strongly believes that protection of local industries should not only be measure in terms of statues, rather protection of local importers should also be reflected in the level of scrutiny, frequency of consultations and the ministries capacity to

administer customs and excise procedures. The Committee would like to see a more holistic focus as well as a review of the current tax rates, this may solve the issue of undervalued goods and provide a tax system which is fairer on business and protect the interests of both the Ministry and Local importers. The Committee is of the view that more consultations should be carried and less imposing of laws which may have adverse effects on local industries if not properly implemented.

Capacity building

Solomon Islands as a member of the World Trade Organisation, has commitments to meet its international trade obligations. The Committee raised concerns about the resources needed meet international standards as well as efficiency in delivering Customs services locally. It was expressed by the Customs Comptroller Mr Nathan Kama, that officers in the Customs Division will undertake training and capacity development program, before implementation of the Bill. The Comptroller was quoted as saying;

“Before this Bill is actually implemented there will be range of trainings both for customs and also exporting community and the requirement and the process of these individual sections will be covered so clarity will be part of the training before the implementation of the Bill”

What, however, is not clear to the Committee is, who is going to provide the needed resources, fund the trainings and on what cost? Is there any form of assistance from the international body that required Solomon Islands to adopt its program in the country? If the bill is passed how long would it take to implement? These were some of the issues the committee would like to know.

Under valuation of imported goods

A number of Importers have been found to have undervalued their imported goods according to the Customs Comptroller. The rates used in determining the customs value of imported goods are 5% or 10% of the transaction value, depending on the type of goods. Some importers by falsifying documents have undervalued their goods in an attempt to dodge paying due customs duty. Such illegal practices result in loss of government revenues.

In a case where goods had been undervalued by the importer, the comptroller had to find means to uplift the value to a realistic level. Customs and excise has no existing legislation that spells out proper valuation method that works in harmony with international customs practices. The bill sought to address this issue. It provides guidelines procedures on customs

valuation methods, as well as defining maximum penalty units for people who make false declaration on the transaction value of their imported goods. The Customs Comptroller in presenting his evidence was quoted as follows;

“Currently there is only one method of valuation under the Customs Act which is the current domestic value of the exporting country, or the selling prices to the purchaser whichever is higher of the two becomes the Customs value. So that is basically how Customs value goods, currently. When there are imports right now, and Customs has reasonable grounds to believe that the value is understated there is also some powers there for Customs to uplift that value. But that is the only extend to which customs can do and that can be unfair in some ways. But this bill gives a range of steps within which customs can actually and both the customs and the importer can actually come up with the true value transaction value of the goods which would be fairer both to the importer and to the government”

5 RECOMMENDATIONS

The Committee has reviewed the Bill and recommends that the government monitor matters raised in this report, in terms of assessing its implementation and effectiveness in achieving its important objectives, and report to Parliament 12 months after the commencement of the Act, and in particular recommends:

1. That there be proper consultation on the Bill between the relevant Ministry and the relevant departments involved in the administration of this Bill;
2. That there be departmental coordination and collective administrative approach to Customs Valuation regulation within Solomon Islands to develop stronger monitoring capacity in the country and,
3. That the procedures under the Bill be developed and regulated quickly and appropriate training of officers occurs if possible before the legislation commences;



Hon. Severino Nuaiasi

Chairman

Bills and Legislation Committee

Monday, 17 August 2009

APPENDIX 1: MINUTES



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Deliberative Proceedings

Monday 10 August 2009

Conference Room 2, Parliament House, 11:15 am

Members Present

Hon. Severino Nuaiasi, MP (Chair)
Hon. Manasseh Sogavare, MP
Hon. Augustine Taneko, MP
Hon. Isaac Inoke Tosika, MP
Hon. Japheth Waipora, MP

Apology

Hon. Nelson Ne'e, MP
Hon. Siriako Usa, MP

Secretariat:

Mr. Ian Rakafia, Committee Secretariat
Mr. David Kusilifu, Committee Secretariat

1. Opening Prayer / Welcome

The Chair said the opening prayer.

The Chair welcomed Committee members and Secretariat

2. Brief on objects and rationale into Customs Valuation Bill 2009

The Committee Secretariat briefed committee on objects and rationale of the Customs Valuation Bill 2009.

3. Deliberation

The Committee deliberated and resolved that a public hearing into the Customs Valuation Bill 2009 be convened on Thursday 13 August 2009, after adjournment of Parliament.

4. Close

Hon. Taneko said the closing prayer.
Meeting ended 11:45am.



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings

Thursday 13 August 2009
Conference Room 2, Parliament House, 12:00pm

Members Present

Hon. Manasseh Sogavare, MP (Acting Chair)
Hon. Augustine Taneko, MP
Hon. Isaac Inoke Tosika, MP
Hon. Japheth Waipora, MP
Hon. Nelson Ne'e, MP

Secretariat:

Mr. Ian Rakafia, Committee Secretariat

Witnesses:

Mr. Shadrach Fanega, Committee Secretariat
Mr. Nathan Kama, Comptroller, Customs & Excise
Mr. Matthew Quan, President, Solomon Is. Chinese Association
Mr. Leliana Firisua, Technical Director, Small & Medium Enterprises of SI
Mr. Juan Porras, Director Corporate, BJS Agencies Ltd

1. Deliberation on Issues and Questions for the Public Hearing

The Chair and Members thanked the Secretariat for the preparatory work for the Public Hearing.

The Committee Secretariat briefed the Committee.

2. Hearing into the Customs Valuation Bill 2009

The Chair welcomed the witnesses and made his opening statement.

The Chair opened the hearing and asked the witnesses to introduce themselves and make any opening statements.

The witnesses made their opening statements to their position on the Bill.

The Legal draftsman provided an overview of the Bill.

The Committee questioned the witnesses.

Evidence Concluded.

3. Close

The Chair thanked the witnesses for their attendance. Hon. Taneko closed the Committee's deliberations with a word of prayer.

Meeting closed at 2:00 pm.

Minutes of Proceedings Meeting No. 27

Monday 17 August 2009, Conference Room 2, Parliament House, 9:45am

Members Present

Hon. Severino Nuaiasi, (Chair) MP
Hon. Manasseh Sogavare, MP
Hon. Nelson Ne'e, MP
Hon. Japhet Waipora, MP

Apologies:

Hon. Isaac Inoke Tosika, MP
Hon. Augustine Taneko, MP
Hon. Siriako Usa, MP

Secretariat:

Mr. David Luta Kusilifu, Committee Secretariat
Mr. Stanley Hanu, Committee Secretariat (Legal)
Mr. Calvin Ziru, Committee Secretariat (Legal)
Mr. Ian Rakafia, Committee Secretariat

In attendance:

Ms. Taeasi Sanga, Clerk to Parliament
Ms. Florence Naesol, Deputy Clerk
Mr. Noel Matea, Committee Secretariat

1. Prayer

Hon. Waipora said the opening prayer.

2. Chair's welcome and opening Remarks

The Chair welcomed and thanked the members for their attendance, offered apologies on behalf of members who were unable to attend and delivered his opening remarks.

3. Chair's Report on the Criminal Procedure Code (Amendment) Bill 2009

The Chair tabled his draft report, which having been previously circulated, was taken as being read a first time.

According to Standing Order 72 (8) the Chair proposed the question 'That the Chair's report be read a second time page by page.' Question put and passed.

The Committee deliberated and sought advice and briefings on relevant matters from the Secretariat staff.

Consideration of the report concluded.

The Committee resolved on the motion of Honourable Née that the report be the report of the Committee to Parliament.

4. Chair's Report on the Customs Valuation Bill 2009

The Chair tabled his draft report, which having been previously circulated, was taken as being read a first time.

According to Standing Order 72 (8) the Chair proposed the question 'That the Chair's report be read a second time page by page.' Question put and passed.

The Committee deliberated and sought advice and briefings on relevant matters from the Secretariat staff.

Consideration of the report concluded.

The Committee resolved on the motion of the Chair that the report be the report of the Committee to Parliament.

5. Brief on the Telecommunications Bill 2009

The Committee Secretariat briefed committee on the hearing times and the stakeholders for the inquiry into the Telecommunications Bill 2009.

Committee deliberated.

6. Close

Mr. Kusilifu said the closing Prayer and the Meeting ended at 10:15am.

APPENDIX 2: WITNESSES

Witnesses who appeared before the Bills and Legislation Committee on 21 July 2009 were:

1. **Mr. Shadrach Fanega** , Permanent Secretary, Ministry of Finance and Treasury
2. **Mr. Rupeni Nawaqakuta**, Legal Draftsman, Attorney-General's Chamber.
3. **Mr. Nathan Kama**, Comptroller of Customs (Ag), Ministry of Finance and Treasury
4. **Mr. Matthew Quan**,, President, Solomon Islands Chinese Association
5. **Mr. Leliana Firisua, Technical Director**, Small & Medium Enterprises Council of Solomon Islands (SMEC)
6. **Mr. Juan Porras**, Director Corporate, BJS Agencies Ltd
7. **Ms. Christine Heiser**, Technical Advisor, Customs & Excise
8. **Mr. David Sadler**, Advisor, Customs & Excise