



CUSTOMS VALUATION BILL

(No. 19 of 2009)



CUSTOMS VALUATION BILL 2009

(NO. ... OF 2009)

A

BILL

Entitled

AN ACT TO PROVIDE FOR A PROCEDURE TO BE APPLIED TO DETERMINE THE CUSTOMS VALUE OF IMPORTED GOODS AND TO ESTABLISH A RANGE OF CUSTOMS OFFENCES AND RELATED MATTERS

ENACTED by the National Parliament of Solomon Islands.

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CUSTOMS VALUATION BILL 2009

PART 1 – PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Customs Valuation Act 2009.

(2) This Act commences on a date appointed by the Minister, by notice in the *Gazette*.

Interpretation

2. (1) In this Act, unless the context otherwise requires –

“computed value” in relation to imported goods has the meaning given by section 12;

“customs laws” means this Act, the Customs and Excise Act and any other Act relating to the customs or excise, and includes any subsidiary legislation made under such an Act;

“customs officer” means a person employed as a customs officer to perform duties and exercise powers under a customs law;

“customs value” in relation to imported goods has the meaning given by section 5(1);

“deductive value” in relation to imported goods has the meaning given by section 11;

“fall-back value” in relation to imported goods has the meaning given by section 13;

“family”, in relation to a natural person, means the husband or wife of that person, a relative of that person, and a relative of that person’s husband or wife;

“identical goods” in relation to imported goods has the meaning given by section 8;

“relative” means mother, father, child, brother, sister, or other ancestor or lineal descendant

and for the purposes of this definition, a legally or customarily adopted child is treated as a natural child by, or as a sibling to, the natural person;

“similar goods” in relation to imported goods has the meaning given by section 9;

“transaction value” in relation to imported goods has the meaning given by section 7;

(2) For the purposes of this Act, two persons are deemed to be related to each other if –

- (a) both being natural persons –
 - (i) they are members of the same family; or
 - (ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;
- (b) both being bodies corporate –
 - (i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate);
 - (ii) both of them together control, directly or indirectly, a third body corporate; or
 - (iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, five percent or more of the maximum number of votes that might be cast at a general meeting of each of them;
- (c) one of them, being a body corporate, is, directly or indirectly, controlled

by the other (whether or not a body corporate);

- (d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or
- (e) they are members of the same partnership.

(3) A person, whether or not a body corporate, is taken to control another body corporate for the purposes of subsection (2) if that person has the capacity to impose any restraint or restrictions upon, or to exercise any direction over, that other body corporate.

(4) Unless the contrary intention appears, any word or phrase used in this Act and not defined in this Act and used in the Customs and Excise Act (Cap. 121) has the same meaning in this Act as in the Customs and Excise Act (Cap. 121).

Objects

- 3.** (1) The objects of this Act are –
- (a) to set out a mechanism consistent with Article VII of The World Trade Organisation General Agreement on Tariffs and Trade to determine the value of imported goods for the purposes of imposing import duty; and
 - (b) to establish a range of Customs offences that will operate as a substitute to bringing proceedings under the Customs and Excise Act (Cap. 121) in respect of serious breaches.
- (2) In interpreting this Act, a construction that promotes the objects of this Act under subsection (1) is preferred to a construction that does not promote those objects.

4. This Act binds the Crown.

Act binds Crown

PART 2 – CUSTOMS VALUE OF IMPORTED GOODS

5. (1) In a customs law the value of imported goods for the purposes of imposing import duty is the customs value of those goods and the Comptroller shall determine that customs value in accordance with this Act.

Customs value of
imported goods

(2) Where the Comptroller can determine the transaction value of imported goods, the customs value of those goods is the transaction value of those goods.

(3) Where the Comptroller cannot determine the transaction value of imported goods, the customs value of those goods is determined in accordance with the following methods, applied in the order set out below –

- (a) the transaction value of identical goods as determined under section 8;
- (b) the transaction value of similar goods as determined under section 9;
- (c) the deductive value of the goods determined under section 11; or
- (d) the computed value of the goods determined under section 12.

(4) An importer may apply, in writing, to the Comptroller for the order of consideration of the methods in sections 11 and 12 to be reversed.

(5) An application under subsection (4) shall be made before the Comptroller commences to determine that customs value of the imported goods.

(6) If the customs value of imported goods cannot be determined using the valuation methods

described in subsection (3), the customs value is the fall-back value of those imported goods.

Inability to determine value of imported goods by reason of insufficient or unreliable information

6. (1) Where the Comptroller is not satisfied that there is sufficient reliable information available to the Comptroller to enable him or her to determine a value of imported goods in accordance with a particular provision of this Act, the Comptroller may determine in writing, that he or she is not so satisfied and the Comptroller is then taken to be unable to determine that first-mentioned value.

(2) Where under subsection (1) the Comptroller is taken to be unable to determine a customs value of imported goods, the importer shall produce further relevant documentation in order that the Comptroller is able to make such a determination of customs value.

Transaction value of imported goods

7. (1) The transaction value of imported goods is the price actually paid or payable for the goods at the time they are sold for export to Solomon Islands adjusted by the amounts specified in subsections (2) and (3).

(2) For the purposes of determining the transaction value of imported goods, the price actually paid or payable for the goods is increased by the sum of the following amounts paid or payable, directly or indirectly, by or on behalf of the purchaser in respect of the goods to the extent that the amount is not already included in the price

- (a) commission and brokerage in relation to the imported goods other than fees paid or payable by the buyer to the buyer's agent for the service of representing the buyer overseas in respect of the purchase of the goods;
- (b) packing costs, including labour and material costs;
- (c) the cost of containers that are treated as being as one with the imported goods;

- (d) royalties and licence fees, including payments for patents, trademarks, and copyrights in respect of the imported goods that the buyer shall pay, directly or indirectly, as a condition of the sale of the goods for export to Solomon Islands, other than for the right to reproduce the goods in Solomon Islands;
- (e) the cost of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses associated with the transportation of, the imported goods until the goods have left the country of export if such costs, charges, and expenses are paid or payable by the buyer, directly or indirectly, to or for the benefit of the seller as a condition of the transaction;
- (f) 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;
- (g) the costs or charges related to the purchase of the finance for the imported goods; and
- (h) the value of any of the following goods and services supplied, directly or indirectly, by the purchaser 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 goods in a reasonable manner and in accordance with generally accepted accounting principles –
 - (i) materials, components, parts, and other goods incorporated

in the production of the imported goods;

- (ii) tools, dies, moulds, and other goods utilised in the production of the imported goods;
- (iii) materials consumed in the production of the imported goods; and
- (iv) engineering work, development work, art work, or design work, plans or sketches undertaken outside Solomon Islands and necessary for the production of the goods.

(3) For the purposes of determining the transaction value of imported goods, the price actually paid or payable for the imported goods is decreased by the sum of the following amounts to the extent that the amount is otherwise included in the price paid or payable for the goods and separately identified in the price –

- (a) expenditure incurred in the construction, erection, assembling or maintenance of, or technical assistance provided in respect of the goods after importation;
- (b) the cost of transportation (including loading, unloading, handling and other expenses associated with transportation) of the goods after importation, and the cost of any insurance relating to such transportation;
- (c) customs duties or other taxes payable in Solomon Islands by reason of the importation or sale of the goods; and

- (d) the costs or charges related to the purchase of the finance for the imported goods and paid or payable to the supplier.

8. (1) For the purposes of this Act, “identical goods”, in relation to imported goods, means goods that the Comptroller is satisfied –

Transaction value
of identical goods

- (a) are the same in all material respects, including physical characteristics, quality and reputation, as the imported goods;
- (b) were produced in the same country as the imported goods; and
- (c) were produced by or on behalf of the producer of the imported goods,

but not being goods in relation to which –

- (aa) art work, design work, development work, engineering work undertaken, or substantially undertaken, in Solomon Islands; or
- (bb) models, plans or sketches prepared, or substantially prepared, in Solomon Islands,

was or were supplied directly or indirectly by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production.

(2) Where the Comptroller after reasonable inquiry is not aware of any goods that may be treated under subsection (1) as identical goods in relation to the goods to be valued, the Comptroller may disregard the requirement in paragraph (1)(c) for the purpose of treating goods as identical goods in relation to the imported goods.

(3) If the customs value of imported goods cannot be determined under section 7, the customs value of those goods is the transaction value of identical goods in respect of a sale of those goods for export to Solomon Islands if –

- (a) the transaction value of the identical goods is the customs value of those goods; and
- (b) the identical goods were exported to Solomon Islands at the same or substantially the same time as the imported goods being valued and were sold to a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and in the same or substantially the same quantities as the goods being valued.

(4) Where the Customs value of imported goods cannot be determined under subsection (3) because identical goods were not sold under the conditions described in paragraph (3)(b), the customs value of those goods may be determined by reference to the transaction value of identical goods in respect of a sale of those goods for export to Solomon Islands if the identical goods were sold under any of the following conditions –

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

(5) For the purposes of determining the customs value of imported goods under this

section, the transaction value of identical goods is adjusted to take account of –

- (a) commercially significant differences in the cost of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses associated with the transportation of, the identical goods until the goods have left the country of export and those costs, charges and expenses in respect of the imported goods being valued that are attributable to differences in distances and modes of transport; and
- (b) where subsection (4) applies, differences in the trade levels of the 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.

(6) If there is insufficient information to determine an amount under subsection (5), the customs value of the imported goods cannot be determined under this section.

(7) 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 this section, the customs value of the imported goods shall be determined on the basis of the lowest of those transactions values.

9. (1) For the purposes of this Act, “similar goods”, in relation to imported goods, means goods that the Comptroller is satisfied –

- (a) closely resemble the imported goods in respect of component materials and parts and in respect of physical characteristics;

Transaction value
of similar goods

- (b) are functionally and commercially interchangeable with the imported goods having regard to the quality and reputation (including any relevant trade marks) of each lot of goods;
- (c) were produced in the same country as the imported goods; and
- (d) were produced by or on behalf of the producer of the imported goods,

but not being goods in relation to which –

- (aa) art work, design work, development work or engineering work undertaken, or substantially undertaken, in Solomon Islands; or
- (bb) models, plans or sketches prepared, or substantially prepared, in Solomon Islands,

was or were supplied directly or indirectly by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production.

(2) Where the customs value of imported goods cannot be determined under section 7 or 8, the customs value of those goods is the transaction value of similar goods in respect of a sale of those goods for export to Solomon Islands if –

- (a) the transaction value of the similar goods is the customs value of those goods; and
- (b) the similar goods were exported to Solomon Islands at the same or substantially the same time as the imported goods being valued and were sold to a buyer at the same or substantially the same trade level as the buyer of the goods being valued, and in the same or substantially the same quantities as the goods being valued.

(3) Subsections 8(4) to (7) apply to this section as if every reference in those subsections to “identical goods” is a reference to “similar goods”.

10. (1) The transaction value of imported goods will not determine the customs value of imported goods if the following circumstances apply –

Transaction value
not to apply

- (a) there are restrictions on the disposition of the imported goods other than –
 - (i) restrictions imposed or required by, or by any public officer or authority acting in accordance with, a law in force in Solomon Islands;
 - (ii) restrictions that limit the geographical in which the goods may be resold; or
 - (iii) restrictions that do not substantially affect the value of the imported goods;
- (b) the sale of the imported goods is subject to some condition or consideration in respect of which a value cannot be determined;
- (c) part of the proceeds of any disposal, use or resale of the goods by the purchaser accrues, directly or indirectly, to the vendor, unless an appropriate adjustment can be made; or
- (d) the buyer and seller of the goods are related at the time the goods are sold for export except in the situation –
 - (i) where the Comptroller is satisfied that the relationship did not influence the price paid or payable for the goods; or

- (ii) where the importer demonstrates to the satisfaction of the Comptroller that the transaction value of the goods closely approximates the transaction value, deductive value, or computed value of identical or similar goods sold at comparable trade and quantity levels to unrelated buyers in Solomon Islands at or about the same time as the goods to be valued.

(2) In a sale between related persons, for the purposes of showing that the relationship did not influence the transaction value, the importer shall produce such evidence or information as is prescribed or which the Comptroller otherwise requests.

Deductive value

11. (1) Subject to section 5, if the customs value of imported goods cannot be determined under section 7, 8 or 9, the customs value of the imported goods is the deductive value of the goods.

(2) Subject to subsection (3), where the imported goods being valued or identical goods or similar goods are sold in Solomon Islands in the condition in which they were imported at or about the time of importation, the deductive value of the goods being valued is the price per unit of the imported goods, or identical or similar goods as the case may be, at which the greatest number of the goods are sold, reduced on a per unit basis by the amounts specified in subsection (4).

(3) Subsection (2) will only apply if the Comptroller is satisfied –

- (a) that the purchaser is not related to the importer; and
- (b) that, in relation to the imported goods to be valued, the purchaser did not supply free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods, the

goods, material and services referred to in section 7(2)(h).

(4) For the purposes of subsection (2), the value of the imported goods to be valued is reduced on a per unit basis by –

- (a) the amount of any commission;
- (b) an amount for profit and general expenses, including all costs of marketing the goods based on sales in Solomon Islands of goods of the same class or kind as the goods sold;
- (c) reasonable costs, charges, and expenses that are incurred in respect of the transportation and insurance of the goods within Solomon Islands, to the extent that those costs and charges have not already been deducted under paragraph (b); and
- (d) customs duties or other taxes payable in Solomon Islands by reason of the importation or sale of the goods.

(5) If the imported goods being valued or identical goods or similar goods are not sold in Solomon Islands at or about the time of importation but are sold in the condition in which they were imported within ninety days after the time of importation and subsection (3) is satisfied, the deductive value is determined by reference to the later sale.

(6) Subject to subsection (7), if the imported goods being valued or identical goods or similar goods are not sold in the condition in which they were imported in Solomon Islands at or about the time of importation or within ninety days after the time of importation but –

- (a) the goods, after being assembled, packaged, or further processed, are

sold within ninety days after the time of importation; and

(b) subsection (3) is satisfied,

the deductive value of the imported goods may be determined at the request of the importer by reference to that sale after reduction on a per unit basis for the value added attributable to the assembly, packaging or further processing of the goods in Solomon Islands.

(7) Subsection (6) will not apply if the Comptroller has insufficient information to determine the amount of the value added attributable to the assembly, packaging or further processing of the goods in Solomon Islands.

Computed value

12. (1) If the customs value of imported goods cannot be determined under section 7, 8, 9 or 11, the customs value of the imported goods is the computed value of the goods.

(2) The computed value of imported goods is such part of the sum of the following amounts as the Comptroller considers should be apportioned to the production of those goods –

- (a) the cost or value of materials used in producing the goods;
- (b) the cost of manufacture or processing to produce the goods;
- (c) the cost of containers that are treated as being as one with the imported goods;
- (d) the cost of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses associated with the transportation of, the imported goods until the goods have left the country of export if such costs, charges, and expenses are paid or payable by the buyer, directly or indirectly, to or

for the benefit of the seller as a condition of the transaction;

- (e) 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;
- (f) the value of any goods, material and services referred to in section 7(2)(h); or
- (g) an amount for profit and general expenses equal to that generally applicable in sales of goods of the same class or kind as the imported goods, which are made by producers in the country of exportation and are the exporter's goods.

13. The fall-back value of imported goods is the value that the Comptroller determines having regard to the other methods of valuation under this Act in the order in which those methods would ordinarily be considered under section 5 and such other matters as the Comptroller considers relevant but not having regard to any of the following matters –

Fall-back value

- (a) the selling price in Solomon Islands of the goods produced in Solomon Islands;
- (b) any system that provides for the acceptance for valuation purposes of the higher of two alternative values;
- (c) the price of the goods on the domestic market of the country from which the imported goods were exported;
- (d) the cost of production of the goods, other than the computed value of identical goods or similar goods;
- (e) the price of the goods sold for export to a country other than Solomon Islands and not imported into Solomon Islands;

- (f) any system that provides for minimum values for Customs purposes; or
- (g) arbitrary or fictitious values.

Importer advised of method of determination

14. The Comptroller shall, upon written request, advise the importer, by notice in writing, of the method used to determine the customs value of imported goods.

Values of goods to be declared in the currency of Solomon Islands

15. (1) The customs value shall be expressed in a customs declaration in Solomon Islands currency.

(2) Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used is the rate published for the relevant country of export by the Central Bank of Solomon Islands as last notified before the goods were entered.

Review of determinations and other decisions

16. (1) At any time after the making of a determination or other decision under this Act in relation to imported goods, the Comptroller may review the determination or other decision and may –

- (a) affirm the determination or other decision;
- (b) vary the determination or other decision; or
- (c) revoke the determination or other decision and make any other determination or decision that is required to be made for the purpose of determining the customs value of the goods in accordance with this Act.

(2) Where, by reason that the Comptroller, under subsection (1), has varied or revoked a determination or other decision or has made a determination or other decision that is required to be made by reason of the revocation of a determination or other decision –

- (a) an amount of duty that was levied is less than the amount that should have been levied; or

- (b) an amount of duty that was refunded is greater than the amount that should have been refunded,

the amount of duty that is unpaid or the amount of refund that was overpaid is a debt due to Solomon Islands and is payable by the owner of the goods.

- (3) Where a customs value has been reviewed and a re-determination made under this section, the re-determined customs value is taken to be the correct customs value for the purposes of this Act.

PART 3 — CUSTOMS OFFENCES

17. A person who knowingly gives to any customs officer false information relating to the customs value or the tariff classification of imported goods commits an offence and is liable upon conviction –

False information

- (a) in the case of a natural person –
 - (i) for a first offence, to a fine not exceeding treble the value of the goods or 50,000 penalty units, whichever is the greater, or to a term of imprisonment not exceeding five years, or both; and
 - (ii) for a second or subsequent offence, to a fine not exceeding treble the value of the goods or 100,000 penalty units, whichever is the greater, or to a term of imprisonment not exceeding ten years, or both; and
- (b) in the case of a company or other entity –
 - (i) for a first offence, to a fine not exceeding treble the value of the goods or 500,000 penalty units whichever is the greater; and
 - (ii) for a second or subsequent offence, to a fine not exceeding treble the value of

the goods or 1,000,000 penalty units
whichever is the greater.

Obstruction of
customs officers

18. A person who intentionally obstructs a customs officer exercising powers under a customs law commits an offence and is liable upon conviction –

- (a) 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 five 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 ten years, or both; and
- (b) 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.

Smuggling

19. (1) A person who knowingly —

- (a) smuggles;
- (b) unlawfully conveys smuggled goods; or
- (c) has in his or her possession smuggled goods,

commits an offence and is liable upon conviction –

- (aa) in the case of a natural person –
 - (i) for a first offence, to a fine not exceeding treble the value of the goods or 50,000 penalty units, whichever is the greater, or to a term of

imprisonment not exceeding five years, or both; and

- (ii) for a second or subsequent offence, to a fine not exceeding treble the value of the goods or 100,000 penalty units, whichever is the greater, or to a term of imprisonment not exceeding ten years, or both; and

(bb) in the case of a company or other entity –

- (i) for a first offence, to a fine not exceeding treble the value of the goods or 500,000 penalty units whichever is the greater; and
- (ii) for a second or subsequent offence, to a fine not exceeding treble the value of the goods or 1,000,000 penalty units whichever is the greater.

(2) A person who knowingly offers for sale smuggled or unlawfully imported goods whether or not customs duty or excise tax was payable on those goods, commits an offence and is liable upon conviction –

(a) in the case of a natural person –

- (i) for a first offence, to a fine not exceeding treble the value of the goods or 50,000 penalty units, whichever is the greater, or to a term of imprisonment not exceeding five years, or both; and
- (ii) for a second or subsequent offence, to a fine not exceeding treble the value of the goods or 100,000 penalty

units, whichever is the greater, or to a term of imprisonment not exceeding ten years, or both; and

- (b) in the case of a company or other entity –
 - (i) for a first offence, to a fine not exceeding treble the value of the goods or 500,000 penalty units whichever is the greater; and
 - (ii) for a second or subsequent offence, to a fine not exceeding treble the value of the goods or 1,000,000 penalty units whichever is the greater.

(3) In this section, “smuggle” means the importation or exportation of goods with the intention to defraud the revenue.

Prohibited
imports or exports

20. (1) A person who imports or exports or causes to be imported or be exported prohibited goods commits an offence and is liable upon conviction –

- (a) in the case of a natural person –
 - (i) for a first offence, to a fine not exceeding treble the value of the goods or 50,000 penalty units, whichever is the greater, or to a term of imprisonment not exceeding five years, or both; and
 - (ii) for a second or subsequent offence, to a fine not exceeding treble the value of the goods or 100,000 penalty units, whichever is the greater, or to a term of imprisonment not exceeding ten years, or both; and

- (b) in the case of a company or other entity –
 - (i) for a first offence, to a fine not exceeding treble the value of the goods or 500,000 penalty units whichever is the greater; and
 - (ii) for a second or subsequent offence, to a fine not exceeding treble the value of the goods or 1,000,000 penalty units whichever is the greater.
- (2) A person who knowingly offers for sale prohibited goods commits an offence and is liable upon conviction –
- (a) in the case of a natural person –
 - (i) for a first offence, to a fine not exceeding treble the value of the goods or 50,000 penalty units, whichever is the greater, or to a term of imprisonment not exceeding five years, or both; and
 - (ii) for a second or subsequent offence, to a fine not exceeding treble the value of the goods or 100,000 penalty units, whichever is the greater, or to a term of imprisonment not exceeding ten years, or both; and
 - (b) in the case of a company or other entity –
 - (i) for a first offence, to a fine not exceeding treble the value of the goods or 500,000 penalty units whichever is the greater; and

- (ii) for a second or subsequent offence, to a fine not exceeding treble the value of the goods or 1,000,000 penalty units whichever is the greater.

(3) A person who receives goods knowing or believing them to be prohibited goods commits an offence and is liable upon conviction –

- (a) in the case of a natural person –

- (i) for a first offence, to a fine not exceeding treble the value of the goods or 50,000 penalty units, whichever is the greater, or to a term of imprisonment not exceeding five years, or both; and
- (ii) for a second or subsequent offence, to a fine not exceeding treble the value of the goods or 100,000 penalty units, whichever is the greater, or to a term of imprisonment not exceeding ten years, or both; and

- (b) in the case of a company or other entity –

- (i) for a first offence, to a fine not exceeding treble the value of the goods or 500,000 penalty units whichever is the greater; and
- (ii) for a second or subsequent offence, to a fine not exceeding treble the value of the goods or 1,000,000 penalty units whichever is the greater.

(4) In this section, “prohibited goods” means goods that under a customs law are prohibited or restricted to be imported or exported.

21. (1) A person involved in any unauthorised movement, alteration or interference with goods that are subject to customs control commits an offence and is liable upon conviction –

Unauthorised
movements

- (a) 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 five 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 ten years, or both; and
- (b) 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.

(2) For the purposes of this section, goods are subject to customs control if a customs law provides that those goods are under the control of customs until released in accordance with that customs law.

22. (1) A customs officer who unlawfully requests or accepts directly or indirectly any money, goods, or services –

Corruption

- (a) in exchange for that officer performing a customs services;

- (b) in exchange for the non-performance of that officer's official duties; or
- (c) otherwise in connection with the officer's official duties,

commits an offence and is liable upon conviction to a fine not exceeding 100,000 penalty units or to a term of imprisonment not exceeding ten years, or both.

(2) A person (including a public officer) who, directly or indirectly, provides money, goods, services to or induces or causes, a customs officer to commit an offence under subsection (1) commits an offence and is liable to the penalties set out in that subsection.

Offences under
more than one Act

23. Where an act or omission constitutes an offence under this Act and the Customs and Excise Act (Cap. 121), the offender is liable to be prosecuted and punished under either or any of those Acts, but is not liable to be punished twice for the same act or omission.

Alternative offences

24. (1) This section applies if, in a prosecution for an offence, a court is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of another offence (the alternative offence) under this Act or under the Customs and Excise Act (Cap. 121).

(2) The court may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Vicarious liability

25. A person is liable for an offence committed by an employee of the person acting in the course of the employee's employment, or by an agent of the person acting within the scope of the agent's authority, whether or not the employee or agent who actually committed the offence is identified or proceeded against in accordance with this Act.

PART 4 — MISCELLANEOUS

Authorisation

26. A customs officer who has been authorised by the Comptroller to do so may exercise the powers of the Comptroller under this Act.

Application **27.** This Act applies to goods imported into Solomon Islands after the commencement date.

- Regulations **28.** (1) The Minister may make regulations prescribing matters –
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), regulations may be made –
- (a) prescribing fines and penalties not exceeding 10,000 penalty units or imprisonment for a term not exceeding 12 months, or both, for offences against the regulations;
 - (b) prescribing information or material that shall be provided by an importer in respect of the valuation of imported goods;
 - (c) prescribing accounting principles or standards that shall be complied with in relation to information or material to be submitted to the Comptroller by an importer in respect of the valuation of imported goods; and
 - (d) within a reasonable time, of a savings or transitional nature consequent upon the amendments of the Customs and Excise Act (Cap. 121) made by this Act.

Consequential amendments **29.** The Customs and Excise Act (Cap. 121) is amended by repealing sections 13, 80 and 265.

CUSTOMS VALUATION BILL 2009

OBJECTS AND REASONS

The Bill 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.

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.

EXPLANATORY MEMORANDUM

Part 1 - Preliminary

Clause 1 - Provides for the short title and date of commencement of the Act. The Act will have a delayed commencement, coming into operation on a date specified by the Minister. Among other things this will allow the business community to be informed of the operation of the new valuation provisions.

Clause 2 - Sets out the objects of the Act and provides that an interpretation that promotes the objects of the Act is to be preferred to a construction that does not promote those objects. The objects of the Act are –

- to set out a mechanism consistent with Article VII of The World Trade

Organisation General Agreement on Tariffs and Trade to determine the value of imported goods for the purposes of imposing import duty; and

- to establish a range of Customs offences that will operate as a substitute to bringing proceedings under the Customs and Excise Act in respect of serious breaches.

Clause 3 - Provides that the Bill will bind the Government but that the Government cannot be prosecuted for an offence.

Clause 4 - Provides for the definition of particular terms used in the Bill. Of particular relevance are the rules for determining when 2 persons are deemed to be related to each other. This concept is important when working out customs value of imported goods under various methods set out in Part 2 of the Act.

This clause also provides that terms used in this Bill and defined in the Customs and Excise Act have the same meaning in this Bill as in the Customs and Excise Act.

Part 2 Customs value of imported goods

Clause 5 - Provides that for the purposes of imposing import duty under a customs law, the value of imported goods is the customs value of those goods and that value is determined by the Comptroller in accordance with this Bill. The clause sets out the methods for determining customs value.

Where the transaction value of imported goods can be determined, the customs value of those goods is that value. If the transaction value of imported goods cannot be determined, the Act sets various methods of determining customs value that are applied in the order set out in the section. That order is –

- the transaction value of identical goods;
- the transaction value of similar goods;
- the deductive value of the goods;
- the computed value of the goods,

However an importer may apply for the order of consideration of the deductive value and computed value methods to be reversed.

If the customs value cannot be determined using these methods, the customs value is the fall-back value of those imported goods determined under clause 13.

Clause 6 - The GATT valuation model provides that customs administrations have the right to satisfy themselves as to the truth or accuracy of any statement, document or declaration. This clause provides that the Comptroller may determine that he or she is not satisfied that there is sufficient reliable information available to enable a value of imported goods to be determined in accordance with a particular provision of this Act and the Comptroller is then taken to be unable to determine a value under that particular provision. Where the Comptroller is unable to determine a customs value of imported goods, the importer is required to produce further relevant documentation in order that the Comptroller is able to determine the customs value.

Clause 7 - Provides that the transaction value of imported goods is the price actually paid or payable for the goods at the time they are sold for export to Solomon Islands adjusted by specified amounts.

Subclause 7(2) provides that the price actually paid or payable for the goods is increased by a range of costs such as commission and brokerage in relation to the imported goods, packing costs, labour and material costs and royalties and licence fees that the importer shall pay as a condition of the sale of the goods for export to Solomon Islands.

Subclause 7(3) provides that the price actually paid or payable for the goods is decreased by a range of costs such as expenditure incurred in the construction of the goods after importation, the cost of transportation of the goods after importation, and the cost of any insurance relating to such transportation and customs duties or other taxes payable in Solomon Islands by reason of the importation or sale of the goods.

Clause 8 - If the transaction value of imported goods cannot be determined, the transaction value of identical goods is the customs value of those goods. Clause 8 provides the method of determining the transaction value of identical

goods. Subclause 8(1) provides that imported goods are identical goods if the goods are –

- the same in all respects including physical characteristics, quality, and reputation as the goods being valued;
- produced in the same country as the goods being valued; and
- produced by the producer of the goods being valued.

The definition excludes imported goods which incorporate engineering, artwork etc, provided by the buyer to the producer of goods free of charge or at a reduced cost, undertaken in Solomon Islands and for which no adjustment has been made.

For this method to be used, the goods shall be sold for export to the same country of importation as the goods being valued. The goods shall also be exported at or about the same time as the goods being valued. Where there are no identical goods produced by the same person in the country of production of the goods being valued, identical goods produced by a different person in the same country may be taken into account.

Subclause 8(5) provides that in determining the customs value of identical goods adjustments are made for factors such as commercially significant differences in the cost of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses associated with the transportation of, the identical goods until the goods have left the country of export. If there is insufficient information to determine this amount the customs value of the imported goods cannot be determined using this method.

Clause 9 - If the transaction value of imported goods and the transaction value of identical goods cannot be determined, the transaction value of similar goods is the customs value of those goods. Clause 9 provides the method of determining the transaction value of similar goods.

Similar goods are goods that –

- closely resemble the goods being valued in terms of component materials and characteristics;
- are capable of performing the same functions and are commercially interchangeable with the goods being valued;
- were produced in the same country as the imported good and produced by or on behalf of the producer of the imported goods.

The definition excludes imported goods which incorporate engineering, artwork etc, provided by the buyer to the producer of goods free of charge or at a reduced cost and undertaken in Solomon Islands and for which no adjustment has been made.

For this method to be used, the goods shall be sold to the same country of importation as the goods being valued and shall be exported at or about the same time as the goods being valued.

Clause 10 - This clause sets out the circumstances in which the transaction value of imported goods cannot be used. For example, the transaction value cannot be used if the sale or price is subject to conditions or considerations for which a value cannot be determined with respect to the goods being valued. Another example is where there are restrictions on the disposition or use of the goods by the buyer, other than restrictions which –

- are imposed or required by a law in Solomon Islands;
- are limited to the geographic area in which the goods may be resold;
- do not substantially affect the value of the goods

Another circumstance where the transaction value of imported goods cannot be used is where the buyer and seller of the goods are related at the time the goods are sold for export except where –

- the Comptroller is satisfied that the relationship did not influence the price paid or payable for the goods; or
- the importer demonstrates that the transaction value of the goods closely approximates the transaction value, deductive value, or computed value of identical or similar goods sold to unrelated buyers in Solomon Islands at or about the same time.

To satisfy himself or herself that the relationship did not influence the transaction value, the importer shall produce the evidence prescribed in the regulations or requested by the Comptroller.

Clause 11 - If the transaction value of imported goods, the transaction value of identical goods or the transaction value of similar goods cannot be determined, the deductive value of those goods is the customs value of those goods. However, subclause 5(4) provides that an importer may request that the order of consideration of the deductive method and the computed method be reversed.

Clause 11 provides the method of determining the deductive value of goods. Essentially this will be determined on the basis of the unit price at which the imported goods or identical or similar goods are sold to an unrelated buyer in the greatest aggregate quantity in Solomon Islands. The buyer and the seller shall not be related and the purchaser shall not have supplied specified goods, material and services at a reduced cost. In addition the sale shall take place at or about the time of importation of the goods being valued. Subclause 11(5) provides that if no sale took place at or about the time of importation, it is permitted to use sales up to 90 days after importation of the goods being valued.

Subclause 11(6) provides that in certain cases the deductive method can apply to goods that are repackaged or further processed in Solomon Islands after importation and then sold within 90 days. However, that will not apply if there is insufficient information to determine the amount of the value added attributable to the assembly, packaging or further processing of the goods in Solomon Islands.

Clause 12 - If the transaction value of imported goods, the transaction value of identical goods, the transaction value of similar goods or the deductive value cannot be determined, the computed value of those goods is the customs value of those goods.

This clause provides that the computed value of goods is essentially the cost of production of the goods being valued, plus an amount for profit and general expenses. This is set out in detail in subclause 12(2).

Clause 13 - If the customs value of imported goods cannot be determined using the other valuation methods in the Bill, the customs value is the fall-back value of those imported goods. Clause 13 provides that the fall-back value is the value that the Comptroller determines having regard to the other methods of valuation in the Bill and such other matters as the Comptroller considers relevant. However, the Comptroller cannot take into account a range of matters specified in subclause 13(2) such as arbitrary or fictitious values.

Clause 14 - Provides that the Comptroller shall, upon written request, advise the importer of the method used to determine the customs value of the imported goods.

Clause 15 - Provides that the customs value of imported goods shall be expressed in Solomon Islands currency at the exchange rate notified by the Central Bank of Solomon Islands at the time the goods were entered.

Clause 16 - Provides that the Comptroller may review a determination of customs value and affirm, vary or revoke the determination and make a fresh determination. Where duty has been paid in relation to imported goods that are the subject of a variation or revocation of a determination of customs value, an amount of duty that is unpaid or the amount of refund that was overpaid as a result of determination is payable to the Government. A re-determined customs value under this clause is taken to be the correct customs value for the purposes of this Bill.

Part 3 Customs Offences

Clause 17 - Creates the offence of knowingly giving to a customs officer false information relating to the customs value or the tariff classification of imported goods.

Clause 18 - Creates the offence of intentionally obstructing a customs officer exercising powers under a customs law.

Clause 19 - Creates the offences of –

- smuggling;
- conveying smuggled goods;
- knowingly having smuggled goods in your possession;
- knowingly offering for sale smuggled or unlawfully imported goods;

The term “smuggled goods” is defined as the importation or exportation of goods with the intention to defraud the revenue and includes the importation or exportation of prohibited goods.

Clause 20 - Creates the offences of

- importing or exporting or causing to be imported or exported prohibited goods;
- knowingly offering for sale prohibited goods;
- receiving goods knowing or believing them to be prohibited goods.

The term “prohibited goods” is defined to mean goods that under a customs law are prohibited or restricted to be imported or exported

Clause 21 - Creates the offence of unauthorised movement, alteration or interference with goods that are subject to customs control. The clause provides that goods are subject to customs control if a customs law provides that those goods are under the control of customs until released in accordance with that customs law.

Clause 22 - Creates the offence of a customs officer unlawfully requesting or accepting any money, goods, or services in the performance of that officer’s official duties.

Clause 23 - Provides that where an act or omission constitutes an offence under this Bill and the Customs and Excise Act, the offender is liable to be prosecuted and punished under either or any of those Acts, but is not liable to be punished twice for the same act or omission. Thus, a person will be able to be prosecuted under the Bill for an offence even though there is an identical or similar offence under the current Customs and Excise Act. Similarly, a person will still be able to be prosecuted under the current the Customs and Excise Act but will not be able to be punished twice for the same act or omission.

Clause 24 - Provides that if the Court is not satisfied that a defendant is guilty of an offence under the Bill, but is satisfied beyond reasonable doubt that the defendant is guilty of another offence under the Bill or under the Customs and Excise Act, the Court may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence.

Clause 25 - Provides that a person such as a company is liable for an offence committed by an employee or agent of the person whether or not the employee or agent who actually committed the offence is identified or proceeded against.

Part 4 — Miscellaneous

Clause 26 - Provides that the Comptroller can authorize customs officers to perform duties and exercise powers under the Bill.

Clause 27 - Provides that the Bill applies to goods imported into Solomon Islands after the day that the Act comes into operation.

Clause 28 - Gives the Minister the power to make regulations required or permitted to be prescribed or necessary or convenient to be prescribed. Of particular relevance is the power to make regulations –

- prescribing fines and penalties not exceeding 10,000 penalty units or imprisonment for a term not exceeding one year, or both, for offences against the regulations;
-

- of a savings or transitional nature consequent upon the amendments of the Customs and Excise Act made by this Act.
- *Clause 29* - Provides for amendments to be made to the Customs and Excise Act consequent to the setting up of a customs valuation system under this Act.

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MINISTER OF FINANCE AND TREASURY