

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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Special Distribution

Committee on Customs Valuation

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INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Addendum

Legislation of Malawi

The following communication has been received from Malawi.

Herewith, is a copy of Government Notice No. 7 of 1990 which is Malawi's legislation implementing Article VII of GATT.

The authorities in Malawi are urgently amending paragraphs 5(1)(g) and 5(3) which they are aware are not in line with the provisions of Article VII. These amendments principally describe destinations but refrain from itemizing countries. At the same time all other minor errors which appear in the text will also be corrected.

* English only/anglais seulement/inglés solamente.

The Malawi Gazette Supplement, dated 2 February 1990,
containing Regulations, Rules, etc. (No. 5A)

Government Notice No. 7

CUSTOMS AND EXCISE ACT
(Cap. 42:01)

CUSTOMS AND EXCISE (SCHEDULE TO THE ACT)(REPLACEMENT) ORDER, 1990

In exercise of the powers conferred by section 111 (3) of the Customs and Excise Act, I, Louis Joseph Chimango, Minister of Finance, make the following Order:

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|---|---------------------------------------|
| 1. This Order may be cited as the Customs and Excise (Schedule to the Act) (Replacement) Order, 1990. | Citation |
| 2. The Schedule to the Customs and Excise Act is revoked and replaced by the following new Schedule: | Replacement of Schedule to Cap. 42:01 |

SCHEDULE (s.111)

Value of Imported Goods

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| 1. For the purposes of this Schedule, unless the context otherwise requires: | Interpretation |
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"buying commission", in relation to imported goods, means any fee paid by an importer to his agent for representing him in the purchase of and the payment for the goods;

"goods of the same class or kind", in relation to imported goods means goods that are produced by a particular industry or industry sector in the country from which the imported goods were exported and falling within the same group or range of goods as the imported goods and includes identical and similar goods;

"identical goods", in relation to imported goods, means goods which:

(a) are the same in all respects, including physical characteristics, quality and reputation except for minor differences in appearance;

(b) were produced in the same country as the goods being valued whether by the same or a different person, but does not include imported goods, incorporating engineering, development work, artwork, design work, and plans and sketches undertaken in Malawi;

"price actually paid or payable", in relation to imported goods, means the total payment made or to be made, either directly or indirectly, by the buyer to or for the benefit of the seller of the goods, but does not include dividends or other payments made by the buyer to the seller which do not directly relate to the goods being valued;

"produce" includes grow, manufacture and mine;

"similar goods", in relation to imported goods, means goods which:

(a) although not alike in all respects to the imported goods, have with due regard to their quality and reputation and the existence of a trade mark, like component materials which enable them to perform the same functions and are commercially interchangeable; and

(b) were produced in the same country as the goods being valued whether by the same or a different person, but does not include imported goods incorporating engineering, development work, and plans and sketches undertaken in Malawi;

"transaction value" in respect of goods, means the value of goods determined in accordance with paragraph 4(1) of this Schedule.

Primary basis
of determining
value

2. (1) The value for duty on goods shall be determined on the basis of the transaction value of the goods in accordance with the conditions set out in paragraph 4(1) of this Schedule.

Subsidiary
basis of
determining

(2) Where the value for duty on goods cannot be determined in accordance with paragraph 4(1), it shall be determined on the basis of the provisions provided in paragraphs 6 to 10, considered in their strict hierarchical order, that can be determined in respect of the goods that can, under paragraphs 6 to 10, be the basis on which the value for duty on the goods is determined.

(3) Notwithstanding sub-paragraph (2) of this paragraph, the order of application of paragraphs 8 and 9 may be reversed at the written request of the importer with the consent of the Controller.

Declaration of
relationship

3. Every importer of goods which are not exempted by regulation shall, when making entry of the goods, declare in the prescribed form, whether or not he is related to the seller of the goods within the meaning of paragraph 4(2) of this Schedule.

Transaction
value method

4. (1) Subject to the provisions of this Schedule, the customs value of any imported goods shall be the transaction value, that is to say, the price actually paid or payable for the goods when sold for export to Malawi, adjusted in accordance with paragraph 5 of this Schedule, provided:

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:

(i) are imposed or required by law; or

(ii) limit the geographical area in which the goods may be sold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price paid or payable for the goods is not subject to some condition or consideration for which a value cannot be determined;

(c) no part of the proceeds of any disposal, use or subsequent resale of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in terms of paragraph 5 of this Schedule;

(d) the buyer and seller of the goods are not related to each other at the time the goods are sold for export to Malawi, or where the buyer and the seller are related:

(i) their relationship did not influence the price paid or payable for the goods; or

(ii) the buyer of the goods demonstrates that the transaction value of the goods meets the requirements set out in sub-paragraph (3)(b).

(2) For the purposes of sub-paragraph (1)(d):

(a) two persons shall be deemed to be related only if:

(i) they are officers or directors of one another's business;

(ii) they are legally recognized partners in business;

(iii) one is the employer of the other;

- (iv) any person directly or indirectly owns, controls or holds five per cent or more of the equity share capital of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are individuals connected by blood relationship, marriage or adoption;

(b) persons who are associated in business with one another in that one is a sole agent, sole distributor or sole concessionaire, however described of the other, shall be deemed to be related only if they are so deemed in terms of sub-paragraph (2)(a).

(3) Notwithstanding the provisions of sub-paragraph (1)(d), the fact that a buyer and a seller are related within the meaning of sub-paragraph (2)(a) shall not in itself be grounds for not accepting the transaction value if:

- (a) in the opinion of the Controller such relationship did not influence the price paid or payable; or
- (b) the importer proves to the satisfaction of the Controller that the transaction value closely approximates to one of the following values occurring at or about the same time:

- (i) the transaction value of identical or similar imported goods in sales between unrelated persons; or
- (ii) the customs value of identical or similar imported goods as determined under the provisions of paragraph 8; or
- (iii) the customs value of identical or similar imported goods as determined under the provisions of paragraph 9.

(4) In applying the provisions of sub-paragraph (3)(b) due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in paragraph 5 and costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

(5) The tests provided in sub-paragraph (3)(b) shall be used on the written request of the importer and for comparative purposes only.

5. (1) In determining the customs value of imported goods under the provisions of paragraph 4(1), there shall be added to the price actually paid or payable for the goods, the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable:

Adjustment of
price paid or
payable

(a) commissions and brokerage, except buying commission;

(b) the cost of containers which are treated as being, for customs purposes, one with the goods in question;

(c) the cost of packing whether for labour or materials;

(d) the value, apportioned to the imported goods as considered appropriate by the Controller, of any of the following goods and services if supplied directly or indirectly by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development work, artwork, design work, plans and sketches undertaken elsewhere than in Malawi and necessary for the production of the imported goods;

(e) royalties and licence fees in respect of the imported goods, including payments for patents, trade marks, copyright and for the right to distribute or resale the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods for export to Malawi to the extent that such fees, charges and expenses are not included in the price actually paid or payable, but excluding charges for the right to reproduce the goods in Malawi;

(f) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller; and

(g) the cost of freight, insurance and associated costs to the port or place of importation into Malawi, if such cost is not included in the price actually paid or payable for the goods being valued provided that where the goods to be valued are imported by means of transport owned by the importer or are transported free of charge or at a reduced cost, and there is no documentary evidence of the delivery costs from where the goods are loaded for export to Malawi, freight shall be deemed to be:

(i) five per centum of the free on board price or basic invoice price of the goods in the case of goods imported from Mozambique, Zambia and Zimbabwe;

(ii) seven and one half per centum of the free on board value or basic invoice price of the goods in the case of goods imported from anywhere else in Africa; and

(iii) ten per centum of the free on board price in the case of goods imported from outside Africa;

(h) all charges for postage and insurance which are reflected on or accompany the postal article in the case of goods imported by post.

(2) In determining the transaction value of imported goods in terms of paragraph 4(1), there shall be deducted the following costs, charges and expenses, to the extent that they are included in the price actually paid or payable and distinguishable from it:

(a) the cost of transport of the goods within Malawi;

(b) any duties and taxes paid or payable for the imported goods;

(c) any duties and taxes applicable in the country of exportation from which the goods have been or will be relieved by way of refund, drawback, rebate or remission;

(d) buying commission if distinguishable from the price actually paid or payable;

(e) interest charged in respect of the price payable for the goods;

(f) any expenditure incurred for the construction, erection, assembly or maintenance of, or technical assistance provided in respect of the goods after they are imported;

(g) any charge for the right to reproduce the imported goods in Malawi; and

(h) advertising and marketing costs, charges and expenses, incurred or to be incurred in Malawi by the importer in respect of the goods.

(3) In establishing the dutiable road freight there shall be deducted from the total road freight actually paid or payable for the transportation of the goods from the point of loading in the country of exportation to the point of destination in Malawi if the freight is distinguishable from the invoice value for the goods or invoiced separately an amount not exceeding:

(a) five per centum of the total freight actually paid or payable for goods consigned from Botswana, Lesotho, Republic of South Africa or Swaziland;

(b) fifteen per centum of the total road freight actually paid or payable for goods consigned from Mozambique, Zambia or Zimbabwe;

(c) thirty-six per centum of the total road freight actually paid or payable for goods consigned from Tanzania; and

(d) for goods consigned from any other country, other than those specified in sub-paragraphs (a) to (c), a rate as may be determined by the Controller.

6. (1) If the value for duty of the imported goods cannot be determined under the provisions of paragraph 4(1), the value for duty of the goods shall be the transaction value of identical goods in a sale for export to Malawi which were exported at or about the same time as the goods being valued, adjusted with reference to differences in any costs and charges referred to in paragraph 5(1), on account of differences in modes of transport, and were sold under the following conditions:

Transaction value of identical goods; first alternative method

(a) to buyer at the same commercial level as the buyer of the goods being valued; and

(b) in substantially the same quantities as the goods being valued.

(2) If the transaction value of the imported goods cannot be determined under sub-paragraph (1), the transaction value of identical goods sold at either a different commercial level or quantity, or at a different commercial level and quantity adjusted on account of such differences, shall be used to determine the transaction value.

Selection of
lowest
transaction
value

(3) Where, in the application of this paragraph, two or more transaction values are ascertained, the lowest of such values shall be the transaction value of the imported goods being valued.

(4) An importer who wishes any imported goods to be valued in terms of this paragraph shall produce to the proper officer either a copy of a previously accepted bill of entry of identical goods which were entered within three months of the date of the goods being valued, or sufficient information to enable the proper officer to trace such bill of entry.

Transaction
value of
similar goods:
second
alternative
method

7. (1) If the value for duty of imported goods cannot be determined under the provisions of paragraph 6(1), the value of duty of the imported goods shall be the transaction value of similar goods sold for export to Malawi which were exported at or about the same time as the goods being valued, adjusted with references to differences in any cost and charges referred to in paragraph 5(1) on account of differences in modes of transport, and were sold under the following conditions:

(a) to a buyer at the same commercial level as the buyer of the goods being valued; and

(b) in substantially the same quantities as the goods being valued.

(2) The provisions of sub-paragraphs (2) to (4) of paragraph 6 shall apply, mutatis mutandis, to the valuation of goods in terms of this paragraph as if reference in those sub-paragraphs to identical goods were references to similar goods.

Deductive
value: third
alternative
method

8. (1) If the value for duty of imported goods cannot be determined under the provisions of paragraph 7(1), the transaction value shall be based on the unit price at which the imported goods, or identical or similar imported goods are sold in Malawi in the greatest aggregate quantity in the same condition as imported, at or about the same time of importation of the goods being valued, by importers to persons not related to them, subject to deductions for the following:

(a) commission usually paid or agreed to be paid or the additions usually made for profit and general expenses including direct and indirect cost of marketing the goods in connection with sales in Malawi of imported goods of the same kind or class irrespective of the country of exportation;

(b) the usual costs of transportation and insurance and associated costs incurred from the port or place of importation into Malawi to the premises of the importer;

(c) any customs duties and other taxes paid or payable in Malawi by reason of the importation or sale of the goods within Malawi.

(2) If neither the imported goods nor identical or similar imported goods are sold in Malawi at or about the same time of importation of the goods being valued, the transaction value of the imported goods shall, subject to the provisions of sub-paragraph (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in Malawi in the same condition as imported at the earliest date after the importation of the goods being valued but before the expiration of ninety days after such importation.

(3) If neither the imported goods nor identical or similar imported goods are sold in Malawi at or about the same time of importation of the goods being valued, then if the importer so requests in writing, the customs value shall be based on the unit price at which the imported goods after further processing, are sold in the greatest aggregate quantity to persons in Malawi who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and deductions provided for in sub-paragraph (1).

(4) For the purposes of determining the unit price of any imported goods under the provisions of this paragraph, the proper officer may accept a sales invoice or price list relating to the goods concerned at the appropriate time.

9. (1) If the value for duty of imported goods cannot be determined under the provisions of paragraph 8(1) or (2), the transaction value shall be based on a value computed by means of information supplied by the producer of the goods being valued and shall consist of the sum of:

Computed value:
fourth
alternative
method

(a) the cost or value of materials and manufacture or other processing employed in producing the goods being valued;

(b) the cost of containers which are treated as being one for customs purposes with the goods in question;

(c) the cost of packing whether for labour or materials;

(d) commissions and brokerage, except buying commission;

(e) the value of any of the goods and services referred to in paragraph 5(1)(d) apportioned to the goods being valued whether or not such goods and services have been supplied free of charge or at a reduced cost;

(f) an amount for profit and general expenses equal to that generally reflected in sales for export to Malawi of goods of the same class or kind as the goods being valued, which are made by producers in the country of exportation;

(g) the cost of transportation of the goods to the port or place of importation into Malawi; and

(h) loading, unloading, handling, insurance and associated costs actually paid or payable for the goods to the port or place of importation into Malawi.

10. (1) Where the value for duty of any imported goods cannot be determined in terms of paragraphs 4 to 9, the transaction value shall be based on:

Fall-back
method: last
alternative
method

(a) previously accepted customs value determined under the provisions of paragraphs 4 to 9;
or

(b) by applying the provisions of paragraphs 4 to 9 flexibly to the extent necessary to arrive at a value for duty of the imported goods; or

(c) by using any reasonable means consistent with the principals and general provisions of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade based on data available in Malawi.

(2) The transaction value under sub-paragraph (1) shall not be based on:

(a) the selling price in Malawi of goods produced therein;

(b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;

(c) the selling price of goods on the domestic market of the country of exportation;

(d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with the provisions of paragraph 9;

(e) the selling price of goods for export to a country other than Malawi;

(f) a system of minimum customs values; or

(g) arbitrary or fictitious values.

Importer's
right to be
informed

11. The importer of any goods shall be informed of the manner in which the manner of determining value for duty of the goods was value determined, if he so requests, in writing.

Foreign
currency
conversion

12. Foreign currency shall be converted in terms of section 113 of this Act.

Confidential
information

13. All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be as strictly confidential and shall not be disclosed without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Controller's
right as to
accuracy

14. The Controller shall have the right to satisfy himself as to the truth of documents, etc., or accuracy of any statement, document or declaration presented for customs valuation purposes.

Made this 29th day of December 1989.

L.J. Chimango
Minister of Finance

(File No. 16/1/13/III)