

**Draft Customs Management (Valuation of Goods) Regulations, 2012 (Version 1)**

In the exercise of powers conferred by section 270 and section 41 of the Customs Management Act 2011, the Minister of Finance hereby makes the following Regulations –

1. These regulations may be cited as the Customs Management (Valuation of Goods) Regulations, 2012 and shall be deemed to have come into operation on 1 September 2012.
2. Article VII of the General Agreement on Tariffs and Trade (GATT) 1994 and the Agreement on Implementation of Article VII of the GATT 1994, concluded at Geneva on 12 April 1979, including the Interpretative Notes thereto, the Advisory Opinions, Commentaries and Explanatory Notes, Case Studies and Studies issued under the said Agreement on Implementation of Article VII, shall govern customs valuation of goods presented to the Customs Division for the purposes of applying the Customs Tariff of the Seychelles and non-tariff measures, in accordance with national legislations governing specific fields relating to trade in goods.
3. Since the Republic of Seychelles is not a member of the World Trade Organisation (WTO), references in these Regulations to WTO agreements (including the definitions provided therein) and WTO bodies or Committees shall not be construed as imposing on Seychelles any obligations arising from such WTO agreements or decisions of such bodies or Committees, beyond obligations expressly taken.
4.
  - (1) Where factors used to determine the customs value of goods are expressed in a currency other than that of the Seychelles, the rate of exchange to be applied shall be that duly published by the competent authorities of Seychelles, in effect at the time of importation.
  - (2) The rate shall reflect as effectively as possible the current value of such currency in commercial transactions in terms of the Seychelles Rupee and shall be valid for a period of one week unless prescribed otherwise.
5. By way of derogation from these Regulations, the customs value of perishable goods usually delivered on consignment may, at the request of the declarant, be determined under simplified rules drawn up by the Assistant Commissioner of Customs.

Made This ..... Day of .....2012

PIERRE LAPORTE  
MINISTER OF FINANCE

**Draft Customs Management (Valuation of Goods) Regulations, 2012 (Version 2)**

In the exercise of powers conferred by section 270 and section 41 of the Customs Management Act 2011, the Minister of Finance hereby makes the following Regulations.

1. These regulations may be cited as the Customs Management (Valuation of Goods) Regulations, 2012 and shall be deemed to have come into operation on 1 September 2012.
2.
  - (1) Unless the context otherwise indicates, any reference in these Regulations to customs value or to value for customs purposes, in relation to goods presented to the Customs Division, shall be deemed to be a reference to valuation of goods for customs purposes.
  - (2) The interpretation of these Regulations shall be subject to Article VII of the General Agreement on Tariffs and Trade (GATT) 1994 and the Agreement on Implementation of Article VII of the GATT 1994, concluded at Geneva on 12 April 1979, including the Interpretative Notes thereto, the Advisory Opinions, Commentaries and Explanatory Notes, Case Studies and Studies issued under the said Agreement on Implementation of Article VII.
3. In these Regulations –
  - “buying commission” means any fee paid by an importer to his agent for the service of representing him abroad in the purchase of the imported goods;
  - “goods of the same class or kind”, in relation to imported goods, means goods 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;
  - “identical goods” means goods that are the same as the imported goods in all respects including physical characteristics, quality and reputation, as well as minor differences in appearance that would not preclude goods otherwise conforming to the definition from being regarded as identical;
  - “imported goods”, in relation to which the customs value has to be determined, means goods presented to the Customs Division at the time of entry for home consumption;
  - “produced” includes grown, manufactured and mined;

- “similar goods” means goods that, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same function and to be commercially interchangeable; the quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;
- the terms “identical goods” and “similar goods” do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under Sub-Paragraph (1)(b)(iv) because such elements were undertaken in Seychelles;
- goods shall not be regarded as “identical goods” or “similar goods” unless they were produced in the same country as the goods being valued;
- goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

#### **CUSTOMS VALUE**

**4.**

- (1) The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to Seychelles adjusted in accordance with the provisions of Regulation 5, provided –
- (a) that there are no restrictions as to the disposal or use of the goods by the buyer other than restrictions which –
    - (i) are imposed or required by law;
    - (ii) limit the geographical area in which the goods may be resold; or
    - (iii) do not substantially affect the value of the goods.
  - (b) that the sale or such price of the goods is not subject to any term or condition for which a value cannot be determined;
  - (c) that 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 Regulation 5;
  - (d) that subject to Sub-Paragraph (3), the seller and the buyer are not related within the meaning of Sub-Paragraph (2)(a).
- (2) (a) For the purposes of Sub-Paragraph (1)(d), two persons shall be deemed to be related only if –

**Price  
Actually  
Paid or  
Payable**

- i. they are officers or directors of one another's businesses;
- ii. they are legally recognised partners in business;
- iii. the one is employed by 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 members of the same family.

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

(c) Every importer of goods which are not exempted by rule shall, when making entry of the goods, declare, in the manner prescribed by rule, whether or not he is related to the supplier of the goods within the meaning of this Regulation.

(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 a ground for not accepting the transaction value, where –

(a) such relationship did not influence the price paid or payable; or

(b) the importer proves that the transaction value closely approximates to one of the following values, namely –

- i. the transaction value of identical or similar goods sold at comparable trade and quantity levels to unrelated buyers in Seychelles at or about the same time as the goods to be valued;
- ii. the value, determined under the provisions of Paragraph (7), of identical or similar goods imported into Seychelles at or about the same time as the goods to be valued;
- iii. the value, determined under the provisions of Paragraph (8), of identical or similar goods imported into Seychelles at or about the same time as the goods to be valued.

(4) (a) If the customs value of the imported goods cannot be determined under the provisions of Paragraph (1), it shall be the transaction value of identical goods sold for export to Seychelles at the same commercial level and in substantially the same quantity and exported at or about the same time as

**Identical  
Goods**

the goods to be valued, adjusted, with reference to differences in any costs and charges referred to in Regulation 5, on account of differences in distances and modes of transport to the port or place of export.

(b) Where no such sale is found, a sale of identical imported goods at either a different commercial or quantity level, or at a different commercial level and quantity level, adjusted to compensate for such differences, shall be used to determine the transaction value.

(c) If in the application of this Paragraph more than one transaction value is determined, the lowest such value shall be the transaction value of the goods to be valued.

(5) (a) If the customs value of imported goods cannot be determined under the provisions of Paragraph (4), it shall be transaction value of similar goods in a sale for export to Seychelles at the same commercial level and in substantially the same quantity and exported at or about the same time as the goods to be valued, adjusted, with reference to differences in any costs and charges referred to in Regulation 5, on account of differences in distances and modes of transport to the port or place of export.

**Similar  
Goods**

(b) Where no such sale is found, the provisions of Sub-Paragraphs (4)(b) and (4)(c) shall apply mutatis mutandis.

(6) If the customs value of imported goods cannot determined under the provisions of Paragraph (5), it shall be determined according to the provisions of Paragraph (7) or, when it cannot be determined under the provisions of that Paragraph, it shall be determined according to the provisions of Paragraph (8) except that, at the request in writing of the importer, the order of application of Paragraphs (7) and (8) shall be reversed.

(7) (a) If the imported goods or identical or similar imported goods are sold in Seychelles in the same condition as that in which they were when imported, the customs value of the imported goods, under the provision of this Paragraph, shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in Seychelles in the greatest aggregate quantity, at or about the time of importation of the goods to be valued, by the importers thereof to persons not related to them, subject to deductions for –

**Deductive  
Value**

- i. commissions usually paid or agreed to be paid or additions usually made for profit and general expenses, including the direct and indirect costs of marketing the goods relative to sales in Seychelles of imported goods of the same kind or class as the goods to be valued, irrespective of the country of exportation;
- ii. the cost of transportation and the cost of loading, unloading, handling, insurance and associated costs incidental to the transportation of the goods from the port or place of export in the country of exportation to the importer's premises in Seychelles; and
- iii. any duties or taxes paid or payable in Seychelles by reason of the importation of the goods or sale of the goods within Seychelles.

(b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods to be valued, the transaction value of the imported goods in terms of this subsection shall, subject to the provisions of Sub-Paragraph (a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in Seychelles in the same condition as that in which they were when imported, at the earliest date after the importation of the goods to be valued, but not later than 90 days after such importation.

(c) If neither the imported goods nor identical nor similar imported goods are sold in Seychelles in the same condition as that in which they were imported, then, if the importer so requests in writing, the transaction value of the imported goods in terms of this Sub-Paragraph 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 Seychelles not related to the sellers of such goods, due allowance being made for the value added by such processing and the deductions referred to in Sub-Paragraph (a).

(8) (a) The customs value of imported goods under the provisions of this Paragraph shall be based on a computed value, calculated by means of information supplied by the importer and/or the producer, or otherwise made available to the Customs Division, and consisting of the sum of –

**Computed  
Value**

- i. the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- ii. an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Seychelles;

iii. the cost or value of all other expenses listed in Sub-Paragraph (1)(e) of Regulation 5.

(b) The Customs Division may not require or compel any person not resident in Seychelles to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Paragraph may be verified in another country by Seychelles authorities with the agreement of the producer and provided that the government of the country in question does not object to the investigation.

(9) (a) Where the customs value of imported goods cannot be determined under the provisions of Paragraph (8), the customs value shall be determined using reasonable means consistent with the principles and general provisions of the Agreement on Implementation of Article VII of the GATT 1994 and of Article VII of GATT 1994, and on the basis of data available in Seychelles. **Fall-Back Method**

(b) However, no customs value shall be determined under the provisions of this Paragraph on the basis of –

- i. the selling price in Seychelles of goods produced in Seychelles;
- ii. a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- iii. the selling price of goods on the domestic market of the country of origin or exportation;
- iv. the cost of production, other than computed values which have been determined for identical or similar goods in accordance with Paragraph (8);
- v. the price of the goods for export to a country other than Seychelles;
- vi. a system of minimum customs values; or
- vii. arbitrary or fictitious values.

(c) If the importer so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Paragraph and the method used to determine such value.

## **ADJUSTMENTS TO THE PRICE ACTUALLY PAID OR PAYABLE**

- 5.** (1) In determining the customs value under the provisions of Regulation 4(1), there shall be added to the price actually paid or payable for the imported goods –
- (a) the following costs, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods –
    - (i) commissions and brokerage, except buying commissions;
    - (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
    - (iii) the cost of packing whether for labour or materials;
  - (b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at 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 –
    - (iv) materials, components, parts and similar items incorporated in the imported goods;
    - (v) tools, dies, moulds and similar items used in the production of the imported goods;
    - (vi) materials consumed in the production of the imported goods;
    - (vii) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;
  - (c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
  - (d) 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;

(e) the following costs, to the extent that they are not included in the price actually paid or to be paid –

- (i) the cost of transport of the imported goods to the port or place of importation;
- (ii) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
- (iii) the cost of insurance.

(2) Additions to the price actually paid or payable shall be made under this Regulation only on the basis of objective and quantifiable data.

(3) No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Regulation.

**6.**

(1) Where factors used to determine the customs value of goods are expressed in a currency other than that of the Seychelles, the rate of exchange to be applied shall be that duly published by the competent authorities of Seychelles, in effect at the time of importation.

(2) The rate shall reflect as effectively as possible the current value of such currency in commercial transactions in terms of the Seychelles Rupee and shall be valid for a period of one week unless prescribed otherwise.

**7.** By way of derogation from these Regulations, the customs value of perishable goods usually delivered on consignment may, at the request of the declarant, be determined under simplified rules issued by the Assistant Commissioner of Customs.

**Perishable  
Goods**

**8.** Specific rules may be laid down in accordance with the appropriate procedure to determine the customs value of carrier media for use in data-processing equipment and bearing data or instructions.

**Carrier  
Media**

**9.** All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned, who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be exchanged with other public authorities for the purposes of cooperation, or may be required to be disclosed in the context of judicial proceedings.

**10.** Since customs valuation determined as transaction value is largely based on documentary input by the importer, and the Customs Divisions has the right to be satisfied as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes, where the Customs Division has reasons to doubt the truth or accuracy of the declared value, the following procedure shall be observed –

- (a) the Customs Division shall ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Regulation 5;
- (b) if, after receiving further information, or in the absence of a response, the Customs Divisions still has reasonable doubts about the truth or accuracy of the declared value, it may, bearing in mind the provisions on appeals, be deemed that the customs value of the imported goods cannot be determined under the provisions of Regulation 4(1);
- (c) before taking a final decision, the Customs Division shall communicate to the importer, in writing if requested, its grounds for doubting the truth or accuracy of the particulars or documents produced and the importer shall be given a reasonable opportunity to respond;
- (d) when a final decision is made, the Customs Division shall communicate to the importer in writing its decision and the grounds thereof.

**11.** If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable.

### **APPEALS**

**12.** For the purposes of these Regulations, “Commissioner” means the Revenue Commissioner and may include the Assistant Commissioner of Customs and any official or committee, to which the Revenue Commissioner has delegated any power or assigned any duty connected with the execution of these Regulations.

**13.** Any person who has an interest may institute proceedings in respect of any decision or determination by the Customs Division made under these Regulations, by lodging an administrative appeal to the Commissioner –

- (a) within 60 calendar days from the date such person was notified of such decision or determination, or the date such person became aware of such decision or determination, as a result of other proceedings; or
- (b) where the Commissioner is satisfied that such person was prevented from filing an administrative appeal as required in Sub-Paragraphs (a) and (b), within a further period of 60 calendar days. The decision of the Commissioner refusing to extend the said period may be modified by the Court, on the application of the person concerned.

**14.** An administrative appeal may be filed by the appellant or by a duly authorised representative.

**15.** An administrative appeal shall be in writing and must set out –

- (a) the name and address of the person who files the appeal;
- (b) if the appeal is filed by an authorised representative, the name and address of such representative and proof of the authority to act on behalf of the appellant;
- (c) full particulars of the decision or determination appealed against;
- (d) the grounds of appeal and the reasons thereof, including as appropriate –
  - (i) findings and submissions relating to relevant factual matters supported by documentation, technical specifications, descriptive literature and or statements or affidavits by technical experts;
  - (ii) arguments and submissions relating to the applicable legal provisions and principles;
  - (iii) any other relevant matter which such appellant considers appropriate; and
  - (iv) such other requirements as the Commissioner may prescribe by rule.

**16.** An administrative appeal shall be considered by the Commissioner who shall notify the appellant of the final decision in writing, within 90 days from the date of filing.

**17.** When considering an administrative appeal the Commissioner may –

- (a) Confirm the appealed decision;
- (b) Invalidate, terminate or amend the appealed decision, with effect from –
  - (i) the date of the first entry of the goods in question;
  - (ii) the date of the decision appealed against; or

(iii) the date of the amendment of that decision.

- 18.** When an administrative appeal has been considered by the Commissioner, any period within which the person concerned may file an appeal against, or institute judicial proceedings in connection with, the final decision of the Commissioner shall commence on the date on which the Commissioner has notified in writing the appellant of that final decision.

#### **FINAL PROVISIONS**

- 19.** The Commissioner may issue a manual in the form of an administrative instruction laying down standard operating procedures and detailing the provisions of these Regulations.

Made This ..... Day of .....2012

PIERRE LAPORTE  
MINISTER OF FINANCE