

ANNEX 4

CUSTOMS & EXCISE ACT 2004

A BILL

for

**AN ACT RELATING TO THE COLLECTION OF REVENUE AND MANAGEMENT OF CUSTOMS
AND EXCISE, AND MATTERS INCIDENTAL THERETO**

BE IT ENACTED by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

**Third draft
July 2004**

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**PART I
PRELIMINARY**

1. Short title and commencement

- (1) This Act may be cited as the Customs and Excise Act 2004.
- (2) This Act comes into force on a date to be proclaimed by His Majesty in Council.

2. Interpretation

In this Act, unless the context requires otherwise –

“airport” means a place appointed as such by the Chief Commissioner;

“authorisation document” means an authorisation issued by customs allowing the goods described in a goods declaration to be dealt with in accordance with the entry;

“boarding officer” is a customs officer who has the responsibility to board an aircraft or ship arriving in or departing from Tonga;

“cargo declaration” means a statement made in writing to a nominated customs officer providing details of the cargo on board an aircraft or ship arriving in Tonga;

“Chief Commissioner” means the Chief Commissioner of Revenue;

“coastal trade” means the customs procedure where free goods and goods under customs control are transported from any place in Tonga to another place within Tonga in an aircraft or ship, which was not the importing conveyance;

“commercial documentation” means the commercial invoice, bill of lading, airway bill, packing list, certificate of origin, order, or confirmation of order and includes all correspondence in connection with the goods whether in electronic form or not;

“commissioner” means the Commissioner of Revenue;

“compliance powers” include the powers to: ask questions; search; examine; measure; count; open; seal; draw samples; read and copy documents; and seize goods and documents;

“conveyance” means an aircraft or ship or other method of bringing goods or passengers to Tonga;

“customs” means The Customs and Trade Revenue Division of the Revenue Services Department, Government of Tonga;

“customs control” in relation to dutiable goods means that those goods are not in free circulation within Tonga and that no person may move, alter, or interfere with those goods without prior written approval from customs;

“customs duty” is an amount payable to the government of Tonga in accordance with this Act on goods imported into Tonga;

“customs tariff” means the official publication outlining the rates of duty for particular goods imported into Tonga;

“customs officer” means a person employed in the Customs and includes a person appointed in writing by the Commissioner to perform a function for the purposes of this Act;

“customs valuation” means the value of imported goods calculated by applying in order the principles set out in Part VII of this Act;

“declared airport” means a place nominated as such by the Commissioner in regulations;

“declared port” means a place nominated as such by the Commissioner in regulations;

“document” includes computer hardware and software and other information in electronic form;

“drawback” means the recovery of import duty which has been paid on imported goods when those goods are later exported;

“dutiable goods” means goods on which any customs duty or excise tax is payable;

“duties of customs” means customs duty and excise tax;

“electronic communications” to Customs means communications conveyed to a customs officer by computer or other electronic form and are treated as declarations made to customs;

“excisable goods” means goods imported into or manufactured in Tonga on which excise tax is payable;

“excise tax” is an amount payable to the government of Tonga in accordance with this Act on specified goods imported into or manufactured in Tonga;

“export” means the transportation of goods beyond the territory of Tonga;

“export cargo declaration” means a statement made in writing to a nominated customs officer providing details of the cargo on board an aircraft or ship departing from Tonga;

“export goods” means goods which are to be or have been exported from Tonga;

“export goods declaration” means a statement made in writing to a nominated customs officer by an owner of goods for export describing the nature, quantity, destination, and other sufficient information about those goods to satisfy customs’ requirements;

"goods" means tangible personal property and includes aircraft and ships;

“goods declaration” means a statement made in writing to a nominated customs officer by an owner of imported goods which provides sufficient details about those imported goods to satisfy customs’ requirements;

“Importer” in relation to goods means the consignee or owner of the goods when they arrive in Tonga;

“import” means to cause goods to arrive within the territory of Tonga;

“imported goods” means goods which have arrived within the territory of Tonga;

“in transit goods” means goods which have arrived at a port within Tonga but are not intended for final delivery to that port;

“owner”, in relation to imported or excisable goods, means the legal owner of the goods or any person nominating himself to customs as the owner.

“owner”, in relation to an aircraft or ship, means the legal owner and includes the master, agent or any person acting for or representing the legal owner;

“master” means the person in charge or command of an aircraft or ship;

“passenger declaration” means a statement made in writing to a nominated customs officer providing the necessary details about the passengers and crew on an aircraft or ship arriving in Tonga;

“person” has the meaning in the Consumption Tax Act;

“port” means a place or geographical area described in regulations which is appointed as such by the Chief Commissioner.

“rate of duty” means a percentage of the customs value (for example 10%) , a fixed amount (for example \$10 per kilo) or a combination rate (for example 10% + \$5 per kilo);

“ship” means any vessel and includes sailing boats, motorboats and pleasure craft;

“ship’s stores” means goods imported into Tonga on an aircraft or ship which are intended for consumption on that aircraft or ship;

“smuggling” means any importation or exportation of goods with an intention to defraud the revenue and includes the intentional importation or exportation of prohibited goods;

“sufferance place” means a place approved by customs for the loading or unloading of an aircraft or ship which is not an approved airport, port, or wharf.

“TCT” means Tongan Consumption Tax;

“temporary admission” means the Customs procedure, where nominated goods can be imported into Tonga conditionally relieved from payment of duties so long as the goods are imported for an approved purpose, are intended for re-exportation within a specified period, and have not undergone any change except normal depreciation;

“this Act” includes any regulations made to assist in the administration of this Act;

“time of import” means the time that an aircraft or ship carrying imported goods arrives at the first airport or port within Tonga;

“time of export” means the time that an aircraft or ship leaves the territory of the kingdom of Tonga with the intention of making an international voyage;

“warehoused goods” means dutiable goods which remain under customs’ control in a place licensed or approved by Customs;

“warrant” means an authorisation by the Chief Commissioner or other authorised person allowing designated customs officers to enter commercial or domestic premises for the purposes of this Act;

“wharf” means a place appointed as such by the Chief Commissioner;

PART II
CUSTOMS CONTROL

3. Customs control

(1) *In general* -- Goods are subject to the control of customs as follows :

Imports	(a) imported goods, from the time of importation until lawful release by customs;
Excise	(b) excisable goods, from the time of importation into or manufacture in Tonga, until lawful release by customs;
In Transit	(c) in transit goods, from the time of importation until lawful release by customs or exportation;
Warehouse	(d) warehoused goods, from the time of placement of the goods in the warehouse until lawful release by customs;
Exports	(e) export goods, from the time the goods are at the place of export until exportation;
Stores	(f) ship's stores, from the time the aircraft or ship arrives in Tonga until exportation;
Post	(g) postal articles, from the time of importation until lawful release by customs;
Overseas goods	(h) goods remaining on board any overseas aircraft or ship while that aircraft or ship remains within the kingdom of Tonga.
Conveyances	(I) aircraft and ships arriving within the territory of the kingdom of Tonga

(2) *Unauthorised Movement* - No person is to move, alter, or interfere with goods which are subject to customs control, unless written customs authorisation is first obtained.

(3) *Liability* - Where a person is authorised to move, control, or care for goods under customs control and cannot account for those goods when requested by customs, that person is liable for any duty or tax payable in respect of the goods.

(4) *Loss* – Customs is not liable for any loss or damage to goods under customs control, unless it is customs' fault.

(5) *Movement/access* - A person may move or have access to goods under customs control by making an application to customs in the manner described in regulations.

PART III
ARRIVAL AND REPORT OF AIRCRAFT AND SHIPS

4. Arrival of aircraft and ships

- (1) *Declared Port* - The master of an aircraft or ship arriving in Tonga must bring that conveyance directly and as quickly as possible to a place described in regulations within a declared airport or port.
- (2) *Facilitation* – The master of an aircraft or ship arriving in Tonga is to facilitate the boarding of that conveyance by customs for the purposes of this Act.
- (3) *Advance notice (aircraft)*- The owner of an aircraft arriving in Tonga must notify customs in writing or (where permitted by regulations) electronically, 2 hours in advance about the time and place of that arrival.
- (4) *Advance notice (ships)* – The owner of a ship arriving in Tonga must notify customs in writing or (where permitted by regulations) electronically, 48 hours in advance about the time and place of that arrival.

5. Cargo Declaration

- (1) *In general* - Before imported goods may be released from customs control, the master of the importing aircraft or ship must ensure that customs is given a cargo declaration which includes:
 - a) a manifest of cargo to be landed in the kingdom of Tonga including the details described in regulations;
 - b) a list of ship's stores on board; and
 - c) clearance documents from any prior port, where required.
- (2) *Advance Notice* - Cargo declarations may be provided to customs at any time prior to the arrival of the conveyance but must be provided at least 4 hours prior to that arrival.
- (3) *Amending Declarations* - All cargo unloaded at any airport or port which has not been reported to customs must be immediately brought to the attention of customs by providing an amended cargo declaration.
- (4) *Discrepancies* - Discrepancies between the cargo declaration and the actual goods landed, such as shortages, incorrect marks and numbers, and breakages, must be immediately communicated in writing to customs.
- (5) *Master and owner liable* - Where cargo reported to customs in the cargo declaration is not unloaded, the master and owner of the aircraft or ship are liable to pay the duty on those goods unless customs is satisfied with the explanation provided.
- (6) *Declaration fee* - The Chief Commissioner may impose a cargo declaration fee described in regulations.

6. Passenger declaration

- (1) *Passenger declaration* - The master or owner of an aircraft or ship arriving in Tonga is to provide to customs in writing or (where the regulations allow) electronically, a passenger declaration identifying the passengers and crew on board the aircraft or ship at the time of its arrival.
- (2) *Advance notice* - A passenger declaration may be provided to customs at any time prior to the arrival of the conveyance but must be provided for aircraft at least 2 hours prior to that arrival and for ships, 24 hours.

7. Boarding of ships or aircraft

- (1) *Boarding* - A customs officer may board any aircraft or ship within the Kingdom and will be provided with access to every part of that ship or aircraft to perform the functions or duties imposed by this Act including examination, search, questioning, opening of packages, or securing of ship's stores.
- (2) *Regulations for passengers and crew* - No person is to leave or board an aircraft or ship in Tonga unless the procedures described in regulations are followed.

8. Unloading of goods

- (1) *In general* -- Imported goods unloaded from any aircraft or ship which remain undelivered two days from the completion of unloading are to be taken to a warehouse nominated by the owner of the aircraft or ship and if there is no such nomination, customs may select a suitable warehouse including a King's warehouse.
- (2) *Regulations* -- Goods under customs control must not be unloaded from or loaded onto an aircraft or ship at a sufferance place unless the conditions described in regulations are met.

PART IV
CLEARANCE OF IMPORTED GOODS

9. Goods declaration

- (1) *Self assessment* – Importers are to lodge for customs review a self assessment of duties and taxes (where required), on a goods declaration before taking delivery of imported goods for home consumption.
- (2) *Regulations* - The customs requirements for goods declarations and commercial documentation are described in regulations.
- (3) *Electronically* - A goods declaration may be communicated to customs electronically or manually.
- (4) *Other import requirements* -A goods declaration is also required in the form described in regulations for –
 - (a) transshipment goods;
 - (b) warehousing of goods;
 - (c) duty-free shop goods;
 - (d) temporary importations;
 - (e) inward and outward passenger processing;
 - (f) reimportation or re-exportation;
 - (g) exportation; and
 - (h) excisable goods
- (5) *Low value goods*- The Regulations describe the customs clearance requirements for low value importations under \$200.
- (6) *Importers responsibility* - The importer must provide to customs factually correct goods declarations and, where obliged, accurate commercial documentation.
- (7) *Factual doubt* - Where the importer has any doubt about any aspect of the information to be included on the goods declaration or about the commercial documentation, this doubt is required to be pre-notified to customs in writing setting out the reasons for concern.
- (8) *Customs release* -Where customs is satisfied with the importer's self assessment, a customs authorisation document in a form described in regulations may be issued.
- (9) *Customs authorisation document* - A customs authorisation document is both a receipt for any duty paid and permission to deal with the goods in the way authorised.
- (10) *Post clearance audit* -Customs is obliged under this Act to conduct post clearance reviews on selected importers' self assessments in addition to the initial review and authorisation provided.
- (11) *Entry processing fee* - The Chief Commissioner may impose an entry processing fee described in regulations.

PART V
IMPOSITION OF DUTIES and TAXES

10. Imposition of customs duty

- (1) *Customs duty imposition* - Customs duty is imposed by this Act on all imported goods.
- (2) *Timing of liability* - The liability for customs duty arises when imported goods are:
 - a) entered with customs in accordance with this Act for release into home consumption within Tonga; or,
 - b) unable to be accounted for to the satisfaction of customs while still under customs control.

Calculation

- (3) *Amount* - The amount of customs duty payable on imported goods is calculated by applying the rate of duty applicable to the relevant item in the customs tariff to the customs value of the goods or calculating the duty from the fixed rate.
- (4) *Fixed rate* - Where a fixed rate of duty is based on any weight or measurement, that duty is to be calculated on the higher of:
 - a) the actual weight or measurement of the goods; or
 - b) the weight or measurement marked on the goods.
- (5) *Timing* - The rate of customs duty payable on imported goods is the rate of duty applicable at the time those goods are entered with customs for home consumption.

Variation

- (6) *Adjustment* - Where a rate of customs duty changes after importation of goods but before customs clearance of those goods and the agreed price in Tonga is affected, the buyer or seller may adjust the agreed price.
- (7) *Variation* - The King in Council may by order prospectively vary a rate of customs duty on goods imported into Tonga.

11. Imposition of excise tax

- (1) *Excise tax* - Excise tax is imposed by this Act on certain goods described in schedule 3 which are imported into or produced or manufactured in Tonga.
- (2) *Amount* - The amount of excise tax payable on goods is described in schedule 3 of this Act.
- (3) *Timing of liability* - Excisable goods become taxable on importation or on the completion of their production or manufacturing process.
- (4) *Regulations* - Regulations describe when excisable goods have completed their production or manufacturing process.
- (5) *Customs control* - Excisable goods are subject to customs control and the provisions of Part II of this Act apply equally to excisable goods.
- (6) *Payment - local production* - Excise tax on locally produced excisable goods is payable to customs before delivery from the place of production or manufacture unless prior written approval from customs has been obtained.
- (7) *Payment - imports* - Excise tax on imported excisable goods is payable to customs before delivery of those goods into home consumption.

- (8) *Excise declarations* - Excise declarations must be lodged with customs in a form described in regulations, so that customs can verify that the correct excise tax has been paid.
- (9) *Liability* -The owner of excisable goods is liable for excise tax and is required to pay that tax prior to the goods entering home consumption within Tonga.
- (10) *Self assessment* - The owner of excisable goods must self assess the amount of excise tax payable
- (11) *Post clearance audit* - Customs is obliged under this Act to conduct post clearance reviews on selected excise tax payer's self assessments in addition to the initial review and clearance authorisation provided.
- (12) *Factual doubt* - An excise tax payer who has any doubt about any aspect of the information to be included on the excise declaration or about the commercial documentation is required to pre-notify this doubt to customs in writing setting out the reasons for concern.

PART VI or SCHEDULE 1

CUSTOMS VALUATION

12. Interpretation

(1) *In general* -- In this Part, unless the context requires otherwise--

“family” means, in relation to an individual, the husband or wife of the individual, a relative of the individual, and a relative of the individual’s husband or wife, and “relative” means mother, father, brother, sister, ancestor or lineal descendant and includes any person who is adopted legally or customarily by or as a sibling to the individual;

“foreign inland insurance” means the cost of any insurance relating to foreign inland freight;

“foreign inland freight” means the cost of transportation (including loading, unloading, handling and other expenses associated with transportation) of goods to the place in the country of export from which the goods were shipped to Tonga;

“identical goods”, in relation to imported goods, means goods that the Chief Commissioner is satisfied –

- (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 does not include goods in relation to which -

- (i) art, design, development, or engineering work undertaken or substantially undertaken in Tonga; or
- (ii) models, plans, or sketches prepared or substantially prepared in Tonga,

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;

“overseas freight”, in relation to imported goods, means amounts (but not an amount of overseas insurance) paid or payable in respect of the transportation of the goods from their place of export to Tonga;

“overseas insurance”, in relation to imported goods, means amounts paid or payable in respect of insurance of the goods from their place of export to Tonga;

1. “place of export”, in relation to imported goods, means -

- (a) the place where the goods were posted for export to Tonga;
- (b) the place in the country of export to Tonga that the goods were packed into a transport container;
- (c) if goods, not being goods referred to in (a) or (b), were exported from a country by air or sea, the place where the goods were placed on board a ship or aircraft for export to Tonga; or
- (d) in any other case, a place determined by the Chief Commissioner;

“price”, in respect of imported goods, means the sum of all amounts paid or payable, directly or indirectly, for the goods by or on behalf of the purchaser to or for the benefit of the vendor;

“similar goods”, in relation to imported goods, means goods that the Chief Commissioner is satisfied –

- (a) closely resemble the imported goods in respect of their component materials and characteristics;
- (b) are functionally and commercially interchangeable with the imported goods;
- (c) were produced in the same country as the imported goods; and
- (d) were produced by or on behalf of the same producer as the imported goods,

but does not include goods in relation to which –

- (i) art, design, development, or engineering work undertaken or substantially undertaken in Tonga; or
- (ii) models, plans, or sketches prepared or substantially prepared in Tonga,

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; and

2. “time of importation”, in respect of goods means the date on which the Chief Commissioner prescribes those particular goods are deemed to be imported.

(2) *Related persons* -- For the purposes of this Part, two persons are related persons if –

- (a) both being natural persons –
 - (i) they are connected by family; or
 - (ii) one of them is an officer or director of a company controlled, directly or indirectly, by the other;
- (b) both being companies –
 - (i) both are controlled, directly or indirectly, by a third person (whether or not a company);
 - (ii) both together control, directly or indirectly, a third company; or
 - (iii) the same person (whether or not a company) is in a position to cast, or control the casting of 5% or more of the maximum number of votes that might be cast at a general meeting of each company;
- (c) one person being a company is, directly or indirectly, controlled by the other person (whether or not a company);
- (d) one person being a natural person, is an employee, officer, or director of the other person; or
- (e) they are members of a partnership.

13. Customs value

- (1) *In general* -- For the purposes of any Act under which import duty is imposed on imported goods by reference to their value, the value of the goods for customs purposes is the customs value determined in accordance with this section.
- (2) *Transaction value* -- Subject to this section, the customs value of imported goods is the transaction value of the goods as determined under section 15.
- (3) *No transaction value* -- If the Chief Commissioner cannot determine the transaction value of imported goods or the transaction value cannot be used as a result of section 14, the customs value of the goods is determined in accordance with the following methods, applied in the order set out below, that can be applied in respect of the goods –
 - (a) the transaction value of identical goods as determined under section 16;
 - (b) the transaction value of similar goods as determined under section 17;
 - (c) the deductive value of the goods determined under section 18; or
 - (d) the computed value of the goods determined under section 19.
- (4) *Order of methods* -- An importer may apply, in writing, to the Chief Commissioner for the order of consideration of the methods in subsection (3)(c) and (d) to be reversed.
- (5) *Time for application on order of methods* -- An application under subsection (4) must be made before the Chief Commissioner commences to determine the customs value of the goods.
- (6) *Residual method* -- If the customs value of imported goods cannot be determined under subsection (3), the customs value must be determined under section 20.

14. Transaction value of imported goods not to apply

The transaction value of imported goods is not to be the customs value of the goods if–

- (a) there is a restriction on the disposition or use of the goods by the purchaser, other than a restriction –
 - (i) imposed by Tongan law;
 - (ii) limiting the geographical area in which the goods may be resold; or
 - (iii) that does not substantially affect the value of the goods;
- (b) the sale or price of the goods is subject to a condition or consideration for 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 in terms of section 15(2)(g); or
- (d) the vendor and purchaser are related persons at the time the goods were sold for export unless –
 - (i) the Chief Commissioner is satisfied that the relationship did not influence the price paid or payable for the goods; or
 - (ii) the importer satisfies the Chief Commissioner 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 Tonga at or about the same time as the goods to be valued.

15. Transaction value of imported goods

- (1) *In general* -- The transaction value of imported goods is the price of the goods at the time they are sold for export to Tonga increased by the amounts specified in subsection (2) and decreased by the amounts specified in subsection (3).
- (2) *Increases* -- For the purposes of computing the transaction value of imported goods, the price of 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 included in the price -
- (a) commission and brokerage, other than buying commission;
 - (b) packing costs, including any labour and material costs;
 - (c) the cost of containers that are treated as being one with the goods;
 - (d) royalties or licence fees payable as a condition of sale, other than for the right to reproduce the goods in Tonga;
 - (e) the cost of foreign inland freight and foreign inland insurance;
 - (f) the cost of overseas freight and overseas insurance;
 - (g) the whole or any part of the proceeds of a subsequent use, resale or disposal of the goods by or on behalf of the purchaser that accrues to the vendor; and
 - (h) the value of any of the following goods and services supplied, directly or indirectly, by the purchaser free of charge or for reduced consideration 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) any materials, components, parts, and other goods incorporated in the imported goods;
 - (ii) any tools, dies, moulds, and other goods utilised in the production of the imported goods;
 - (iii) any materials consumed in the production of the imported goods; and
 - (iv) any engineering, development, art, or design work, plans or sketches undertaken outside Tonga and necessary for the production of the goods.
- (3) *Decreases* -- For the purposes of computing the transaction value of imported goods, the price of the goods is decreased by the sum of the following amounts to the extent that these amounts are separately identified in the price paid or payable for the goods–
- (a) any expenditure incurred for 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; and
 - (c) any duties or taxes paid or payable by reason of the importation or sale of the goods in Tonga.

16. Transaction value of identical goods

- (1) *In general* -- If the customs value of imported goods cannot be determined under section 15, the customs value is the transaction value of identical goods in a sale of those goods for export to Tonga if –
- (a) the transaction value of the identical goods is the customs value of those goods; and
 - (b) the identical goods were exported to Tonga at the same or substantially the same time as the imported goods and were sold to a purchaser –
 - (i) at the same or substantially the same trade level as the imported goods; and
 - (ii) in the same quantities as the imported goods.
- (2) *Other cases where transaction value of identical goods applies* -- If subsection (1) does not apply solely because identical goods were not sold under the conditions specified in subsection (1)(b), the customs value of the imported goods may be determined by reference to the transaction value of identical goods in a sale of those goods for export to Tonga if the identical goods were sold under any of the following conditions –
- (a) to a purchaser at the same or substantially the same trade level, but in different quantities from the imported goods;
 - (b) to a purchaser at a trade level different from the purchaser of the imported goods, but in the same or substantially the same quantities as the imported goods; or
 - (c) to a purchaser at a trade level different from the purchaser of the imported goods and in different quantities from the imported goods.
- (3) *Adjustments* -- The customs value of imported goods under this section is the transaction value of identical goods referred to in subsection (1) or (2) adjusted to take account of –
- (a) commercially significant differences in the foreign inland freight and foreign inland insurance costs of the identical goods and those costs for the imported goods attributable to differences in distance and modes of transport; and
 - (b) if subsection (2) applies, differences in the trade levels, quantities, or both, as the case may be.
- (4) *Lowest value applies* -- If, in relation to imported goods, there are two or more transaction values for identical goods that meet the requirements of subsection (1) or (2), as the case may be, the customs value of the imported goods is determined on the basis of the lowest of such transaction value.
- (5) *Insufficient information* -- This section does not apply if there is insufficient information to determine the customs value of imported goods under subsection (3).

17. Transaction value of similar goods

- (1) *In general* -- If the customs value of imported goods cannot be determined under section 15 or 16, the customs value is the transaction value of similar goods in a sale of those goods for export to Tonga if –
- (a) the transaction value of the similar goods is the customs value of those goods; and
 - (b) the similar goods were exported to Tonga at the same or substantially the same time as the imported goods and were sold to a purchaser –
 - (i) at the same or substantially the same trade level as the imported goods; and
 - (ii) in the same quantities as the imported goods.
- (2) *Rules for identical goods apply* -- Section 16(2) to (5) apply for the purposes of this subsection on the basis that the reference to “identical goods” is a reference to “similar goods”.

18. Deductive value

(1) *In general* -- Subject to section 13(4), if the customs value of imported goods cannot be determined under section 15, 16, or 17, the customs value is the deductive value of the goods.

(2) *Deductive value* -- If –

- (a) the imported goods, or identical or similar goods are sold in Tonga at the same or substantially the same time as the time of importation of the imported goods;
- (b) the goods were sold in Tonga in the same condition in which they were imported;
- (c) the sale was made at the first trade level after importation; and
- (d) the Chief Commissioner is satisfied that the purchaser in the sale was not related to the importer and did not incur any costs referred to in section 15(2)(h) in relation to the goods sold,

the deductive value of the imported goods is the unit price 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 by the following amounts determined on a per unit basis –

- (i) the amount of any commission;
- (ii) an amount for profit and general expenses, including all costs of marketing the goods based on sales in Tonga of goods of the same class or kind as the goods sold;
- (iii) the cost of transportation of the goods in Tonga (including loading, unloading, handling and other expenses associated with transportation) and insurance in relation to such transportation to the extent not deducted under paragraph (ii); and
- (iv) any amount referred to in section 15(3)(c).

(3) *Later sale* -- If –

- (a) the imported goods, or identical or similar goods are not sold at the same or substantially the same time as the time of importation but are sold within 90 days after the time of importation; and
- (b) subsections (2)(b) to (d) are satisfied,

the deductive value of the imported goods is determined in accordance with subsection (2) by reference to such later sale.

(4) *Reductions for assembly etc.* -- If –

- (a) the imported goods, or identical or similar goods are not sold in Tonga at the time of importation or within ninety days after that time;
- (b) the goods are sold in Tonga, after being assembled, packaged, or further processed, within 180 days after the time of importation; and
- (c) subsections (2)(b) to (d) are satisfied,

the deductive value of the imported goods is determined, at the request of the importer, in accordance with subsection (2) by reference to such sale and making a reduction on a per

unit basis for the value added attributable to the assembly, packaging or further processing in Tonga.

- (5) *Insufficient information to determine reductions* -- Subsection (4) will not apply if the Chief Commissioner has insufficient information to determine the amount of the reduction for the value added attributable to the assembly, packaging or further processing in Tonga.

19. Computed value

- (1) *In general* -- If the customs value of imported goods cannot be determined under section 15, 16, 17, or 18, the customs value is the computed value of the goods.
- (2) *Computed value* -- The computed value of imported goods is the sum of the following amounts –
- (a) the cost or value of materials used in producing the goods;
 - (b) the cost of manufacture or processing to produce the goods;
 - (c) any costs referred to in subsections 15(2)(c), (f) and (g);
 - (d) the value of any goods or services referred to in section 15(2)(h); and
 - (e) 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.

20. Residual method of valuation

If the customs value of imported goods cannot be determined under the preceding sections, the value must be determined by the Chief Commissioner having regard to the methods for valuation specified in this Part and to any other information available to the Chief Commissioner but not including any of the following matters -

- (a) the selling price in Tonga of goods produced in Tonga;
- (b) any system that provides for the acceptance for valuation purposes of the higher of two alternative values;
- (c) the selling price of goods on the domestic market of the country of exportation of the imported goods;
- (d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with section 19;
- (e) the price of the goods for export to a country other than Tonga;
- (f) a system of minimum customs values; or
- (g) arbitrary or fictitious values.

21. Importer advised of method of computation

The Chief Commissioner, upon written request, will advise the importer, by notice in writing, of the method used to determine the customs value of imported goods.

PART VII
DEPARTURE OF AIRCRAFT AND SHIPS

22. Departure of aircraft and ships

- (1) *Authorisation* - No aircraft or ship is to leave Tonga until authorised by customs clearance.
- (2) *Requirements* - Customs is to provide authorisation for aircraft and ships to leave Tonga only when it is satisfied that the requirements described in regulations are met.
- (3) *Revoke* - Customs may, if necessary, revoke, in writing, an authorisation for a ship or aircraft to leave Tonga.
- (4) *Prevention* - Where Customs believes that an aircraft or ship may leave Tonga without proper authorisation, Customs is required to prevent that departure.
- (5) *Responsibility* - The master of a departing aircraft or ship in Tonga is responsible for complying with this Part.

23. Authorised loading

- (1) *Procedures* - Authorised loading procedures for passengers and cargo are described in regulations.
- (2) *Unauthorised loading* - The master of any aircraft or ship departing from Tonga must not allow any loading of goods inconsistent with this Act or the regulations.

24. Export cargo declaration

- (1) *Export cargo declaration* - The master of a departing aircraft or ship is to provide to customs, prior to departure from Tonga, an export cargo declaration as described in regulations.
- (2) *Approval* - No aircraft or ship is to depart from Tonga unless customs has approved the export cargo declaration.
- (3) *Export cargo declaration fee* - The Commissioner may impose an export cargo declaration fee in accordance with the regulations.

25. Approved stores

- (1) *Stores* - The Commissioner may, on request, permit the master of a departing aircraft or ship to take on board approved stores for consumption on voyages outside Tonga.
- (2) *Regulations* - Regulations describe the procedures for the loading and unloading of ships stores from aircraft and ships.

26. Crew and passenger list

The master of a departing aircraft or ship is to provide to Customs a list of the officers, crew, and passengers at least one hour before departure.

27. Boarding of departing aircraft or ship

- (1) *Boarding* - A customs officer may board any aircraft or ship within Tonga to verify proper compliance with this Act and the master of the aircraft or ship is to immediately assist this verification.
- (2) *Disembarkation* - The master of a departing aircraft or ship must allow a customs officer to disembark at the nearest boarding station nominated in regulations or at some other place which has been pre-agreed in writing.

PART VIII
EXPORTATION OF GOODS BY AIR AND SEA

28. Export goods declaration

- (1) *Export declaration* – Where required by regulations, the owner of goods for export from Tonga is to provide to Customs prior to the loading of any goods for export –
 - (a) an export goods declaration; and,
 - (b) where required, relevant commercial documentation relating to the export.
- (2) *Loading* - Goods for export are not to be presented for loading or accepted onto an aircraft or ship until Customs has approved the export goods declaration.
- (3) *Accuracy* - Information on the export goods declaration must be factually correct and, if an exporter is unsure about any of the facts presented, this is required to be pre-notified to customs in writing.

29. Payment of export duty

- (1) *Export duty* - The owner of goods for export from Tonga must self assess any export duty payable and accurately communicate the amount of duty to Customs on the export goods declaration.
- (2) *Liability* - The owner of goods for export from Tonga is to pay export duty as required by this Act.
- (3) *Export declaration fee* - The Chief Commissioner may impose an export declaration fee in accordance with the regulations.

30. Customs approval of export goods declaration

- (1) *Revocation* - An export goods declaration once approved may be revoked by Customs.

31. Dealing with export goods

- (1) *Dealing* - An export goods declaration is authority to deal with those goods in the way described in the declaration.
- (2) *Relanding* - Goods shipped for export from Tonga must not be relanded in Tonga prior to export unless Customs approval in writing is obtained.

PART IX
ARRIVAL AND DEPARTURE OF PASSENGERS

32. Interpretation

In this Part, unless the context requires otherwise –

“personal effects” means all articles, whether used or new, which a traveller may reasonably require for personal use on the journey, but not goods for commercial purposes; or in commercial quantities;

“traveller “ means any person who -

- (a) temporarily enters or leaves Tonga and does not permanently reside there; or
- (b) leaves (“departing resident”) or returns (“returning resident”) to Tonga where the traveller normally resides; and

“traveller’s unaccompanied baggage” means baggage arriving before or after the traveller.

33. Customs procedures for travellers

- (1) *Traveller processing* - The regulations describe the customs offices and hours of operation for the customs processing of travellers.

34. Travellers’ declarations

- (1) *Master’s responsibility* - A master of an aircraft or ship arriving in Tonga is to provide to travellers a traveller’s declaration for the traveller to complete.
- (2) *Traveller’s declaration* - Travellers, where required, are to complete a traveller’s declaration and give it to Customs before leaving the place of arrival or departure.
- (3) *Obligation* - If for any reason a customs officer is not at the traveller’s place of arrival in or departure from the kingdom of Tonga that traveller is to arrange for the traveller’s declaration to be delivered to customs or a police station within 24 hours after arrival or departure.
- (4) *Self transport* - Travellers arriving in Tonga by their own means of transport must, within 24 hours after arrival within the kingdom of Tonga, directly bring that conveyance to a Customs office as described in regulations and complete the customs requirements described in regulations for their arrival.

35. Traveller’s goods

- (1) *Goods declaration* - Travellers’ goods in accompanied or unaccompanied baggage require a goods declaration to be presented to Customs unless those goods are personal effects.
- (2) *Storage* - Traveller’s unaccompanied baggage that is under customs control is to be stored at a place and for a time described in regulations.
- (3) *Travellers’ allowances* - The travellers’ allowances for duty free importation and exportation are described in regulations.
- (4) *Temporary admission* - Travellers may bring goods into Tonga on a temporary admission basis without payment of duty as described in regulations.
- (5) *Exportation* - Customs is to allow non-residents’ temporary admission goods to be exported through any customs office.

- (6) *Reimportation* - If a traveller requests, Customs is to take identification details of travellers goods leaving Tonga if it facilitates a later reimportation free of duty.

PART X
IMPORT AND EXPORT BY POST

36. Interpretation

In this Part –

“postal article” means letter-post and parcels, as described in the Acts of the Universal Postal Union currently in force, when carried by or for postal services;

“postal service” means a public or private body authorised by the Government to provide the international services governed by the Acts of the Universal Postal Union currently in force; and

“Universal Postal Union” means the specialised agency of the United Nations bearing that name.

37. Postal articles

- (1) *Deemed goods* - For customs purposes, postal articles are treated as goods.
- (2) *Customs treatment* - Customs requirements for the customs clearance of postal articles are described in regulations.
- (3) *Customs control* - Postal articles arriving within the territory of the Kingdom of Tonga are subject to customs control and the provisions within Part II of this Act also apply to postal articles.
- (4) *Liability* - The owner of a postal article is to pay any duty or tax payable before that postal article is released to the owner.

38. Postal article declaration

- (1) *Declaration* - Where the consignee of a postal article is required by regulations, that person must self assess the duty and tax payable and present that to customs in a postal article declaration.
- (2) *Uncertainty* - If an owner is obliged to lodge with customs a postal article declaration and is unsure of any aspect, that fact is required to be notified on the postal article declaration in the area provided.
- (3) *Prohibited goods* - If an officer of the post office believes that a postal article is or contains prohibited goods, that officer is to deliver the postal article immediately to customs for appropriate action in exercise of the powers of customs under this Act.

PART XI
RULES OF ORIGIN

39. Rules of Origin

- (1) *PICTA Agreement* - Imported goods are treated as originating in a country belonging to the Pacific Island Countries Trade Agreement (“PICTA”) if the goods comply with the rules of origin.
- (2) *Rules of origin* - Schedule 2 sets out the requirements for the Rules of Origin covered by this Part.

PART XII
TEMPORARY ADMISSIONS

40. Temporary Admissions

- (1) *Regulations* - Temporary admission requirements are described in regulations.
- (2) *Concessional entry* - Where imported goods qualify for temporary admission, those goods may be conditionally duty free.
- (3) *Non compliance* - Where imported goods initially qualify for temporary admission, but later, do not comply with the conditions for temporary admission described in regulations, those goods are liable for their normal import duty, which may be collected from the importer or current owner.
- (4) *Extension of time* - The Commissioner has the discretion to extend an application for temporary admission.
- (5) *Security* - Where the regulations require, the Commissioner may demand a security to be paid by the importer for goods seeking temporary admission status.
- (6) *Goods declaration* - The regulations describe which temporary admission goods require the importer to lodge a goods declaration.
- (7) *Istanbul convention* - Goods imported into Tonga, which are included in any of the following annexes to the Convention on Temporary Admission (Istanbul Convention) June 1990 may also be eligible for temporary admission if they meet the requirements described in regulations:
 - (i) goods for display or use at exhibitions, fairs, meetings or similar events referred to in annex B 1;
 - (ii) professional equipment referred to in annex B 2;
 - (iii) containers, pallets, packings, samples and other goods imported in connection with a commercial operation referred to in annex B. 3;
 - (iv) goods imported for educational, scientific or cultural purposes referred to mean annex B. 5;
 - (v) Travellers' personal effects and goods imported for sports purposes referred to in annex B 6;
 - (vi) tourist publicity material referred to in annex B7;
 - (vii) goods imported as frontier traffic referred to in annex B. 8;
 - (viii) goods imported for humanitarian purposes referred to in annex B 9;
 - (ix) means of transport, referred to in annex C;
 - (x) animals referred to in annex D
- (8) *Procedures* - Temporary admission procedures for goods imported into Tonga and described in sub-section (7) are described in regulations.

PART XIII
PROHIBITED IMPORTS AND EXPORTS

41. Prohibited goods

- (1) *Prohibited imports and exports* - The Chief Commissioner may prohibit the importation of goods into Tonga or the exportation of goods from Tonga.
- (2) *Regulations* - The regulations describe which goods are totally prohibited imports or exports.
- (3) *Conditional prohibition* - The regulations describe whether any prohibited goods may be conditionally imported or exported from Tonga and if so, what conditions are to be met.
- (4) *Licences or permits* - The Commissioner may issue an import or export licence, quarantine permit or other permit or licence to an applicant where the regulations require this as a condition of importation or exportation.
- (5) *Compliance* - Where the Commissioner issues to an applicant a licence, permit or other approval for importation or exportation of prohibited goods, the applicant is to comply with the conditions imposed.
- (6) *Offence* - Where an applicant does not comply with all of the conditions imposed by a licence, permit or other approval for the importation or exportation of prohibited goods, the applicant is guilty of an offence and the goods remain prohibited goods.
- (7) *Other legislation* - Other legislation may also impose restrictions on the importation, coastal trade, or exportation of goods or the movement of persons into or from Tonga. Goods the import or export of which is prohibited by other legislation are considered prohibited goods for purposes of this Act.

**PART XIV
COASTAL TRADE**

42 Coastal Trade

- (1) *Transfer* - The master of a Tongan aircraft or ship must not allow the transfer of any goods to or from an aircraft or ship on an international voyage without customs permission in writing.
- (2) *Transfer* - The master of a Tongan aircraft or ship involved in an international voyage must not allow the transfer of any goods to or from any other aircraft or ship on a voyage within Tonga without customs permission in writing.
- (3) *Regulations* – Regulations describe the customs requirements for aircraft and ships involved in coastal trade.
- (4) *Master responsible* - Where goods are on board an aircraft or ship involved in coastal trade then the master of that aircraft or ship is responsible to customs for those goods arriving at their nominated place of discharge and any customs duty to be paid on them if they do not arrive.
- (5) *Customs control* - The master of a conveyance involved in coastal trade is not to accept on board that conveyance any goods subject to customs control, unless customs has given its written authorisation.
- (6) *Identification* – Goods under customs control, loaded on any aircraft or ship involved in coastal trade, are to be readily identifiable if required by customs.
- (7) *Cargo declaration* - The master of any aircraft or ship involved in coastal trade who is transporting goods under customs control, is to give to customs at the port or place of discharge of those goods, a cargo declaration identifying those goods under customs control.
- (8) *Illegal landing* - The master of an aircraft or ship involved in coastal trade who is transporting goods under customs control, must not allow those goods to be landed at a foreign port or at any place or port within Tonga which has not been approved in writing by customs.
- (9) *Approved loading* – Regulations describe the places which are approved for loading and unloading goods under customs control involved in coastal trade.
- (10) *Persons* - Regulations describe the customs requirements for the carriage of passengers, officers, and crew in coastal trade.

PART XV
CUSTOMS SECURITIES

43. Customs Securities

- (1) *Customs power* - Customs have the power to require and take securities for:
 - a) compliance with this Act;
 - b) compliance with any condition or restriction imposed under this Act; or
 - c) the protection of the revenue.
- (2) *Release* - Customs are not to release goods subject to a security from customs control until the required securities are paid or put in place.
- (3) *Regulations* - Regulations describe the manner and form of securities to be provided to customs.
- (4) *Form* - The Commissioner may allow a customs security to be provided by a bond, guarantee, or cash or by a combination of these.
- (5) *Amount* - The Commissioner is to determine the amount of any customs security but that amount is not to exceed the customs duty payable.
- (6) *Further security* - Where customs becomes dissatisfied with the amount, legality, or any other aspect of a security previously accepted, the Commissioner may require a new security and this must be immediately provided by the importer.
- (7) *Three years* - Where a security has been provided to customs by an importer, that security may be taken for use by the Crown after three years or at an earlier time if that is a condition of the security.
- (8) *Forfeiture* - Where the conditions of a security are not complied with, then that security may be forfeited to the Crown at any time.
- (9) *Invalidity* -A security does not become invalid merely because of some formal defect within the document, for example, no witness to its execution.
- (10) *Inadmissibility in proceedings* -The payment of a security by a person to customs may not be relied upon nor confer any benefit to a person in customs or excise proceedings.

PART XVI
WAREHOUSES AND APPROVED PLACES

44. Warehousing

- (1) *Customs warehouse* - A “customs warehouse” is a place for the storage, by the general public, of dutiable goods which are under customs control.
- (2) *Private warehouse* - A “private warehouse” is a place for the storage, only by a nominated person, of dutiable goods which are under customs control.
- (3) *Approved place* - A “customs approved place” is a place which is not a customs or private warehouse but where dutiable goods under customs control may be stored so long as customs written approval has first been obtained.
- (4) *Warehousing procedures* - Customs “warehousing procedures” means the customs procedures under which dutiable or excisable goods may be stored under customs control without the payment of import or excise duty.
- (5) *Regulations* - The regulations describe the customs warehousing procedures including:
 - a) licensing requirements and obligations;
 - b) types of goods which may be stored in customs warehouses;
 - c) types of goods which may be stored in private warehouses;
 - d) functions which may be performed on and access to goods stored in a customs or private warehouse;
 - e) transfer of ownership of goods stored in a customs or private warehouse;
 - f) the procedures to be followed by customs when goods are not removed from a customs or private warehouse within the agreed time period;
- (6) *Government indemnity* - The government is not responsible for any loss or damage to goods stored in a customs or private warehouse unless there is wilful negligence by customs.
- (7) *Help to customs* - The licensee of a warehouse or approved place under this Part is to provide all necessary assistance to customs in performing any examination at that place for the purposes of this Act.
- (8) *Facilities* - The licensee of a warehouse or approved place under this Part is to provide whatever facilities the Commissioner requires to assist customs in any compliance review at that place (for example, office accommodation, immediate access to records, or ability to easily inspect packages).
- (9) *Revocation* - The Commissioner may revoke a warehouse licence where the licensee does not comply with the conditions of the licence.
- (10) *Alternative warehouse* - Where the Commissioner revokes a warehouse licence, the goods in that warehouse under customs control are to be removed immediately under customs’ supervision to another customs warehouse nominated by customs.
- (11) *Hours of operation* -The licensee of any customs warehouse must obtain prior authorisation from customs about the hours of operation of that place and is to pre- notify customs in writing of any variation.
- (12) *Unauthorised entry* - No person is to enter any customs warehouse outside of the customs approved hours of operation without customs written authorisation.

- (13) *King's warehouse* - The Chief Commissioner may declare a place to be a king's warehouse where goods may be stored under customs control either by permission of customs or by order of the Commissioner.
- (14) *Records* - The licensee or proprietor of any licensed warehouse or approved place for the purposes of this part is to maintain records as the regulations require concerning dutiable and excisable goods under customs control, stored at that place.
- (15) *Availability* - The licensee or proprietor of any licensed warehouse or approved place for the purposes of this Part is to make available to customs immediately on request, the records of any goods under customs control stored or delivered at that place.
- (16) *Identification* - All goods in any licensed warehouse or approved place for the purposes of this Part are to be stored by the licensee so that they may be easily identifiable by customs in any compliance checks.
- (17) *Liability* - Where the licensee of a licensed warehouse is unable to account to the satisfaction of customs, for the whereabouts of any dutiable or excisable goods under customs control recorded into that place then the licensee is liable for and must pay to customs the customs duty or excise taxes on those goods.
- (18) *Alterations* - Where dutiable goods under customs control, stored in a King's warehouse or place are considered by the Commissioner to require repackaging, better security, or any other alteration, the Commissioner may order that improvement and, if necessary, recover any costs from the owner prior to delivery.
- (19) *Unauthorised movement* - Dutiable goods under customs control stored in a warehouse or at an approved place must not be moved from that place until the written permission of customs is provided.
- (20) *Government cost* - Customs may move goods for its own purposes from a King's warehouse to another warehouse or approved place and the government is to bear the cost of that removal.
- (21) *Two years* - All warehoused goods may stay under customs control in a warehouse for two years from the time of the initial placement. After that time those goods are to be entered with customs for home consumption, exported, or transshipped.
- (22) *Rewarehousing* - The Commissioner may consider and, if appropriate, approve a request by an owner to re-warehouse goods after two years in circumstances described in regulations.
- (23) *Customs auctions* - Goods remaining in any licensed warehouse or approved place for a period exceeding two years may be sold at public auction by customs following procedures described in regulations.
- (24) *Rate for certain goods* - The customs duty and excise taxes to be paid when goods are subject to fixed rates of duty or tax are to be determined by reference to the measurement of those goods at the time they were placed in the warehouse unless the Commissioner is satisfied about any variation.
- (25) *Shortages* - Where there is a difference between the quantity or value of goods initially entered for warehousing and the goods entered for home consumption within the kingdom, customs duty or excise tax on that difference is payable by the warehouse licensee unless a suitable explanation has been provided to customs.
- (26) *Customs value* - The customs value of goods sold at Customs sales is the sale price of those goods or another value at the discretion of the Commissioner.
- (27) *Liability* - The owner of goods is liable to self assess and pay any customs duty or excise tax when goods are entered for home consumption from any warehouse.

- (28) *Warehouse goods declaration* - The owner of goods is to lodge with customs a goods declaration described in regulations together with commercial documentation where required, before warehoused goods may be released into home consumption.
- (29) *Licensee obligation* -The licensee of a warehouse is not to release goods into home consumption unless customs authorisation described in regulations is first obtained by that licensee.

PART XVII
REFUNDS AND DRAWBACKS

45. Refunds

- (1) *Refunds and remissions* - The Commissioner may allow refunds and remissions of any duty or excise tax paid or payable on any goods in the circumstances described in regulations.
- (2) *Calculation* - The regulations describe the method of calculation of refunds or remissions.
- (3) *Application* - The regulations describe the way to make a refund or remission application.
- (4) *Application fee* - Where a person makes an application for a refund in certain circumstances described in regulations an application fee will be payable.
- (5) *Export duty refund* - Where a person has paid export duty on goods leaving Tonga and those goods are reimported into Tonga the Commissioner may allow a full or partial refund of that duty on those goods.
- (6) *Drawback* - The Commissioner may approve the payment of a drawback of customs duty paid or payable on imported goods in circumstances described in regulations.
- (7) *Processing* - Imported goods which have undergone a further processing in Tonga prior to export, as described in regulations, may be eligible for drawback.
- (8) *Regulations* - The regulations describe the way to apply for a drawback and the amount of any drawback payable.

PART XVIII
CUSTOMS OFFENCES

46. Customs Offences

- (1) *Assembly for offence* - Where two or more persons assemble with the intention of smuggling or preventing the seizure of any smuggled goods, those persons are guilty of an offence.
- (2) *Hindering* - Where a person rescues any goods which have been seized or before a seizure breaks or destroys any goods or documents relating to the seizure then that person is guilty of an offence.
- (3) *Assault* - Where a person assaults, resists, obstructs or intimidates a customs officer exercising powers under this act then that person is guilty of an offence.
- (4) *Smuggling* - A person who smuggles, unlawfully conveys, or has in his possession any smuggled goods is guilty of an offence.
- (5) *Intent* - A person who knowingly conveys or knowingly has in his possession without reasonable excuse any smuggled goods is guilty of an offence.
- (6) *Masters' liability* - The master of an aircraft or ship is guilty of an offence if that aircraft or ship is intentionally used or allowed to be used in smuggling.
- (7) *Evasion* - A person who evades payment of any duty or tax which is payable is guilty of an offence.
- (8) *Unauthorised refund* - A person who obtains any drawback, refund, or remission which is not payable is guilty of an offence.
- (9) *Misstatement* - A person who knowingly or recklessly makes a statement to a customs officer exercising powers under this Act which is wrong in fact is guilty of an offence.
- (10) *Omitting a fact* - A person who knowingly or recklessly omits from a statement made to a customs officer exercising powers under this Act, a relevant fact is guilty of an offence if that officer is misled.
- (11) *Dishonoured cheques* - A person who presents a cheque to Customs in payment of a customs liability, which is not honoured by the bank, is guilty of an offence, unless the failure to honor the cheque is due to error on the part of the bank.
- (12) *Misstatement* - A person who makes any written declaration to Customs which is factually incorrect (regardless of intention) is guilty of an offence.
- (13) *Unauthorised entry* - An unauthorised person who enters into a place where passengers from an aircraft or ship are disembarking is guilty of an offence.
- (14) *Failure to answer* - A person who fails to answer a reasonable question from a customs officer exercising powers under this act is guilty of an offence.
- (15) *Failure to produce* - A person who fails to promptly produce a document or record required for the purposes of this Act is guilty of an offence.
- (16) *Lawful commands* - If a person having control of an aircraft or ship which is liable to seizure or examination by customs does not obey a lawful command by customs then that person is guilty of an offence.
- (17) *Firearms and weapons* - If a person commits any customs offence and is at the time of such involvement in possession of firearms, ammunition, or other weapons, that person is guilty of an offence.
- (18) *Removal or damage* - A person who removes, hinders, or damages anything used by a customs officer exercising powers under this Act is guilty of an offence.

- (19) *Concealment* - A person concealing dutiable or excisable goods or prohibited imports or exports is guilty of an offence.
- (20) *Prohibited imports* - If a person imports or exports or causes to be imported or exported any prohibited imports or exports, that person is guilty of an offence.
- (21). *Attempts* - If a person attempts to import or export or attempts to cause to be imported or exported any prohibited imports or exports that person is guilty of an offence.
- (22) *Customs tariff and valuation* - If a person misrepresents the tariff classification or value of goods to Customs that person is guilty of an offence.
- (23) *Unauthorised customs services* - If an officer of customs demands or accepts directly or indirectly any unauthorised money, goods, or services in exchange for that officer performing any customs services, that person is guilty of an offence.
- (24) *Non- performance of customs services* - If an officer of customs demands or accepts directly or indirectly any unauthorised money, goods or services for the non-performance of that person's duties then that person is guilty of an offence.

How about in place of 23 and 24:

- (23) *Unauthorised money, goods, or services* -- If an officer of customs demands or accepts directly or indirectly any unauthorised money, goods, or services:
- a) in exchange for that officer performing any customs, services;
 - b) in exchange for the non-performance of that person's duties; or
 - c) otherwise in connection with the officer's official duties
- that person is guilty of an offence.
- (25) *Unauthorised production* - If a manufacturer or producer of excisable goods is not licensed by customs to manufacture or produce those goods, that person is guilty of an offence.
- (26) *False records* - If a manufacturer or producer of excisable goods has quantities of those goods in excess of the quantities recorded in the books of account without a reasonable explanation, that person is guilty of an offence.
- (27) *Unauthorised interference* - A person who interferes with goods or conveyances which have been secured, held, marked, sealed and the like by customs, is guilty of an offence.
- (28) *Impersonation* - A person impersonating a customs officer for the purpose of obtaining directly or indirectly some benefit, is guilty of an offence.
- (29) *Assistance* - A person who assists another person in any way with a customs offence is guilty of that offence.
- (30) *Failure to account* - A person who fails to account when obliged to do so, for goods under customs control (including ship stores and conveyances) is guilty of an offence.
- (31) *Failure to deal* - A person who fails to deal with goods in accordance with a customs declaration is guilty of an offence.
- (32) *Unauthorised movement* - A person who, without authorisation, moves, alters or interferes with goods which are subject to customs control is guilty of an offence.
- (33) *Masters* - A master of an aircraft or ship in the territory of Tonga, who fails to comply with a lawful demand made by customs is guilty of an offence.

- (34) *Use of firearms* - If any person uses or attempts to use firearms, offensive weapons, ammunition or other weapons in any way to prevent, deter or hinder a customs officer in the exercise of that officer's duties, that person is guilty of an offence.
- (35) *Enter customs control area* - An unauthorised person entering a place where there are goods under customs control is guilty of an offence.
- (36) *Sufferance place* - A person loading or unloading or responsible for loading or unloading goods at a sufferance place in a way not described in regulations is guilty of an offence.
- (37) *Finding and possession* - If a person has in their possession prohibited or smuggled goods or goods under customs control which have been found at sea or on land, that person is guilty of an offence unless the finding is reported to customs or the police within 24 hours.
- (38) *Threats* - A person threatening or abusing a customs officer so as to intimidate or deter that officer carrying out duties under this Act is guilty of an offence.
- (49) *Rules for disembarking or boarding* - Where a person disembarks or boards an aircraft or ship in Tonga and the procedures described in regulations are not followed then that person and the master of the aircraft or ship are guilty of an offence.

PART XIX

POWERS OF OFFICERS

47. Powers of officers

- (1) *Examination* - Any customs officer may examine any goods subject to customs control and the expenses for that examination are to be paid for by the importer.
- (2) *Examples* - Examples of what a customs officer may do in an examination include:
 - a) open any package in which goods are contained;
 - b) use a device like an x-ray machine or scanning equipment on the goods;
 - c) test or analyse the goods;
 - d) measure or count the goods;
 - e) read documents either directly or with the use of an electronic device;
 - f) use dogs or other aids in examining goods; and
 - g) secure, lock, seal, or mark goods or conveyances.
- (3) *Copies* - Where a customs officer considers that a document is relevant for the proper administration of this Act, a copy of that document may be taken and retained by customs.
- (4) *Boarding* - Customs and police officers may board and search any aircraft or ship where it is believed that on board there are goods under customs control.
- (5) *Suitable accommodation* - Where a customs or police officer boards and remains on an aircraft or ship the master is to provide suitable accommodation and food.
- (6) *Carry firearms* - The Commissioner may authorise a customs officer to carry firearms and other articles of defence if required.
- (7) *Patrol and pass* - Any customs officer when exercising powers under this Act may patrol and pass freely over any part of the territory of Tonga including the coast or airport.
- (8) *Customs mooring* - Any customs officer in charge of a Customs vessel may take that vessel to or moor that vessel at any place in the Kingdom for the purposes of this Act.
- (9) *Answer questions (customs control)* - A customs officer may question any person connected directly or indirectly with goods under customs control and that person is to answer those questions.
- (10) *Answer questions (smuggling)* - A customs officer may question any person connected directly or indirectly with goods suspected of being smuggled and that person is to answer those questions.
- (11) *Detain* - Where a person refuses to answer questions about goods under customs control or reasonably suspected of being smuggled, the officer may detain that person for the purposes of establishing identity and if necessary convey that person to the nearest police station.
- (12) *Search conveyances* - A customs officer may without a warrant, stop and search any conveyance or goods within it to establish that there has been proper compliance with the customs laws.
- (13) *Unload goods* - A customs officer may order the master of any aircraft or ship which has been detained, to unload goods suspected of being under customs control at a place for further examination.

- (14) *Warrants* - The Chief Commissioner may issue a nominated customs officer a warrant to enter domestic or commercial premises where the Chief Commissioner has grounds to believe that there has been a customs offence and that the particular premises are likely to contain information which will assist customs in administering this Act.
- (15) *Regulations* - The Regulations describe the matters to be included in a warrant.
- (16) *Expiry* - A warrant expires seven days after it is issued.
- (17) *Warrant authorisation* - A warrant authorises customs officers to:
- a) enter and search the nominated premises;
 - b) seize things (including documents and goods) found within the premises that the officer believes will directly assist the Customs investigation;
 - c) search persons (following procedures described in regulations) who are at or near the premises if the officer in charge believes that the person is concealing documents or goods that will assist in the customs investigation.
 - d) remove documents or goods seized to another place following procedures described in regulations.
 - e) use computers or other electronic equipment found at the nominated premises to assist in the investigation.
- (18) *Court order* - Where necessary, customs may apply for a court order to compel a person to assist customs to understand information stored in electronic format.
- (19) *Copies* - Where customs seizes any document, customs, on request, is to provide a copy of that document to that person within a reasonable time.
- (20) *Searching persons* - Where customs conducts a search of a person then a customs or police officer of the same gender is to conduct that search.
- (21) *Arrest* - An officer of customs or police may, without warrant, arrest any person where there are grounds to believe that person is involved in smuggling.
- (22) *Assault* - An officer of customs or police may, without warrant, arrest any person where that person is involved in assault against a customs officer exercising duties under this Act.
- (23) *Documents* - Customs may impound or retain any document presented in connection with a declaration produced under this Act.
- (24) *Foreign language* - If a document is presented to customs in a foreign language, customs may require an interpretation of that document at the owner's expense.
- (25) *Abandoned goods* - Where goods under customs control are abandoned by the owner, the Commissioner may dispose of those goods.
- (26) *Disposal* - Where the Commissioner disposes of abandoned goods any expenses incurred by customs, including duty, may be recovered from the proceeds of the sale.
- (27) *Detain and search* - Where a customs officer suspects that a person is carrying any smuggled goods, customs may detain and search that person.
- (28) *Samples* - A customs officer may take samples of dutiable goods at any time for the purposes of this Act.

- (29) *Power of arrest* - A customs officer may arrest any person where the customs officer suspects that person has committed or is about to commit an offence against this Act and that person is to be taken immediately to the nearest police station.
- (30) *Produce documents* - A customs officer may request a person to produce documents in connection with imported goods or excisable goods and that person must immediately produce those documents.
- (31) *Masters and owners to answer questions* - A customs officer may question any master or owner of an aircraft or ship about the conveyance or goods carried on that conveyance and that person or his senior officer, if requested, is to attend before that customs officer and answer those questions.
- (32) *Master or agents to produce documents* - A customs officer may request a master or owner of an aircraft or ship to produce documents in connection with a conveyance or goods carried on that conveyance and that person or his senior officer, if requested, is to attend before that customs officer and produce those documents.
- (33) *Answer questions* - A customs officer may question any person about dutiable goods where that officer believes that incorrect duty has been or will be collected and that person is to answer those questions.

48. COMPLIANCE

- (1) *Entry with consent* - A customs officer may enter premises with the consent of the occupier and exercise compliance powers to verify whether a person is complying with this Act.
- (2) *Notice* - A customs officer is to provide to an occupier of premises notice before entering premises with consent.
- (3) *Identification* - A customs officer entering premises or exercising any compliance powers must produce an identity card to the occupier.
- (4) *Regulations* - A customs officer performing compliance reviews is to follow procedures described in regulations.

PART XX
SEIZURE AND FORFEITURE

49. Seizure and forfeiture

(1) *Conveyances* - The following ships and aircraft are forfeited to the Crown:

- a) any aircraft or ship used in smuggling or knowingly used in unlawful importation, exportation or conveyance of any prohibited imports or prohibited exports;
- b) any aircraft or ship where the master has refused to allow that aircraft or ship to be boarded by customs;
- c) any aircraft or ship from which goods are thrown overboard or destroyed to prevent seizure by customs;
- d) any aircraft or ship which is found to be fitted in any way for the purpose of concealing goods from customs.
- e) any abandoned aircraft or ship.

(2) *Goods* - The following goods are forfeited to the Crown:

- a) goods which are smuggled or unlawfully imported, exported, or conveyed;
- b) prohibited imports or exports;
- c) imported goods which have not obtained an approved licence or permission;
- d) goods imported or exported in any aircraft or ship in which goods are prohibited to be imported or exported.
- e) bulk goods where the bulk is broken without authorisation;
- f) goods under the control of customs that have been moved, altered, or interfered with, without authorisation;
- g) goods which are required by this Act to be dealt with in a particular way and are not dealt with in that way;
- h) any other conveyance or animal used in smuggling or in the unlawful importation, exportation, or conveyance of any goods;
- i) goods (but not passengers' baggage) found on any aircraft or ship after clearance which are not included on the cargo declaration and are not accounted for to the satisfaction of customs;
- j) prohibited exports put on any aircraft or ship for export or brought to any airport, wharf, or place for the purpose of export;
- k) dutiable goods concealed, misdescribed, or misrepresented to customs in any manner;
- l) packages which have goods concealed which are not declared or are packed so as to deceive customs;
- m) dutiable goods found in the possession of or in the baggage of a person who has landed from or gone onboard an aircraft or ship where that person has denied that there are any dutiable goods in the person's possession, or who when questioned by an officer has not fully disclosed that such goods are in the person's possession or baggage;

- n) all dutiable unaccompanied goods imported by a person where the person has denied that there are any dutiable goods or after having been questioned by an officer has not fully disclosed that there are such goods.
 - o) all goods offered for sale in Tonga where the seller directly or indirectly states that the goods are prohibited or smuggled.
 - p) ships' stores which do not comply with the requirements described in regulations.
- (3) *Customs may seize* - Where customs believes goods are forfeited goods, customs may seize those goods following procedures described in regulations.
 - (4) *Seizure notice* - A seizure notice in a form described in regulations must be given by customs to the owner of goods or if that person cannot be identified the person from whom the goods were seized, within a reasonable time after a seizure has taken place.
 - (5) *Secure place* - Seized goods are to be taken immediately by customs to a King's warehouse or other secure place.
 - (6) *Request for return* - The owner of seized goods may request from customs the return of any goods seized within the time limits and on the form described in regulations.
 - (7) *Condemnation* - Where after 30 days there has been no request to customs by the owner for the return of seized goods, those goods are condemned as forfeited to the Crown and may be disposed of by customs following procedures described in regulations.
 - (8) *Referral to court* - Where the owner of seized goods believed by customs to be forfeited, makes an application to customs for the return of those goods within 30 days, then customs may commence proceedings in court seeking an order for the condemnation of those goods.
 - (9) *Title* - Where goods for any reason are condemned as forfeited to the Crown then the title in those goods transfers absolutely to the Crown.
 - (10) *Disposal* - Once goods become condemned goods, they may be disposed of as the Commissioner directs after consideration has been given to the circumstances of each case.
 - (11) *Reimbursement* - Customs is to be reimbursed for any expenses incurred in the storage and disposal of any forfeited goods including the customs duty and other taxes.
 - (12) *Release to owner* - The Commissioner may allow on application, goods suspected of or actually being forfeited goods to be released to the owner on payment of the duty and any penalty nominated by the court or Commissioner.
 - (13) *Perishable goods* - Where seized forfeited goods are perishable goods or live animals the Commissioner may direct that those goods be dealt with in a suitable way including destruction and no person may commence legal proceedings against the Commissioner for any such decision.
 - (14) *Recovery of market value* - Where seized perishable goods are disposed of by the Commissioner, the owner of those goods may make application to the court for recovery from the government of Tonga of the market value of those goods.
 - (15) *Condition for recovery of market value* - The owner of seized perishable goods which are disposed of by the Commissioner, is entitled to the recovery of the market value of those goods only where it is proven in court that the goods were not used or involved in the commission of any offence under this Act.

**PART XXI
CUSTOMS PENALTIES**

50. Penalties for Offences

- (1) *Customs offences* - An offence against this Act may be a criminal, civil, or administrative offence depending on the categories of offences described in this Part.

51 *Criminal Offences*

- (1) *Criminal offences* - Offences described in the following sub-sections of this Act are to be treated as criminal offences and the court may impose, on successful prosecution, a jail term of up to two years and/or a fine of up to \$5,000:
- (2) section...
- (3) section...
- (4) section...
- (5) section...

(the sections to this provision and those below are to be completed following discussions with the Crown Law Office. Regard should be had to the existing customs law, the consumption tax and income-tax legislation to ensure uniformity. However further regard should be had to the unusual circumstances of customs work - see for example the provisions concerning offences relating to violence to customs offices who board ships and are isolated from an office environment)

52 *Civil offences*

- (1) *Civil offences* - Offences described in the following sub-sections of this Act are to be treated as civil offences and the court may impose, on successful prosecution, fines up to the amounts specified against each sub-section below
- (2) section...
- (3) section...
- (4) section...
- (5) sectiones

...

Administrative Penalties

53. Administrative Penalties

- (1) *Administrative penalties* - Offences against the following sub-sections of this Act, although civil offences, may be dealt with by the Commissioner imposing a monetary penalty on the guilty person without recourse to a court or tribunal.
- (2) section.....

- (3) section.....
- (4) section.....
- (5) section....
- (2) *Unpaid administrative penalty* - Where an administrative penalty imposed by this Act remains outstanding for more than 28 days or other time approved by the Commissioner, that matter may then be prosecuted by the Commissioner as a normal civil offence.
- (3) *Amount of administrative penalty* - The amount payable to the Commissioner for an administrative penalty is to be determined by the Commissioner having regard to the circumstances of each case but the amount is not to exceed 80% of the maximum penalty for each offence if that offence was prosecuted through the court system.
- (4) *Regulations* - Regulations describe the procedures for administrative penalties.
- (5) *Policy* – The Commissioner is to issue guidelines on how administrative penalties are applied.

54 ***Strict Liability Offences***

- (1) *Strict liability* - Offences against the following sub-sections of this Act are strict liability offences where the person is guilty of the offence if that person physically performs the act. That is, there is no mental element required to prove the offence:
 - (2) section....
 - (3) section....
 - (4) section...
 - (5) section...

55. **General Penalty**

- (1) *General penalty* - Where there is no specific penalty allocated to an offence against this Act then the penalty for that offence is an amount of \$XXXX.

PART XXII
LEGAL PROCEEDINGS

56. Legal proceedings

- (1) *Repayment* - Where the Commissioner is satisfied that the correct amount of customs duty or excise tax has not been paid or an amount of refund or drawback has been incorrectly paid, the importer or manufacturer must pay immediately the amount demanded in writing by the Commissioner.
- (2) *Retrospectivity* - The Commissioner has the power to make demands under this Part for 4 years from the date that the duty or tax was payable.
- (3) *Crown debts* - Amounts demanded by the Commissioner under this Part are Crown debts which may be recovered at any time in a court.
- (4) *Protest* - Where there is a dispute about the rate or amount of customs duty or excise tax payable, an importer or manufacturer of excisable goods may pay that disputed amount under protest.
- (5) *Recovery action* - Where a disputed amount of customs duty or excise tax is paid under protest, the person who paid that amount may commence proceedings in a tribunal or court for the recovery of the amount paid within three months from the date of payment.
- (6) *Procedures* - Regulations set out the procedures for importers and manufacturers of excisable goods to pay amounts in dispute under protest.
- (7) *Repayment* - Where as a result of a court or tribunal decision too much import or excise duty has been paid, the Commissioner is to repay that amount together with any interest ordered by the court or tribunal.
- (8) *Competent court* - Offences against the customs and excise laws may be prosecuted at the discretion of the Crown Solicitor, before the competent court.
- (9) *Magistrate's court* - Any provision of this Act requiring recovery or enforcement (for example, the seizure and forfeiture provisions) may be brought before a magistrate's court.
- (10) *Imprisonment* - Where any court convicts a person of an offence under this Act and imposes a penalty for that offence, the court may impose a term of imprisonment if that penalty is not paid.
- (11) *Limitation* - Proceedings under the customs and excise laws may be commenced at any time within seven years after the date of the offence.
- (12) *Prosecution* - Any customs officer may prosecute and conduct any information or other proceeding under the customs and excise laws in respect of any offence or penalty.
- (13) *Costs* - The same rules concerning costs apply in customs prosecutions as in proceedings between private persons.
- (14) *Tribunal costs* - Each party bears its own costs in matters before the Tribunal.
- (15) *Identities* - Where any information or proceeding is commenced concerning customs seizure, forfeiture, or condemnation, the court is to satisfy itself about the true identities of the owners of the goods.
- (16) *Condemnation* - Where the true owners of goods cannot be confirmed by the court in proceedings referred to in the preceding subsection then those goods are to be condemned.
- (17) *Indemnity* - Customs officers performing their lawful duty are not liable to civil proceedings.

- (18) *Smuggling prosecutions* - In prosecutions for smuggling, proof that the proper duty has been paid or the goods have been lawfully imported, delivered or exported or the like, is the responsibility of the defendant.
- (19) *Averment* - In any customs prosecution, the averment of the prosecutor contained in the information, complaint, declaration, or claim is prima facie evidence of the matter or matters averred.
- (20) *Commissioner may sell* - Where a pecuniary penalty is imposed on any person and remains unpaid, the Commissioner may sell any goods belonging to that person which may then or later be subject to customs control, and recover the amount of that penalty.
- (21) *Body corporate* - Where in a customs prosecution it is necessary to establish the state of mind of a body corporate, it is sufficient to show that a director, servant, or agent of the body corporate who performed the conduct in the scope of his authority, had that state of mind.
- (22) *Customs officer* - In any trial if it becomes necessary to demonstrate that any person is a customs officer, that person's own evidence is prima facie proof and that person is to be considered a competent witness.
- (23) *Penalty valuation* - Where any penalty is imposed by the court by reference to the value of any goods, that value is to be determined by reference to the customs valuation provisions in this act.
- (24) *Valuation certificate* - A certificate from the Commissioner of the customs value of any goods in subsection (23) is prima facie evidence for the court.
- (25) *Evidence of markings* - In any customs prosecution where direct oral evidence of a fact is admissible, any statement contained in any marking in or on any goods or their wrappings or containers is admissible as evidence of that fact.
- (26) *Copies* - Where a book or document is required by the customs laws as evidence in any court, copies of those books or documents certified by a customs officer are admissible for that purpose without production of the original.
- (27) *Manufacturer for sale* - All excisable goods manufactured in the Kingdom are to be taken to be goods manufactured for sale unless the contrary is proved.
- (28) *Excisable goods found* - All excisable goods found in a place will be taken to have been manufactured in that place unless the contrary is proved.
- (29) *Spirits found* - Where spirits are found on any premises where there is an unlicensed still, those spirits will be taken to have been distilled by the occupier of those premises unless the contrary is proved.
- (30) *Criminal burden of proof* -- Where a criminal offence under this Act is prosecuted, the burden of proof obligations and the usual practice and procedure of the court in criminal matters apply.
- (31) *Civil burden of proof* - Where a civil offence under this Act is prosecuted, the burden of proof obligations and the usual practice and procedure of the court in civil matters apply.
- (32) *Evidence* - Where it is necessary in any customs or excise proceeding to give proof of any direction issued by his Majesty in Council, the Chief Commissioner or the Commissioner, any written document to that effect will be sufficient.
- (33) *Expert's report* - Where it is necessary in any customs or excise proceedings to give proof of any expert's report (including a pharmacist's report) a certificate signed by that expert will be sufficient.

PART XXIII
RETENTION OF COMMERCIAL DOCUMENTATION

57. Retention of Documents

- (1) *Commercial documentation* - Commercial documentation includes customs declarations, commercial invoices, packing lists, bills of lading, airway bills, packing lists, bills of material, manufacturing costs, correspondence, and records concerning the transaction, whether in hard copy or electronic format.
- (2) *Production* - Customs may request, in writing, a person to produce commercial documentation and the original or a certified copy of that document must be immediately provided.
- (3) *Certified copy* - Where commercial documentation is maintained in soft copy then a certified hard copy of that documentation is to be provided.
- (4) *Retention time* - Importers and manufacturers of excisable goods must keep all commercial documentation relating to an importation or manufacture of excisable goods for a period of five years from the date of the liability of those goods to duties of customs.
- (5) *Availability* - Commercial documentation which is required by this Act is required to be made available, on request by customs, within 24 hours.
- (6) *Certified copies* - Certified copies of commercial documentation are to be retained by a person who must provide the original documents to another government department or person.

PART XXIV
TARIFF CONCESSIONS

58. Tariff Concessions

- (1) *Lower rate* - Tariff concessions reduce the general rate of duty appearing in the customs tariff to a lower duty rate set out in schedule 4 of the customs tariff.
- (2) *Application* - Importers may apply to the Chief Commissioner for a tariff concession in the way described in regulations.
- (3) *Public record* - The Commissioner may describe in regulations or other public record, goods which are eligible for a tariff concession.
- (4) *Freely available* - Where the Commissioner approves a tariff concession, it is freely available to all importers of that class of goods.
- (5) *Eligibility* - The circumstances considered by the Commissioner in granting tariff concessions are described in regulations.

**PART XXV
CUSTOMS AGENTS**

59. Customs Agents

- (1) *Customs agent* - “Customs agent” means a representative of an importer, exporter, overseas exporter or local manufacturer of excisable goods who attends to the customs clearance formalities on behalf of that person.
- (2) *Licensing* - A customs agent must be licensed by the Commissioner.
- (3) *Annual licence* - A customs agent must apply to the Commissioner for the renewal of a licence annually.
- (4) *Qualifications* - A customs agent must be qualified before the Commissioner grants a licence.
- (5) *Regulations* - The qualification requirements for a customs agent are described in regulations.
- (6) *Owner authorisation* - An owner of goods is required to authorise in writing a person to be the owner’s customs agent for the purposes of this Act
- (7) *Misrepresentation* - A person is not to misrepresent that the person is a licensed customs agent.
- (8) *Written authorisation* - Where a person claims to be a customs agent for a person, customs may request written authorisation of that appointment.
- (9) *Deeming* - Where a customs agent makes a declaration to customs which is required by this Act on behalf of an owner, that declaration may be taken as if it were made by the owner.
- (10) *Penalties* - Where a customs agent makes a declaration to customs, the agent may be taken to be the owner of the goods (and may be liable to the same penalties as the actual owner).
- (11) *Security* - The Commissioner may require a licensed customs agent to give a security to customs for compliance with the conditions of the licence.
- (12) *Revocation* - The Commissioner may revoke a customs agent’s licence for non-compliance with the terms of the licence.
- (13) *Annual fee* - A customs agent is to pay an annual fee described in regulations for a customs agent’s licence.

**PART XXVI
ADMINISTRATION**

60. Administration

- (1) *General administration* - The Chief Commissioner is to have the general administration of this Act.
- (2) *Delegation* - The Chief Commissioner may delegate any power or duty imposed by this Act, but not this power of delegation
- (3) *Chief Commissioner* - When a delegated power or duty is exercised by the delegate, that activity will be interpreted as being exercised by the Chief Commissioner.
- (4) *Location and hours* – Regulations describe the location of customs offices and their time of operation.
- (5) *Customs fee* - Where customs provides a service outside of office hours or at a non-declared place, customs may charge a fee as described in the regulations.
- (6) *Declaration* - The Chief Commissioner may declare ports, airports, wharves, sufferance wharves, or boarding stations for the purposes of this Act (referred to as “customs places”).
- (7) *Accommodation* - Owners or operators of customs places are required to provide suitable office accommodation for customs use.
- (8) *Customs requirements* - The Chief Commissioner must ensure that relevant information concerning the requirements, obligations and administration of this Act is available as required.
- (9) *Transition* - All lawful approvals provided by customs or other government departments, before the commencement of this Act are to remain valid, unless revoked in writing.
- (10) *Financial interests* - No person exercising powers under this Act is to have any financial interest in the manufacture, sale, importation, or trade of dutiable or excisable goods unless that interest is declared in advance to the Chief Commissioner.
- (11) *Indemnity* - No judicial proceedings may be commenced against any person performing lawful duties under this Act in respect of such duties.
- (12) *Confidentiality* - No person exercising powers under this Act is to communicate to any unauthorised person, directly or indirectly, information obtained in the administration of this Act.
- (13) *Intoxicating Liquor Act* - The Intoxicating Liquor Act does not apply to sales made by customs in the administration of this Act.

PART XXVII

MISCELLANEOUS

61. Miscellaneous

- (1) *Compatability* - A person may provide a declaration to Customs under this Act in an electronic format only if the person is registered with Customs to ensure compatibility of systems.
- (2) *Regulations* - The regulations describe how a person may register with customs for electronic communication of declarations.
- (3) *Agreement* - Persons registering to communicate with customs electronically are required to enter an agreement with customs setting out the terms and conditions of that arrangement with customs.
- (4) *Identifying code* - Where a person registers with Customs to communicate electronically, customs is to provide to that person an identifying code which is to be used in all communications with customs by the user.
- (5) *Revocation* - Where the Commissioner is satisfied that any person has not complied with the terms of the electronic communication agreement, the Commissioner may revoke that person's authorisation to communicate with customs electronically.
- (6) *Commissioner authorised* - The Commissioner is authorised to make lawful decisions to deal with circumstances arising from the administration of this Act which are not specifically covered by this Act.
- (7) *Compensation* - The King in Council may decide not to proceed with a matter to court but instead accept on behalf of the Crown a compensatory payment from any person reasonably suspected of the contravention of this Act so long as the affected person agrees in writing.
- (8) *Forms* - Where required, the Commissioner may direct what forms will be used for the purposes of the customs laws so long as this is done one month in advance of their commencement.
- (9) *Regulations* - The King in Council may make regulations to assist in the understanding and administration of this Act so long as they are consistent with this Act.
- (10) *Rules of origin dispute* - Where a person is dissatisfied about a customs decision affecting rules of origin, that person may seek a review of that decision before the tribunal.
- (11) *Personal information* - A person may disclose information to customs about the movement of persons or goods into or out of Tonga even if that information is personal information.
- (12) *Detention notice* - Where the Commissioner is satisfied that an aircraft or ship should be detained at a boarding station, a detention notice in writing is to be provided to the master detaining that conveyance until written permission to depart is provided.
- (13) Where the Commissioner sells any goods which have been lawfully obtained under the customs and excise laws the proceeds from those sales are to be applied:
 - a) firstly, in the payment of the expenses of the sale;
 - b) secondly, where the price for the goods includes duty, in payment of the duty;
 - c) thirdly, in payment of the warehouse rent and charges;
 - d) fourthly, in payment of the harbour and wharfage charges.

SCHEDULE 1 WTO VALUATION PROVISIONS

A decision to be made whether to adopt a variation of these actual WTO Article vii provisions or to retain Part vi of the Act To be discussed further. NOTE Act currently has the 2 valuation systems in the draft. One to be deleted once the decision is made.

AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

GENERAL INTRODUCTORY COMMENTARY

1. The primary basis for customs value under this Agreement is "transaction value" as defined in Article 1. Article 1 is to be read together with Article 8 which provides, *inter alia*, for adjustments to the price actually paid or payable in cases where certain specific elements which are considered to form a part of the value for customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the imported goods. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass from the buyer to the seller in the form of specified goods or services rather than in the form of money. Articles 2 through 7 provide methods of determining the customs value whenever it cannot be determined under the provisions of Article 1.

2. Where the customs value cannot be determined under the provisions of Article 1 there should normally be a process of consultation between the customs administration and importer with a view to arriving at a basis of value under the provisions of Article 2 or 3. It may occur, for example, that the importer has information about the customs value of identical or similar imported goods which is not immediately available to the customs administration in the port of importation. On the other hand, the customs administration may have information about the customs value of identical or similar imported goods which is not readily available to the importer. A process of consultation between the two parties will enable information to be exchanged, subject to the requirements of commercial confidentiality, with a view to determining a proper basis of value for customs purposes.

3. Articles 5 and 6 provide two bases for determining the customs value where it cannot be determined on the basis of the transaction value of the imported goods or of identical or similar imported goods. Under paragraph 1 of Article 5 the customs value is determined on the basis of the price at which the goods are sold in the condition as imported to an unrelated buyer in the country of importation. The importer also has the right to have goods which are further processed after importation valued under the provisions of Article 5 if the importer so requests. Under Article 6 the customs value is determined on the basis of the computed value. Both these methods present certain difficulties and because of this the importer is given the right, under the provisions of Article 4, to choose the order of application of the two methods.

4. Article 7 sets out how to determine the customs value in cases where it cannot be determined under the provisions of any of the preceding Articles.

Members,

Having regard to the Multilateral Trade Negotiations;

Desiring to further the objectives of GATT 1994 and to secure additional benefits for the international trade of developing countries;

Recognizing the importance of the provisions of Article VII of GATT 1994 and desiring to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;

Recognizing the need for a fair, uniform and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious customs values;

Recognizing that the basis for valuation of goods for customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued;

Recognizing that customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply;

Recognizing that valuation procedures should not be used to combat dumping;

Hereby *agree* as follows:

PART I

RULES ON CUSTOMS VALUATION

Article 1

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 the country of importation adjusted in accordance with the provisions of Article 8, provided:

- (a) that 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 by the public authorities in the country of importation;
 - (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 price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
- (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 8; and
- (d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2.

2. (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related within the meaning of Article 15 shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and the importer shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

- (b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:
 - (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;

- (ii) the customs value of identical or similar goods as determined under the provisions of Article 5;
- (iii) the customs value of identical or similar goods as determined under the provisions of Article 6;

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

- (c) The tests set forth in paragraph 2(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2(b).

Article 2

1.
 - (a) If the customs value of the imported goods cannot be determined under the provisions of Article 1, the customs value shall be the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.
 - (b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.
2. Where the costs and charges referred to in paragraph 2 of Article 8 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.
3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 3

1.
 - (a) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the customs value shall be the transaction value of similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.
 - (b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.
2. Where the costs and charges referred to in paragraph 2 of Article 8 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between

the imported goods and the similar goods in question arising from differences in distances and modes of transport.

3. If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 4

If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3, the customs value shall be determined under the provisions of Article 5 or, when the customs value cannot be determined under that Article, under the provisions of Article 6 except that, at the request of the importer, the order of application of Articles 5 and 6 shall be reversed.

Article 5

1. (a) If the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported, the customs value of the imported goods under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:
 - (i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind;
 - (ii) the usual costs of transport and insurance and associated costs incurred within the country of importation;
 - (iii) where appropriate, the costs and charges referred to in paragraph 2 of Article 8; and
 - (iv) the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.
- (b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of paragraph 1(a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

2. If neither the imported goods nor identical nor similar imported goods are sold in the country of importation in the condition as imported, then, if the importer so requests, 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 the country of importation 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 the deductions provided for in paragraph 1(a).

Article 6

1. The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of:

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

- (b) 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 the country of importation;
- (c) the cost or value of all other expenses necessary to reflect the valuation option chosen by the Member under paragraph 2 of Article 8 .

2. No Member may require or compel any person not resident in its own territory 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 Article may be verified in another country by the authorities of the country of importation with the agreement of the producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

Article 7

1. If the customs value of the imported goods cannot be determined under the provisions of Articles 1 through 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of GATT 1994 and on the basis of data available in the country of importation.

2. No customs value shall be determined under the provisions of this Article on the basis of:

- (a) the selling price in the country of importation of goods produced in such country;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the 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 Article 6;
- (e) the price of the goods for export to a country other than the country of importation;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

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

Article 8

1. In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods:

- (a) the following, 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:
 - (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, 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.

2. In framing its legislation, each Member shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:

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

3. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

Article 9

1. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the country of importation.

2. The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Member.

Article 10

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 required to be disclosed in the context of judicial proceedings.

Article 11

1. The legislation of each Member shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty.
2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Member shall provide for the right of appeal without penalty to a judicial authority.
3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any rights of further appeal.

Article 12

Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of GATT 1994 by the country of importation concerned.

Article 13

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. The legislation of each Member shall make provisions for such circumstances.

Article 14

The notes at Annex I to this Agreement form an integral part of this Agreement and the Articles of this Agreement are to be read and applied in conjunction with their respective notes. Annexes II and III also form an integral part of this Agreement.

Article 15

1. In this Agreement:
 - (a) "customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;
 - (b) "country of importation" means country or customs territory of importation; and
 - (c) "produced" includes grown, manufactured and mined.
2. In this Agreement:
 - (a) "identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical;
 - (b) "similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions 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;
 - (c) 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 paragraph 1(b)(iv) of Article 8 because such elements were undertaken in the country of importation;

- (d) goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued;
- (e) 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.

3. In this Agreement "goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.

4. For the purposes of this Agreement, persons shall be deemed to be related only if:

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

5. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Agreement if they fall within the criteria of paragraph 4.

Article 16

Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of the importer's goods was determined.

Article 17

Nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

PART II

ADMINISTRATION, CONSULTATIONS AND DISPUTE SETTLEMENT

Article 18

Institutions

1. There is hereby established a Committee on Customs Valuation (referred to in this Agreement as "the Committee") composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall normally meet once a year, or as is otherwise envisaged by the relevant provisions of this Agreement, for the purpose of affording Members the opportunity to consult on matters relating to the administration of the customs valuation system by any Member as it might affect the operation of this Agreement or the furtherance of its objectives and carrying out such other responsibilities as may be assigned to it by the Members. The WTO Secretariat shall act as the secretariat to the Committee.

2. There shall be established a Technical Committee on Customs Valuation (referred to in this Agreement as "the Technical Committee") under the auspices of the Customs Co-operation Council (referred to in this Agreement as "the CCC"), which shall carry out the responsibilities described in Annex II to this Agreement and shall operate in accordance with the rules of procedure contained therein.

Article 19

Consultations and Dispute Settlement

1. Except as otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under this Agreement.

2. If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, as a result of the actions of another Member or of other Members, it may, with a view to reaching a mutually satisfactory solution of this matter, request consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultations.

3. The Technical Committee shall provide, upon request, advice and assistance to Members engaged in consultations.

4. At the request of a party to the dispute, or on its own initiative, a panel established to examine a dispute relating to the provisions of this Agreement may request the Technical Committee to carry out an examination of any questions requiring technical consideration. The panel shall determine the terms of reference of the Technical Committee for the particular dispute and set a time period for receipt of the report of the Technical Committee. The panel shall take into consideration the report of the Technical Committee. In the event that the Technical Committee is unable to reach consensus on a matter referred to it pursuant to this paragraph, the panel should afford the parties to the dispute an opportunity to present their views on the matter to the panel.

5. Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of this information, authorized by the person, body or authority providing the information, shall be provided.

PART III

SPECIAL AND DIFFERENTIAL TREATMENT

Article 20

1. Developing country Members not party to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade done on 12 April 1979 may delay application of the provisions of this Agreement for a period not exceeding five years from the date of entry into force of the WTO Agreement for such Members. Developing country Members who choose to delay application of this Agreement shall notify the Director-General of the WTO accordingly.

2. In addition to paragraph 1, developing country Members not party to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade done on 12 April 1979 may delay application of paragraph 2(b)(iii) of Article 1 and Article 6 for a period not exceeding three years following their application of

all other provisions of this Agreement. Developing country Members that choose to delay application of the provisions specified in this paragraph shall notify the Director-General of the WTO accordingly.

3. Developed country Members shall furnish, on mutually agreed terms, technical assistance to developing country Members that so request. On this basis developed country Members shall draw up programmes of technical assistance which may include, *inter alia*, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of this Agreement.

PART IV

FINAL PROVISIONS

Article 21

Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Article 22

National Legislation

1. Each Member shall ensure, not later than the date of application of the provisions of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

2. Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

Article 23

Review

The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the Council for Trade in Goods of developments during the period covered by such reviews.

Article 24

Secretariat

This Agreement shall be serviced by the WTO Secretariat except in regard to those responsibilities specifically assigned to the Technical Committee, which will be serviced by the CCC Secretariat.

Schedule 2

Rules of origin for customs purposes mean:

“factory” means the place in the territory of a Party where a process of manufacture occurs .

“factory cost” means the total cost of the goods in their finished state following a process of manufacture, excluding any profit, marketing costs, taxes and other duties

“inner containers” includes any container or containers into which, or on which, any goods are packed for sale, but excludes any shipping container, pallet, or similar article used for the purposes of carriage on any ship or aircraft

“Labour costs” means:

- a) salaries, wages, bonuses, productivity payments and other employment related benefits incurred in connection with a process of manufacture in the territory of the party; and

- b) either labour costs incurred at a factory in connection with the manufacturing process in the territory of the party, including:
- (i) Management of the process of manufacture;
 - (ii) receipt of materials;
 - (iii) storage of materials;
 - (iv) supervision of the process;
 - (v) training in relation to the manufacture of goods;
 - (vi) quality control;
 - (vii) packing into inner containers; and
 - (viii) handling the storage of goods in the factory.

“material” means all inputs, other than labour and overheads, into a process of manufacture in the form they are received at a factory, including:

- a) an input that is itself a result of an earlier process of manufacture;
- b) natural elements that are used in that process of manufacture; and
- c) inner containers.

“originating material costs in relation to any process of manufacture” means:

- a) the total cost of wholly produced or obtained goods used in that process of manufacture; or
- b) the cost of material used in that process of manufacture that is wholly produced or obtained in the territory of a party, excluding labour costs and overhead costs from an earlier process of manufacture if:
 - (i) that earlier process of manufacture has taken place outside the territory of a party; or
 - (ii) the total expenditure on material that is wholly produced or obtained, and on labour and overhead that is incurred, in the territory of that party, is less than 40% of the factory cost of that process of manufacture.

“other duties” includes goods and services taxes, sales taxes, value added taxes, excise taxes, anti-dumping duties and countervailing duties.

“overhead costs” includes any of the following costs, where incurred in connection with the final process of manufacture in the territory of the party:

- a) inspecting and testing materials and goods;
- b) insuring real property, plant, equipment and materials used in the production of the goods, work in progress and finished goods;
- c) liability insurance, accident compensation, and insurance against consequential loss from accident to plant and equipment;
- d) dies, moulds and tooling, whether or not these items originate within the territory of a party;

- e) depreciation, maintenance and repair of plant and equipment;
- f) interest payments for plant and equipment;
- g) research, development, design, engineering and creative work;
- h) rent, leasing, mortgage interest, depreciation on buildings, maintenance, repairs, rates and taxes for real property used in the production of the goods;
- i) leasing of plant and equipment, whether or not these items originated within the territory of a party;
- j) materials and supplies utilised in the manufacturing process, but not directly incorporated into the manufactured goods, including energy, fuel, water, lighting, lubricants and rags, whether or not these items originated within the party;
- k) storage of material and goods at the factory;
- l) royalties, licences or fees in respect of patented machines or processes used in the manufacture of the goods, or in respect of the right to manufacture the goods, or intellectual property rights;
- m) subscriptions to standards institutions and industry and research associations;
- n) factory security, provision of medical care, including first-aid kits and medical supplies, cleaning services, cleaning materials and equipment, training materials, disposal of waste, safety and protective clothing and equipment, and the subsidisation of a factory cafeteria to the extent not recovered by returns;
- o) computer facilities allocated to the process of manufacture of the goods;
- p) contracting out part of the manufacturing process within the territory of a party;
- q) employee transport and factory vehicle expenses; and
- r) any tax in the nature of a fringe benefit tax payable on a cost in respect of labour or overheads.

“overhead costs“ does not include:

- a) costs for telephone, mail and other means of communication;
- b) the cost of shipping and airfreight containers;
- c) the cost of conveying, insuring, or shipping the goods after their manufacture is completed;
- d) royalty payments relating to a license agreement to distribute or market the goods;
- e) rent, mortgage interest, depreciation on buildings, property insuring premiums, maintenance, repair, taxes and rates for real property used by personnel charged with administrative functions;
- f) international travel expenses, including fares and accommodation;
- g) manufacturers’ profits, or the profit or remuneration of any trader, agent, broker or other person dealing in the goods after their manufacture;
- h) costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services, and insurance; or
- i) any other costs and expenses incurred after the completion of the manufacture of the goods.

“wholly produced or obtained goods” means:

- a) live animals born and raised in the territory of a party;
- b) animals obtained by hunting, trapping, fishing, gathering or capturing in the territory of a party;
- c) products obtained from live animals born and raised in the territory of a party;
- d) plants and plant products harvested, picked or gathered in the territory of a party;
- e) products of sea fishing and other products taken from the sea outside the territory of the party, where the party is the country of registration of the vessel that carries out those operations;
- f) minerals and other naturally occurring substances extracted from soil, the waters, the seabed, or beneath the seabed of the territory of a party;
- g) scrap and waste derived from manufacturing operations in the territory of a party, which are only fit for disposal or for the recovery of raw materials;
- h) scrap and waste derived from articles collected or consumed in the territory of a party which are only fit for the recovery of raw materials;
- i) products taken from the area of the seabed outside the territory of that party, pursuant to rights held by that party and recognised under international law; or
- j) goods produced in the territory of a party exclusively from products referred to in the paragraphs above.

Goods are indirectly exported if the goods do not enter the commerce of a State, Territory, or self-governing entity, which is not a party. Goods do not enter the commerce of a non-party, if:

- a) a transit entry is justified for geographical reasons or transport requirements;
- b) the goods have only undergone an operation required for unloading or reloading, or any operation required to keep them in good condition.

Goods exported from one party to any other party, whether directly or indirectly, shall be treated as goods originating in the territory of the first party if these goods are:

- a) wholly produced or obtained in the territory of that party;
- b) the result of the final process of manufacture performed in the territory of that party, and the total expenditure on originating material costs, labour costs and overhead costs is not less than 40 per cent of the total expenditure on material, labour and overheads, whether or not incurred in the territory of that party; or
- c) if difficulties arise, from unforeseen circumstances of a short-term nature, resulting in an individual shipment of goods failing to qualify for origin under sub – item 2 above, then the exporting and importing parties may agree to apply a margin of tolerance of up to 2% of the qualifying expenditure. These parties shall apply this tolerance for a limited period of time only.
- d) Minimal operations or processes that only performed to:
 - (i) ensure the preservation of goods in good condition for the purposes of transport or storage;
 - (ii) facilitate shipment or transportation;
 - (iii) package or present the goods for sale; or

shall not, alone or in combination with each other, confer origin on goods under any other rule .

Goods imported into Tonga, which originated in a country which is a contracting party to the Pacific Island Countries Trade Agreement may be eligible for concessional rates of import duty as set out in the customs tariff.

Regulations shall describe the documentary requirements for importers claiming concessional import duty rates under this item.