

# WORLD TRADE ORGANIZATION

G/VAL/N/2/FJI/1

2 April 1997

(97-1312)

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Committee on Customs Valuation

Original: English

## INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT ON CUSTOMS VALUATION

### Checklist of Issues

#### Fiji

In accordance with the Decision of the Tokyo Round Committee of 5 May 1981 (G/VAL/5), the Permanent Mission of Fiji submits the attached responses to the questions raised in the checklist of issues.

Appendix VIII

Question 1(a)(i)

Answer: Section 2(1)(d)(i)(ii) to Part 2 of Schedule 1

This section provides for the transaction value to be accepted as the Customs value between related parties when the relationship did not influence the price paid or payable for the goods or it is demonstrated in terms of sub-section 3 to Section 2 of Part 2 to Schedule 1 of the Customs Tariff Act 1986 that the price has not been influenced.

Question 1(a)(ii)

Answer: Section 2(1) to Part 2 and Section 2(2) to Part (2)

Intercompany price lists are considered to be an indication that there is the possibility of price influence, but in general terms this is one of several factors that could suggest the relationship has influenced the price. There is however no specific reference to intercompany prices in the Fiji Legislation, there is only reference to buyer and sellers who are related and therefore that relationship may or may not have influenced the price paid for the goods.

Question 1(a)(iii)

Answer: Section 2(2) to Part (2)

The officer who is appraising the value for duty of the goods (customs value) shall notify the importer of the goods of such grounds, i.e. that the relationship may have influenced the price. If the importer requests, the notification shall be in writing. The notification explains the grounds for the Customs believing there may be price influence.

Question 1(a)(iii)

Answer: Section 2(3) to Part 2

This section is self-explanatory and reflects Article 1.2 (b)(i)(ii) and (iii). Like other Members of the WTO Article 1.2(b)(iv) has not been implemented as this test value method has been eliminated by all Members to the GATT Valuation Agreement.

Question 1(b)

Answer: Section 51 of the Customs Act 1986

This section states that the Comptroller on written request by the owner/importer:

- (a) Re-gauge, re-measure, re-weigh, examine or take stock of any warehoused goods;
- (b) Re-value any goods liable to duty ad valorem which have deteriorated in quality and the duty on such goods shall be chargeable on the basis of examination or valuation under paragraph (a) or (b).

Question 2

Answer: see Section 1 to Part 1 - "Basis of Valuation"

This section states that upon written request from the importer to the Comptroller the order of consideration of the valuation basis in respect of Articles 5 and 6 (Section 6 and 7 to Part 2) shall be reversed and confirmed in writing by the Comptroller.

Question 3

Answer: Refer to Section 6(4) to Part 2

The relevant Fiji Legislation states:

(4) "Where the goods being valued, or identical goods or similar goods are not sold in Fiji in the circumstances described in sub-section (2) or sub-section (3) of this Section but the goods being valued after being assembled, packaged or further processed in Fiji are sold in Fiji before the expiration of 90 days after the importation thereof and the importer of the goods being valued request that this sub-section be applied in the determination of the Customs value of those goods, the deductive value of the goods being valued shall be the price per unit in respect of sales described in sub-section (5) of this Section and determined in accordance with that sub-section and adjusted in accordance with sub-section (6) of this Section at which the greatest number of units of the goods being valued are so sold".

The reality of this section is that its use by Fiji is unlikely bearing in mind that Fiji is a small developing nation and that the use of deductive value is likely to be very limited and then only in respect of goods sold in consignment or at auction.

Question 4

Answer : Section 7(2) (A) (B) and Section 7(4) to Part 2

The relevant Legislation refers as follows :

Section 7 "(2) The computed value of the goods being valued is the aggregate of amounts equal to:

(a) The cost, charges and expenses in respect of, or the value of :

- (i) Materials employed in producing the goods being valued, and
- (ii) The production or other processing of the goods being valued, determined on the basis of:
  - (A) The commercial accounts of the producer of the goods being valued; or
  - (B) Any other sufficient information relating to the production of the goods being valued - that are supplied by or on behalf of the producer of the goods and prepared in a manner consistent with the generally accepted accounting principles of the country of production of the goods being valued, including, without limiting the generality of the foregoing" - (see Legislation).

In respect of Article 6.2 the Fijian Legislation takes the approach that in order to allow the computed value method to operate it accepts that the information is likely to rest with the overseas producer. It is also realised that the computed value method is more likely to operate in respect of related parties. In any other situation an overseas supplier is not going to produce their costings to an unrelated party - and nor should that be expected.

As a consequence Section 7(2)(A) + (B) seek appropriate financial details from evidence of the commercial accounts of the producer, or sufficient information relating to the production of the goods being valued to be supplied by or on behalf of the producer.

Section 7        "(4) The amount of profit and general expenses referred to in sub-section (2)(b) of this Section shall be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally acceptable accounting principles of the country of production of the goods being valued and that is supplied:

- (a)     By or on behalf of the producer of the goods being valued; or
- (b)     Where the information supplied by or on behalf of the producer of the goods being valued is not sufficient information, by an examination of sales for export to Fiji of the narrowest group or range of goods of the same class or kind from which sufficient information can, in the opinion of the Comptroller be obtained".

This sub-section takes the same approach as Section 7(2)(A) + (B) in so much that it relies on profit and general expenses information to be supplied by or on behalf of the producer of the goods.

If Customs believe there is not sufficient information to enable the Customs value to be determined (and this could be due to the fact that no information could be supplied) then valuation must be attempted in terms of Article 7. (Section 8 in the Fijian Legislation).

Question 5(a)

Answer : Section 8(1) to Part 2

In the Fijian Legislation the Customs value is determined on information available in Fiji on the basis of a value derived from methods of valuation set out in Sections 2 to 7 (Articles 1 to 6).

Question 5(b)

Answer : Section 9 to Part 2

The Fijian Legislation is self-explanatory as follows:

Section 9. Supply of Information: Upon written request by any importer of any goods, the Comptroller shall give notice to that importer in writing of the Customs value of the goods and the basis of the determination of that Customs value including the provisions of the Act applying thereto.

Question 5(b)

Answer : Section 8(2) to Part 2

The Fijian Legislation fully reflects Article 7(2) as follows:

- (2) A Customs value shall not be determined on the basis of:
- (a) The selling price in Fiji of goods produced in Fiji; or
  - (b) A basis which provides for the acceptance of the higher of the two alternative values;
  - (c) The price of goods on the domestic market of the country of exportation; or
  - (d) The cost of production, other than computed values that have been determined for identical or similar goods in accordance, with Section 7 of this Schedule;
  - (e) The price of goods for export to a country other than Fiji; or
  - (f) Minimum Customs value; or
  - (g) Arbitrary or fictitious values;

Question 6

Answer : Section 3(1)(a)(vi) to Part 2 and 3(1)(b)(i) B to Part 2

Section 3 to Part 2 to the Fijian Legislation deals with those situations where they may be an adjustment to the price where it is necessary to either add or deduct such amounts that are either not included in the price, or excluded from the price whatever the case may be, as follows:

**Section 3 Adjustment of price paid or payable** - (1) The price paid or payable in respect of goods sold for export to Fiji shall be adjusted:

- (a) By adding thereto amounts, to the extent that each such amount is not already included in the price paid or payable for the goods equal to:
  - (vi) The cost of transportation and insurance and the loading and unloading and handling charges and other charges and expenses associated with the transportation of the imported goods to Fiji.

Section 3(1)(b) by deducting therefrom amounts to the extent that each such amount is included in the price paid or payable for the goods equal to:

- (i) Any of the following costs, charges or expenses.
  - (B) Any reasonable cost, charge or expense that is incurred in respect of the transportation or insurance of the goods within Fiji and any reasonable cost, charge or expense associated therewith :

You will note that the Customs value in Fiji is the equivalent of CIF (Cost Insurance and Freight). As a consequence no ex-factory or fob prices are accepted as the Customs value.

Question 7 Section 6 of Pt. 2 of Schedule 1 of CTA 1986

Answer

For the purposes of levying *ad valorem* duty in respect of the imported goods, the rate of exchange with regard to the value of those goods expressed in the currency of the country from which they were imported shall be the selling rate for sight drafts in Fiji as last notified before the time when the goods are entered or at the discretion of the Comptroller as may be expedient for computer processing, a mean rate calculated over a period of 5 working days or such further period as may be convenient as basis for an application of a single rate for the calculation of Value for Duty over a period of time.

Question 8

Answer : Section 1(2) of the Official Secrets Act

"(2) if any person:

- (a) Retains for any purposes prejudicial to the safety or interests of the State any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with any directions issued by any Government Department or any person authorised by such department with regard to the return of disposal thereof; or
- (b) Allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code word or password issued for the use of some person other than himself, or on obtaining possession of any official document by finding or otherwise, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to a police constable; or
- (c) Without lawful authority or excuse, manufactures or sells, or has in his possession for sale any such die, seal or stamp as aforesaid,

he shall be guilty of a misdemeanour".

Question 9(a)

Answer : Section 94 of Customs Act 1986

94. (1) If any dispute arises as to the amount or rate of duty payable in respect of any goods, or as to the liability of any goods to duty under any customs laws, the owner of the goods may pay under protest the sum demanded by the Comptroller as the duty payable in respect of the goods, and thereupon the sum so paid shall, as against the owner of the goods, be deemed to be the proper duty payable in respect of the goods unless the contrary is determined in an action brought in pursuance of this section.

(2) The owner may:

- (a) If the dispute relates to the decision by the Comptroller upon any of the matters specified in the Schedule to this Act, within 3 months after the date of payment, enter an appeal to the Court of Review established under the provisions of section 174;

- (b) In any other case, within 3 months after the date of payment, bring an action against the Comptroller in any Court of competent jurisdiction for the recovery of the whole or any part of the sum so paid.

Question 9(b)

Answer: Section 158 of Customs Act 1986

158. (1) If a notice of claim has been given to the Comptroller in accordance with the provisions of section 157, then the Comptroller may within a period of 2 months from the receipt of such claim, either:

- (a) By notice in writing to the claimant, require the claimant to institute proceedings for the recovery of the goods within 2 months of the date of such notice; or
- (b) Himself institute proceedings for the condemnation of the goods.

(2) If the Comptroller fails within such period of 2 months either to require the claimant to institute proceedings, or himself to institute proceedings, in accordance with the provisions of sub-section (1) then such goods shall be released to the claimant.

(3) If the Comptroller, in accordance with the provisions of sub-section (1), requires the claimant to institute proceedings with the period of 2 months and the claimant fails to do so, then on the expiration of such period the goods are deemed to have been condemned.

Question 10 (a)(i)

Answer: see below

The national Legislation for Customs Valuation in respect of the GVA may be found in Part 1 and Part 2 to Schedule 1, the Customs Tariff Act 1986

Question 10 (a)(ii)

Answer: Part 1 and Part 2 of Schedule 1 to CTA 1986

Regulation 157

**Pursuant to Part 2 of Schedule 1 of Customs tariff Act, the value of the goods and Services supplied directly or indirectly by the buyer of any goods being valued shall be determined in accordance with this Regulation:**

- (a) In the case of materials, components, parts and other goods incorporated in the goods being valued or any materials consumed in the production of the goods being valued:
  - (i) By ascertaining:
    - (A) Their cost of acquisition where they were acquired by the buyer from a person who was not related to the buyer at the time of their acquisition; or
    - (B) Their cost of acquisition incurred by the person related to the buyer, where the goods were acquired by the buyer from a person who was

related to the buyer at the time of their acquisition but who did not produce them; or

- (C) Their cost of production where they were produced by the buyer or a person related to the buyer at the time of their production and
  - (ii) By adding thereto:
    - (A) The cost of their inspection to the place of production of the goods being valued and
    - (B) The value added to them by any repairs or modifications made to them after they were so acquired or produced.
- (b) In the case of tools, dies, moulds, and other goods, utilised in the production of the goods being valued:
  - (i) By ascertaining:
    - (A) Their cost of acquisition where they were acquired by the buyer from a person who was not related to the buyer at the time they were so acquired; or
    - (B) Their cost of acquisition incurred by the person related to the buyer, where they were acquired by the buyer from a person related to the buyer at the time they were so acquired but who did not produce them or
    - (C) Their cost of production where they were produced by the buyer or a person related to the buyer at the time of their production; and
  - (ii) By adding thereto:
    - (A) The cost of their transportation to the place of production of the goods being valued and
    - (B) The value added to them by any repairs or modifications made to them after they were so acquired or produced; and
  - (iii) By deducting therefrom an amount to account for any previous use of the goods made after the goods were so acquired or produced.
- (c) In the case of engineering, development work, artwork designwork plan, and sketches, undertaken elsewhere than in Fiji and necessary for the production of the goods being valued by ascertaining:
  - (i) Their cost of acquisition or of the lease thereof, where they were acquired or leased by the buyer from a person who was not related to the buyer at the time they were so acquired or leased and are not generally available to the public; or
  - (ii) Their cost of acquisition or of the lease thereof incurred by the person related to the buyer, where they were acquired or leased by the buyer from a person related to the buyer at the time they were so acquired or leased, but who did not produce them and are not generally available to the public; or
  - (iii) The cost to the public of obtaining them where they are available generally to the public; or



- (iv) The cost of production thereof where they were produced by the buyer or a person related to the buyer at the time of their production.

Question 10(a)(iii)

Answer: Fiji Royal Gazette published monthly

Issue of Customs & Excise Public Notices.

Question 10(b)

Answer: No

Question 11(a) and (b)

Answer: Regulation 161 of Customs Regulation 1986

161. (1) Where goods have been seized as being liable to forfeiture under this Act, it is lawful for the Comptroller to order the delivery of such goods on security by bond, with two sufficient sureties to be first approved by him, being given for double the value of the goods, and such bond shall be delivered and kept in the custody of the Comptroller.

(2) If the goods referred to in sub-section (1) are condemned, the value thereof only shall be paid into the hands of the Comptroller who shall thereupon cancel the bond.

Question 12(a) and (b)

Answer: Section (13) Interpretation Section "Explanation to Importer"

"Explanation to Importer" means upon receipt of a written request from the importer within 30 days, the Comptroller of Customs shall in a written explanation of how the value of the imported goods were determined. The explanation will apply only to the imported goods being valued and will not serve as authority with respect to the valuation of importation of any other goods. This process does not affect or replace the protest for administrative ruling contained in the Act or any other Customs procedures.

There are no further regulations concerning the above explanation.

Question 13

Answer: See below (Fiji Customs to note)

The interpretative notes have been included in the Fijian Legislation particularly in Sections 2 to 8 to Part 2 of Schedule 1 to the Customs Tariff Act 1986. In some instances, such as the definition of "generally accepted accounting principles" mentioned in the "General Note" to Annex 1 to the Interpretative Notes, appears under the "Interpretation Section" to the Legislation, i.e., Section 1 to Part 1 of Schedule 1 to the Customs Tariff Act 1986.

Another example is the Note to Article 1, concerning charges or costs excluded from the price actually paid or payable. This Note may be found in Section 3(1)(b)(i) to Part 2 to Schedule 1 of the Customs Tariff Act 1986.

General notes to the Interpretative Notes are also identified in Public Notices Nos. 2 and 3 and Departmental Notices Nos. 2, 3 and 4.

Question 14

Answer: Section 1(11) to Part 1

The following excerpt from the law shows how the decision relevant to interest charges has been implemented as follows:

Section 1(ii) "For the purposes of this Act, charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the Custom value in any cases where:

- (a) The charges are distinguished from the price actually paid or payable for the goods; and
- (b) Such goods are actually sold at the price declared as the price actually paid or payable; and
- (c) The buyer, if required can demonstrate that:
  - (i) The financing arrangement was made in writing;
  - (ii) The claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.

Question 15

Answer: as below

The Fiji Government has not implemented the Decision of the Valuation of Carrier Media Bearing Software for Data Processing Equipment at this stage. This means of course that the cost of software forms an integral component of the price actually paid or payable for these goods.

It should however be pointed out that the question of implementing this "Decision" has yet to be given consideration by the Fiji Government bearing in mind the financial implications to the country if the decision was put into operation.