



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

CHECKLIST OF ISSUES

TONGA

The following communication, dated 1 April 2021, is being circulated at the request of the delegation of Tonga.

1. Questions concerning Article 1:

(a) Sales between related persons:

(i) Are sales between related persons subject to special provisions?

Yes, see Part 3-Section 9 (2) and Section 11 (d) of the Customs Act 2007. Please refer below:

https://ago.gov.to/cms/images/LEGISLATION/PRINCIPAL/2007/2007-0005/CustomsAct_2.pdf

PART 3 - CUSTOMS VALUATION OF IMPORTED GOODS

9 Interpretation

(2) 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) that are controlled, directly or indirectly, by a third person (whether or not a company);

(ii) that together control, directly or indirectly, a third company; or

(iii) where 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 the same partnership.

11 Transaction value of imported goods not to apply

The transaction value of imported goods will not determine the customs value if:

- (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 the Kingdom at or about the same time as the goods to be valued.

(ii) Is the fact of intercompany prices prima facie considered as grounds for regarding the respective prices as being influenced?

No, please refer to Section 11(d)(i) of the Customs Act 2007. Please refer below:

11 Transaction value of imported goods not to apply

The transaction value of imported goods will not determine the customs value if:

- (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

(iii) What is the provision for giving the communication of the afore-mentioned grounds in writing if the importer so requests? (Article 1.2(a))

Section 18 and 20 of the Customs Act 2007. Please refer below:

18 Importer advised of method of determination

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

20 Review of customs value determinations

(1)

(a) At any time after the making of a determination or other decision by a Customs officer under this Part in relation to imported goods, the Chief Commissioner may review the determination or other decision and may:

(i) affirm the determination or other decision;

(ii) vary the determination or other decision; or

(iii) revoke the determination or other decision and make any other determination or decision that is required to be made for the purpose of determining the customs value of the goods in accordance with this Part; Customs Act 2007 Section 21 to Act No. 5 of 2007 Page 21. https://ago.gov.to/cms/images/LEGISLATION/PRINCIPAL/2007/2007-0005/CustomsAct_2.pdf

(b) Where, by reason that the Chief Commissioner, under paragraph (a), has varied or revoked a determination or other decision of a proper officer:

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

(ii) the amount of duty that was refunded is greater than the amount that should have been refunded;

a letter of demand will be issued by the Chief Commissioner for the payment of the amount of duty so short levied or so erroneously refunded, as the case may be.

(2) Where a Customs value has been reviewed and a re-determination made, the re-determined Customs value shall be taken to be the correct Customs value.

(iv) How has Article 1.2(b) been implemented?

Section 11(d)(ii) of the Customs Act 2007. Please refer below:

11 Transaction value of imported goods not to apply

(d) the vendor and purchaser are related persons at the time the goods were sold for export unless:

(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 the Kingdom at or about the same time as the goods to be valued.

(b) Price of lost or damaged goods:

Are there any special provisions or practical arrangements concerning the valuation of lost or damaged goods?

No.

2. How has the provision of Article 4 to allow the importer an option to reverse the order of application of Articles 5 and 6 been implemented?

This option to reverse the order of application is not provided.

3. How has Article 5.2 been implemented?

See section 15 of the Customs Act. This is implemented using the Deductive value method. Please refer below:

15 Deductive value

- (1) Subject to section 10, if the customs value of imported goods cannot be determined under sections 12, 13 or 14, the customs value shall be the deductive value of the goods.
- (2) If:
 - (a) the imported goods, or identical or similar goods are sold in the Kingdom at or about the time of importation of the imported goods;
 - (b) the goods were sold in the Kingdom 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 12(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, at the earlier date after importation, 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 the Kingdom of goods of the same class or kind as the goods sold;
 - (iii) the cost of transportation of the goods in the Kingdom (including loading, unloading, handling and other expenses associated with transportation) and insurance in relation to such transportation to the extent not deducted under subparagraph (ii); and
 - (iv) any amount referred to in 12(3)(c).
- (3) If:
 - (a) the imported goods, or identical or similar goods are not sold on or about the same time as the time of importation but are sold within 90 days after the time of importation; and
 - (b) subsection (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) If:
- (a) the imported goods, or identical or similar goods are not sold in the Kingdom at the time of importation or within 90 days after that time;
 - (b) the goods are sold in the Kingdom, after being assembled, packaged, or further processed, within 90 days after the time of importation; and
 - (c) sub-section (2)(b) to (d) are satisfied,

the deductive value of the imported goods shall be 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 the Kingdom.

- (5) Subsection (4) shall not apply if the Chief Commissioner has insufficient information to determine the amount of the value added attributable to the assembly, packaging or further processing in the Kingdom.

4. How has Article 6.2 been implemented?

Powers of Customs Officers to request information are provided for under sections 74 and 78 of the Customs and Excise Management Act. Please refer below:

https://ago.gov.to/cms/images/LEGISLATION/PRINCIPAL/2007/2007-0004/CustomsandExciseManagementAct_3.pdf

74 Request of information

- (1) Where reasonable grounds exist, a Customs officer may question any person about any matter in the performance of his duties under customs laws, and may include a request to produce any documents.
- (2) Any person to whom sub-section (1) applies shall provide such information and produce such documents.

78 Notice to produce

- (1) The Chief Commissioner may, by notice in writing, require a person, as and when specified in the notice:
 - (a) to produce for inspection by a specified Customs officer, documents or records that the Chief Commissioner considers necessary to facilitate:
 - (i) an investigation under the Customs laws;
 - (ii) an audit under this Act; or
 - (iii) the recovery of a debt due and payable to the Crown under the Customs laws; and
 - (b) allow the Customs officer to take extracts from, or make copies of, documents or records of the kind referred to in paragraph (a).

- (2) In this section, person includes an officer employed in, or in connection with, a government department, corporation, or local authority, or employed in or in connection with a bank.

5. Questions concerning Article 7:

(a) What provisions have been made for making value determinations pursuant to Article 7?

See Section 17 of the Customs Act. This is implemented using the Fall Back value method. Please refer below:

17 Fall back value

If the customs value of imported goods cannot be determined under sections 12, 13, 14, 15 or 16, the fall-back method shall be used and is such value as the Chief Commissioner determines, having regard to the preceding methods of valuation in this Part in the order in which those methods would ordinarily be considered and of such other matters the Chief Commissioner considers relevant but not including the following:

- (a) the selling price in the Kingdom of goods produced in the Kingdom;
- (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 value of identical or similar goods in accordance with section 14;
- (e) the price of the goods for export to a country other than the Kingdom;
- (f) a system of minimum customs values; or
- (g) arbitrary or fictitious values.

(b) What is the provision for informing the importer of the customs value determined under Article 7?

See Section 18 of the Customs Act. Please refer below:

18 Importer advised of method of determination

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

(c) Are the prohibitions found in Article 7.2 delineated?

Yes, Refer to Section 17 of the Customs Act. Please refer below:

17 Fall back value

If the customs value of imported goods cannot be determined under sections 12, 13, 14, 15 or 16, the fall-back method shall be used and is such value as the Chief Commissioner determines, having regard to the preceding methods of valuation in this Part in the order in

which those methods would ordinarily be considered and of such other matters the Chief Commissioner considers relevant but not including the following:

- (a) the selling price in the Kingdom of goods produced in the Kingdom;
- (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 value of identical or similar goods in accordance with section 14;
- (e) the price of the goods for export to a country other than the Kingdom;
- (f) a system of minimum customs values; or
- (g) arbitrary or fictitious values.

6. How have the options found in Article 8.2 been handled? In the case of f.o.b. application, are ex-factory prices also accepted?

See Section 12 subsections (2) and (3) of the Customs Act. Please refer below:

12 Transaction value of imported goods

- (2) For the purposes of determining the transaction value of imported goods, the price actually paid or payable for the goods is increased by the sum of the following amounts paid or payable, directly or indirectly, by or on behalf of the purchaser in respect of the goods to the extent that the amount is not already included in the price:
 - (a) commission and brokerage, 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 the Kingdom;
 - (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 any subsequent use, resale or disposal of the goods by or on behalf of the purchaser that accrues to the vendor;
 - (h) finance cost to purchase the finance for imported goods; and
 - (i) the value of any of the following goods and services supplied, directly or indirectly, by the purchaser free of charge or for a 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 production of the imported goods;
 - (ii) any tools, dies, molds, 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 work, development work, art work, or design work, plans or sketches undertaken outside the Kingdom and necessary for the production of the goods.
- (3) For the purposes of determining the transaction value of imported goods, the price actually paid or payable for the imported goods is decreased by the sum of the following amounts to the extent only 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;
 - (c) any duties or taxes paid or payable by reason of the importation or sale of the goods in the Kingdom; and
 - (d) financing costs paid or payable to the supplier in connection with the purchase of the imported goods.

7. Where is the rate of exchange published, as required by Article 9.1?

The rates of exchange are published by the National Reserve Bank of Tonga (NRBT). The NRBT publishes monthly exchange rates for Customs purposes.

<http://www.reservebank.to/index.php/financials/financial-markets/mer.html>

8. What steps have been taken to ensure confidentiality, as required by Article 10?

See Section 125 of the Customs and Excise Management Act. Confidentiality is required and breach amounts to an offence. Please refer below:

125 Confidentiality

- (1) A Customs officer shall not communicate or allow to be communicated, any information obtained under the Customs laws, to any person not legally entitled to such information.
- (2) Any person who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 10 years, or both.

9. Questions concerning Article 11:**(a) What rights of appeal are open to the importer or any other person?**

See Section 20 of the Customs Act and section 126 of the Customs and Excise Management Act. Appeal to the Minister or to the Tax Tribunal. Please refer below:

20 Review of customs value determinations

(1)

- (a) At any time after the making of a determination or other decision by a Customs officer under this Part in relation to imported goods, the Chief Commissioner may review the determination or other decision and may:
 - (i) affirm the determination or other decision;
 - (ii) vary the determination or other decision; or
 - (iii) revoke the determination or other decision and make any other determination or decision that is required to be made for the purpose of determining the customs value of the goods in accordance with this Part; Customs Act 2007 Section 21 to Act No. 5 of 2007 Page 21.
- (b) Where, by reason that the Chief Commissioner, under paragraph (a), has varied or revoked a determination or other decision of a proper officer:
 - (i) the amount of duty that was levied is less than the amount that should have been levied; or
 - (ii) the amount of duty that was refunded is greater than the amount that should have been refunded; a letter of demand will be issued by the Chief Commissioner for the payment of the amount of duty so short levied or so erroneously refunded, as the case may be.

(2) Where a Customs value has been reviewed and a re-determination made, the re-determined Customs value shall be taken to be the correct Customs value.

126 Appeal

Any person may appeal to the Tax Tribunal within 30 days of receipt of a decision of the Chief Commissioner under Customs laws.

(b) How is he to be informed of his right to further appeal?

When decisions are made, the concerned person is informed of his or her right to appeal.

10. Provide information on the publication, as required by Article 12, of:**(a) (i) The relevant national laws;**

Published in the government gazette and also online on the website of the Attorney General's office. Customs Act 2007.

<https://ago.gov.to/cms/legislation/gazettes/gazettes-by-year.html>

(ii) The regulations concerning the application of the Agreement:

Published in the government gazette and also online on the website of the Attorney General's office. Customs and Excise Management Regulations 2008.

https://ago.gov.to/cms/images/LEGISLATION/SUBORDINATE/2008/2008-0011/CustomsandExciseManagementRegulations2008_3.pdf

(iii) The judicial decision and administrative rulings of general application relating to the Agreement:

Judicial decisions are published by the Courts and also by the Attorney General's Office online. Valuation rulings are published in public notices by Customs. <https://ago.gov.to/cms/judgements.html>

(iv) General or specific laws being referred to in the rules of implementation or Application

Published in the government gazette and also online on the website of the Attorney General's office. <https://ago.gov.to/cms/legislation/gazettes/gazettes-by-year.html>

(b) Is the publication of further rules anticipated? Which topics would they cover?

Yes, possible revisions of the Customs Act 2007 are currently under consideration.

11. Questions concerning Article 13:

(a) How is the obligation of Article 13 (last sentence) being dealt with in the respective legislation?

Refer PART 9 Customs Securities: Sections 50-52 of the Customs and Excise Management Act. Provisional entries may also be made. Please refer below:

PART 9 - CUSTOMS SECURITIES

50 Chief Commissioner's powers

- (1) The Chief Commissioner may take securities for compliance with the Customs laws.
- (2) The Chief Commissioner may:
 - (a) allow a Customs security to be provided by a bond, guarantee, or cash or by a combination of these; and
 - (b) impose such conditions as he deems necessary.
- (3) Securities collected under this Part shall be cancelled or returned by Customs promptly once the Chief Commissioner is satisfied that the security is no longer required for the purpose of this Act.

51 Release of goods

Goods subject to a Customs security shall not be released from Customs control until the Customs security is provided.

52 Forfeiture of security

A Customs security collected under this Part shall be forfeited to the Crown if any condition imposed is not complied with.

(b) Have additional explanations been laid down?

No.

12. Questions concerning Article 16:

(a) Does the respective national legislation contain a provision requiring customs authorities to give an explanation in writing as to how the customs value was determined?

Yes, see section 18 of the Customs Act. Please refer below:

18 Importer advised of method of determination

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

(b) Are there any further regulations concerning an above-mentioned request?

No further regulations are provided in relation to Article 16 requirements.

13. How have the Interpretative Notes of the Agreement been included?

Interpretive notes have been included in the legislative provisions (to add).

14. How have the provisions of the Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods been implemented?

Charges for interest on financing arrangements entered into by the buyer in relation to the purchases of the goods are not included in determining Customs value.

15. For those countries applying paragraph 2 of the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment, how have the provisions of this paragraph been implemented?

The decision on carrier media can be emphasized and published by way of a written ruling under regulation 131 of the Customs and Excise Management Regulations 2008. Although carrier media are currently being valued in accordance with the decision following notification of Tonga Customs from the WCO, a ruling was not issued by Customs under Reg.131 to reflect this at the time.
