

REPUBLIC OF VANUATU

IMPORT DUTIES (CONSOLIDATION)

(CUSTOMS VALUATION AMENDMENT) ACT NO. 8 of 1999

Arrangement of Sections

1. Insertion of new section 2
 2. Insertion of new Schedule 2
- Schedule 2 – Customs Valuation of Imported Goods
- | | |
|-----------|---|
| Clause 1 | Interpretation |
| Clause 2 | Application |
| Clause 3 | Transaction value as primary basis of customs valuation |
| Clause 4 | Adjustment of price actually paid or payable |
| Clause 5 | Transaction value of identical goods as customs value |
| Clause 6 | Transaction value of similar goods as customs value |
| Clause 7 | Deductive value as customs value |
| Clause 8 | Computed value as customs value |
| Clause 9 | Residual value |
| Clause 10 | Appeal rights |

- Clause 11 Supply of information
- Clause 12 Confidential information
- Clause 13 Foreign currency conversion
- Clause 14 Withdrawal of goods
- Clause 15 Delegation

3. Commencement.

REPUBLIC OF VANUATU

Assent **10.09.1999**
Commencement **01.01 2001**

IMPORT DUTIES (CONSOLIDATION)

(CUSTOMS VALUATION AMENDMENT) ACT NO. 8 OF 1999

An Act to amend the Import Duties (Consolidation) Act [CAP 91] (“the Principal Act”) to implement the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

BE IT ENACTED by the President and Parliament as follows:

INSERTION OF NEW SECTION 2

1. Section 2 of the Principal Act is repealed and the following section substituted:

“DUTIES TO BE LEVIED ON CUSTOMS VALUE OF GOODS

2. The ad valorem duty on imported goods specified in Schedule 1 is payable on the customs value of such goods worked out in accordance with the provisions of Schedule 2.”.

not affect the value of the goods; and

- (b) were produced in the same country as the goods being valued were produced; and
- (c) were produced by or on behalf of the producer of the goods being valued;

but does not include goods which incorporate or reflect engineering, development, artwork, design work, plans and sketches for which no adjustment has been made under subparagraph 4(2)(g)(iv) because such elements were undertaken in Vanuatu;

"price actually paid or payable" is the total payment made or to be made by the buyer to, or for the benefit of, the seller of the imported goods;

"produced" includes grown, manufactured or mined;

"similar goods" means imported goods that:

- (a) closely resemble the goods being valued in respect of component materials and parts and characteristics, and are functionally and commercially interchangeable with the goods being valued, having regard to the quality and reputation of the goods and the goods being valued; and
- (b) were produced in the same country as the goods being valued were produced; and
- (c) were produced by or on behalf of the producer of the goods being valued;

but does not include goods which incorporate or reflect engineering, development, artwork, design work, plans and sketches for which no adjustment has been made under subparagraph 4(2)(g)(iv) because such elements were undertaken in Vanuatu;

"sufficient information", in respect of a determination made under this Schedule of any amount, difference or adjustment, means objective and quantifiable information that clearly establishes the accuracy of the amount, difference or adjustment;

"to produce" includes to grow, to manufacture or to mine;

"transaction value" means the value determined in accordance

with clauses 3 and 4.

- (2) For the purposes of this Schedule, persons are taken to be related only if:
 - (a) they are officers or directors of one another's business; or
 - (b) they are legally recognised partners in business; or
 - (c) they are employer and employee; or
 - (d) in the case of persons that are bodies corporate – another person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them; or
 - (e) one of them directly or indirectly controls the other; or
 - (f) both of them are directly or indirectly controlled by another person; or
 - (g) together they direct or indirectly control another person; or
 - (h) they are members of the same family.
- (3) For the purposes of this Schedule, 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 are taken to be related if they fall within the criteria of subclause (2).
- (4) For the purposes of this Schedule, persons are taken to be members of the same family if:
 - (a) they are connected by blood relationship within the fourth degree of relationship; or
 - (b) they are married to each other, or one is married to a person who is connected within the fourth degree of relationship to the other; or
 - (c) one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other.
- (5) For the purposes of this Schedule, if:
 - (a) there are no goods that were produced by or on behalf of

the person who produced the goods being valued; and

- (b) there are no goods that are otherwise identical goods or similar goods;

goods that were produced by or on behalf of a different person and that are otherwise identical goods or similar goods are taken to be

- (b) the decision of 26 April 1984 on the Treatment of Interest Charges in the Customs Value of Imported Goods that was adopted by the WTO Committee on Customs Valuation on

clause 9.

TRANSACTION VALUE AS PRIMARY BASIS OF CUSTOMS VALUATION

3. (1) The customs value of imported goods is the transaction value, that is the price actually paid or payable for the goods when sold for export to Vanuatu adjusted in accordance with clause 4, if:
 - (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:
 - (i) are imposed by law; or
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods; and
 - (b) 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; and
 - (c) 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 clause 4; and
 - (d) the buyer and the seller of the goods are not related to each other at the time the goods are sold for export or, if the buyer and the seller are related to each other at that time, the transaction value is acceptable for customs purposes under subclause (4).
- (2) If the buyer and seller are related, the Director of Customs must examine the circumstances surrounding the sale to determine whether the transaction value is acceptable or not.
- (3) If the Director of Customs is of the opinion that the relationship between the buyer and the seller of any goods influenced the price actually paid or payable for the goods, the Director must:
 - (a) inform the importer of the grounds on which his or her opinion was formed; and
 - (b) give the importer a reasonable opportunity to satisfy him or her that the relationship did not influence the price.

- (d) whether a difference in values is commercially significant.
- (7) The tests in paragraph (4)(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under paragraph (4)(b).

ADJUSTMENT OF PRICE ACTUALLY PAID OR PAYABLE

- 4. (1) In determining the customs value of imported goods under clause 3, the price actually paid or payable for the goods must be adjusted in accordance with subclauses (2) and (5).
- (2) There is to be added to the price actually paid or payable for the imported goods the following amounts, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
 - (a) commissions and brokerage, except buying commissions;
 - (b) the cost of containers, cartons, cases and coverings that are treated for customs purposes as being part of the goods;
 - (c) the cost of packing the goods whether for labour or materials;
 - (d) royalties and licence fees, including payments for patents, trademarks and copyright, relating to the goods being valued that the buyer must pay, directly or indirectly, as a condition of sale of the goods being valued (exclusive of charges for the right to reproduce the goods in Vanuatu);
 - (e) the value of any part of the proceeds of any subsequent resale, disposal or use of the goods that accrues or is to accrue directly or indirectly to the seller;
 - (f) the following costs and charges:
 - (i) the cost of transportation of the goods to Vanuatu;
 - (ii) the loading, unloading and handling charges associated with the transportation of the goods to Vanuatu;
 - (iii) the cost of insurance of the goods to Vanuatu;

- (g) the value (determined and apportioned in accordance with subclause (3)) of the following goods and services that are supplied directly or indirectly by the buyer free of charge, or at a reduced cost, for use in connection with the production and sale for export of the imported goods:
 - (i) material components, parts and other goods incorporated in the imported goods;
 - (ii) tools, dies, moulds and other goods used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, art work, design work, plans and sketches undertaken outside Vanuatu and necessary for the production of the imported goods.

- (3) The value of the goods and services in subparagraphs (2)(g)(i), (ii), (iii) and (iv) is to be:
 - (a) determined in a reasonable manner appropriate to the circumstances; and
 - (b) apportioned to the imported goods in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

- (4) Without limiting paragraph (3)(a):
 - (a) if the importer acquires the goods or services at a given cost from a seller who is not related to the importer– the value of the goods or services is that cost; or
 - (b) if the goods or services were produced by the importer or by a person related to the importer – the value of the goods or services is the cost of producing the goods or services; or
 - (c) if the goods or services had previously been used by the importer, whether or not acquired or produced by such importer – the value of the goods or services would be the original cost of acquisition or production adjusted downward to reflect the prior use.

- (c) sold to a buyer:
 - (i) at the same or substantially the same commercial level as the buyer of the goods being valued; and
 - (ii)

identical goods is found, the lowest such transaction value must be used to determine the customs value of the imported goods.

TRANSACTION VALUE OF SIMILAR GOODS AS CUSTOMS VALUE

6. (1) If the customs value of imported goods cannot be determined under clause 5, the customs value of the goods is the transaction value of similar goods if the similar goods were:
 - (a) sold for export to Vanuatu; and
 - (b) exported at the same or at substantially the same time as the goods being valued; and
 - (c) sold to a buyer:

greatest aggregate quantity at the earliest date after the goods being valued are imported if:

- (a) the imported goods, or identical or similar goods, are sold in Vanuatu in the condition in which they were imported; and
- (b) the sale does not occur at or about the time of the importation of the goods being valued, but does occur within 90 days after that importation.

(4) If:

- (a) neither the imported goods nor identical goods nor similar goods are sold in Vanuatu in the condition in which they were imported; and
- (b) the imported goods, after being assembled, packaged or further processed in Vanuatu, are sold in Vanuatu within 90 days after their importation; and
- (c) the importer requests that this subclause be applied;

the deductive value of the imported goods is the unit price at which those goods are sold in the greatest aggregate quantity, due allowance being made for the value added by the assembling, packaging or further processing referred to in paragraph (b).

(5) For the purposes of subclauses (2), (3) and (4), the unit price at which imported goods, or identical or similar goods, are sold must be determined by ascertaining the unit price in respect of sales of the goods:

- (a) at the first commercial level after importation of the goods; and
- (b) to persons who are not related to the persons from whom they buy the goods;

if a sufficient number of such sales have been made to permit a determination of the unit price of the goods.

(6) Any sale in Vanuatu of imported goods to a person who supplies any of the goods or services referred to in paragraph 4(2)(g) directly or indirectly free of charge, or at a reduced cost, for use in connection with the production and sale for export of the imported goods must not be taken into account for the purposes of this clause.

- (7) For the purpose of subclauses (2), (3) and (4), the unit price in respect of any goods being valued must be adjusted by deducting from the price an amount equal to the total of the following:
- (a) an amount determined in accordance with subclause (8) for:
 - (i) the commission generally earned on a unit basis; or
 - (ii) the profit and general expenses, including all costs of marketing the goods, considered together as a whole that is generally reflected on a unit basis;in connection with sales in Vanuatu of goods of the same class or kind;
 - (b) the reasonable costs, charges and expenses that are incurred in respect of the transportation and insurance of the goods within Vanuatu, and reasonable associated costs, charges and expenses, to the extent that an amount for such costs, charges and expenses is not deducted in respect of general expenses under paragraph (a);
 - (c) any customs duty or other taxes payable in Vanuatu in respect of the goods to the extent that an amount for such duties and taxes is not deducted in respect of general expenses under paragraph (a);
 - (d) if subclause (4) applies - the amount of value added to the goods that is attributable to the assembly, packaging or further processing in Vanuatu of the goods.
- (8) The amount for commission or profit and general expenses referred to in paragraph (7)(a) must be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally accepted accounting principles.
- (9) The information must be supplied:
- (a) by or on behalf of the importer of the goods being valued; or
 - (b) if the information supplied by or on behalf of the importer of the goods being valued is not sufficient information - by an examination of sales in Vanuatu of the narrowest group or range of goods of the same class or kind as the goods being valued from which sufficient information can

be obtained.

- (10) If there is not sufficient information to determine the amount referred to in paragraph (7)(d) in respect of any goods being valued, the customs value of the goods must not be determined under subclause (4).
- (11) For the purposes of subclause (3), the “earliest date” refers to the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

COMPUTED VALUE AS CUSTOMS VALUE

- 8. (1) If the customs value of imported goods cannot be determined under clause 7, the customs value of the goods is the computed value of the goods.
- (2) The computed value of the imported goods is the sum of:
 - (a) the costs, charges and expenses, or the value, of:
 - (i) materials employed in producing the imported goods; and
 - (ii) the production or other processing of the imported goods;including the costs, charges and expenses mentioned in subclause (3), and determined in the manner specified in subclause (4); and
 - (b) an amount for profit and general expenses, considered together as a whole, 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 Vanuatu, and determined under subclause (5).
- (3) The costs, charges and expenses mentioned in paragraph (2)(a) include the following:
 - (a) the costs referred to in paragraphs 4(2)(b) and (c);
 - (b) the value of any goods and services referred to in paragraph 4(2)(g) which have been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods;

(c) the value of engineering, development, artwork, design work, plans and sketches that were undertaken in Vanuatu to the extent that such elements are charged to the producer of the goods.

(4) The costs, charges and expenses referred to in paragraph (2)(a) are to be 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;

supplied by or on behalf of the producer of the goods and prepared in a manner consistent with generally accepted accounting principles of the country of production of the goods being valued.

(5) The amount of profit and general expenses referred to in paragraph (2)(b) must 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.

(6) The information must be supplied:

(a) by or on behalf of the producer of the goods being valued; or

(b) if 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 Vanuatu of the narrowest group or range of goods of the same class or kind from which sufficient information can be obtained.

(7) For the purposes of this clause, "general expenses" means the direct and indirect costs, charges and expenses of producing goods for export other than the costs, charges and expenses referred to in paragraph (2)(a).

- (3) If, as a result of a review under subsection (1) or (2), the Director of Customs is satisfied that the determination is:
- (a) inconsistent with this Schedule; or
 - (b) incorrect for any other reason;
- the Director of Customs must amend the determination, and import duty is payable in accordance with that amended determination.
- (4) If the importer of the goods is not satisfied with a decision of the Director of Customs under subclause (3) in relation to a determination, the importer may apply to the Supreme Court for a review of the original determination or the amended determination, as the case requires.
- (5) The Supreme Court may affirm, vary or revoke the original determination or the amended determination, as the case requires.

SUPPLY OF INFORMATION

11. Subject to clause 12, upon the written request by the importer of any goods, the Director of Customs must give written notice to the importer:
- (a) of the customs value of the goods; and
 - (b) the basis of the determination of that value; and
 - (c) the provisions of this Schedule that apply to the goods.

CONFIDENTIAL INFORMATION

12. (1) This clause applies to information that:
- (a) is by its nature confidential; or
 - (b) has been provided to the Director of Customs by any government or person on a confidential basis for the purpose of determining the customs value of any goods.
- (2) The information must not be disclosed to any other government or person without the specific authority of the government or person who provided the information, except to extent that it may be required to be disclosed in any legal proceedings arising out of a

determination made under this Schedule.

FOREIGN CURRENCY CONVERSION

13. (1) If the conversion of foreign currency into the currency of Vanuatu is necessary to determine the customs value of imported goods, the rate of exchange to be used:
 - (a) is the rate duly published by the competent authority in Vanuatu; and
 - (b) must 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 Vanuatu.
- (2) The rate of exchange to be used is the rate referred to in subclause (1) that is in effect at the time when the imported goods are declared for customs purposes.
- (3) The Director of Customs must notify the rate of exchange in such manner as he or she determines.

WITHDRAWAL OF GOODS

14. (1) If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of the customs value, the importer of the goods may withdraw the goods from the control of the Director of Customs.
- (2) The Director of Customs as a condition of withdrawal of any goods may require from the importer:
 - (a) a sufficient guarantee for the goods in the form of a surety; or
 - (b) a deposit or some other appropriate instrument covering the ultimate payment of customs duties for which the goods may be liable.

DELEGATION

15. The Director of Customs may delegate, by instrument in writing, all or any of his or her functions and powers under this Schedule (other than those under clause 10) to a customs officer on such terms and conditions as are specified in the instrument of

delegation.”.

COMMENCEMENT

3. This Act commences on the date specified by Order in writing made by the Minister. A copy of the Order must be published in the *Gazette*.