

Unvalidated References:

Customs Act 1951

Customs Act 1951

Customs Tariff Act 1990

Customs Tariff Act

Customs Tariff Act 1990

This reprint of this Statutory Instrument incorporates all amendments, if any, made before 25 November 2006 and in force at 1 July 2001.

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Legislative Counsel
Dated 25 November 2006

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1987.

Customs (Ad Valorem Duties) Regulation 1987

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MADE by the Head of State, acting with, and in accordance with, the advice of the National Executive Council, under the *Customs Act 1951*, to come into operation on 1 July 1987.

Dated 200 .

PART I. – PRELIMINARY.

1. INTERPRETATION.

(1)¹ In this Regulation, unless the contrary intention appears—

“**the Act**” means the *Customs Act 1951*;

“**buying commission**” means an amount paid by an importer of goods to an agent for the purpose of representing that importer abroad in the purchase of those goods;

“**commercial or genuine invoice**”, in relation to imported goods, means an import invoice—

- (a) prepared and issued by the vendor of goods exported to Papua New Guinea; and
- (b) showing—

¹ Section 1 (definition of “F.O.B. charges”) repealed by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s1(a)(iii); Section 1 (definition of “inland freight or inland cartage”) repealed by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s1(a)(iii); Section 1 (definition of “inland insurance”) repealed by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s1(a)(iii).

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- (i) a true description of the goods; and
- (ii) the country of origin of the goods; and
- (iii) the quantity and unit price of the goods; and
- (iv) the terms of delivery and payment; and
- (v) the actual price paid or payable for the goods by the importer, including–
 - (A) details of any addition to, or deduction from, the price paid or payable; and
 - (B) details of all other costs covering overseas freight, overseas insurance, loading, handling and associated service charges incurred in respect of goods imported up to the port or place of importation into Papua New Guinea;

“computed value”, in relation to goods, means the value of the goods determined in accordance with Division 11.6;

²**“Cost, Insurance and Freight”** or **“C.I.F.”** means the value of imported goods at the F.O.B. level plus cost of overseas freight including airfreight, road, rail or postal parcel charges, overseas insurance, loading, handling and other associated service charges paid or payable up to the port or place of importation into Papua New Guinea;

“customs value” means the value of imported goods for the purpose of levying *ad valorem* duties;

“deductive value”, in relation to goods, means the value of the goods determined in accordance with Division 11.5;

³**“goods of the same class or kind”**, in relation to goods being valued, means imported goods that–

- (a) are within a group or range of imported goods produced by a particular industry or industry sector that includes identical goods and similar goods in relation to the goods being valued; and
- (b) for the purposes of–
 - (i) Division 11.5, were produced in any country and exported from any country; and

² Section 1 (definition of “Cost, Insurance and Freight (C.I.F.)”) inserted by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s1(a)(ii).

³ Section 1 (definition of “F.O.B. charges”) repealed by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s1(a)(iii); Section 1 (definition of “inland freight or inland cartage”) repealed by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s1(a)(iii); Section 1 (definition of “inland insurance”) repealed by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s1(a)(iii).

- (ii) Division 11.6, were produced in and exported from the same country as the country in and from which the goods being valued were produced and exported;

“identical goods”, in relation to goods being valued, means imported goods that—

- (a) are the same in all respects, including physical characteristics, quality and reputation, as the goods being valued, except for minor differences in appearance that do not affect the value of the goods; and
- (b) were produced in the same country as the country in which the goods being valued were produced; and
- (c) were produced by or on behalf of the person by or on behalf of whom the goods being valued were produced,

but does not include imported goods where engineering, development work, art work, design work, plans or sketches undertaken in Papua New Guinea were supplied, directly or indirectly, by the purchase of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;

“import” means import into Papua New Guinea;

“overseas freight”, in relation to goods, means any costs, charges and expenses of, or associated with, the transportation of the goods from the port of export to Papua New Guinea;

“overseas insurance”, in relation to goods, means any costs, charges and expenses of, or associated with, the insurance of the goods in respect of the transportation of the goods from the port of export to Papua New Guinea;

⁴**“price paid or payable”**, in relation to the sale of goods for export to Papua New Guinea, means the aggregate of all payments made or to be made, directly or indirectly, in respect of the goods by the purchaser to or for the benefit of the vendor subject to any permissible additions or deductions;

“produce”, includes growing, manufacturing, mining and processing of natural resources;

“purchaser”, in relation to goods, means the purchaser in relation to the relevant transaction;

“relevant transaction”, in relation to goods, means—

⁴ Section 1 (definition of “price paid or payable”) replaced by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s1(a)(iv).

- (a) a contract of sale of the goods (not being a contract of sale that, in the opinion of a Collector, is a contract of sale on the domestic market of a country other than Papua New Guinea) entered into before the goods became subject to Customs control; or
- (b) if there were two or more such contracts, the later or latest of those contracts;

“similar goods”, in relation to goods being valued, means imported goods that—

- (a) closely resemble the goods being valued in respect of their component materials and characteristics; and
- (b) are capable of performing the same functions as, and of being commercially interchangeable with, the goods being valued; and
- (c) were produced in the same country as the country in which the goods being valued were produced; and
- (d) were produced by or on behalf of the person by or on behalf of whom the goods being valued were produced,

but does not include imported goods where engineering, development work, art work, design work, plans or sketches undertaken in Papua New Guinea were supplied, directly or indirectly, by the purchaser of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;

“sufficient information”, in relation to the determination of any amount, difference or adjustment, means objective and quantifiable information that establishes the accuracy of the amount, difference or adjustment;

“transaction value”, in relation to goods, means the value of the goods determined in accordance with Division 11.2;

“value for duty of goods” means the value—

- (a) of goods imported into Papua New Guinea; and
- (b) determined in accordance with this Regulation,

for the purpose of levying *ad valorem* duties under the *Customs Tariff Act 1990* or under any other law for the time being in force;

“vendor”, in relation to goods, means the seller in respect of a relevant transaction;

“without penalty” means that the importer shall not be subject to a fine or threat of fine merely because he chose to exercise his right of appeal.

Note The *Customs Tariff Act* (Chapter 101A) was repealed and replaced by the *Customs Tariff Act 1990*.

(2) Where, in relation to goods being valued, there are no identical goods or similar goods, but there are goods that would be identical goods or similar goods, as

the case may be, if they were produced by or on behalf of the person by or on behalf of whom the goods being valued were produced, those goods shall be deemed to be identical goods or similar goods, as the case may be.

(3) For the purposes of this Regulation, persons are related to each other if—

- (a) each is an officer or director in some business of the other; or
- (b) they are legally recognized partners in business; or
- (c) one is the employer of the other; or
- (d) any other person directly or indirectly owns, holds or controls 5% or more of the outstanding voting stock or shares of both of them; or
- (e) one directly or indirectly controls or is controlled by the other; or
- (f) each is directly or indirectly controlled by any other person; or
- (g) they directly or indirectly control any other person; or
- (h) they are individuals connected by blood relationship, marriage or adoption; or
- (i) they are persons who are associated in business in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other and they are otherwise related under anyone or more of the foregoing paragraphs of this subsection.

(4)⁵ ⁶In determining Customs value for the purposes of this Regulation, the following charges shall not be included:—

- (a) subject to Subsection (5), charges for interest in respect of a financing arrangement entered into in writing; and
- (b) any amount paid or payable as a buying commission.

(5)⁷ ⁸Charges for interest under Subsection (4)(a)—

- (a) shall not exceed the level for such transactions prevailing—
 - (i) in the country of export; or
 - (ii) in the country where, and at the time when, the finance was provided; and
- (b) shall be distinguished from the price actually paid or payable for the goods.

⁵ Section 1(4) replaced by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s1(b).

⁶ Section 1(4) replaced by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s1(b).

⁷ Section 1(5) amended by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s1(c).

⁸ Section 1(5) amended by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s1(c).

PART II. – DETERMINATION OF VALUE FOR DUTY.*Division 1.**General.***2. VALUATION GENERALLY.**

For the purposes of this Part—

- (a) declared value shall be accurate, fair and based on true facts; and
- (b) arbitrary or fictitious Customs values shall not be applied; and
- (c) value shall, so far as practicable, be based on, and be consistent with, commercial practices and realities; and
- (d) transaction value shall, as far as practicable, be the basis for the valuation of goods; and
- (e) valuation procedures followed to ascertain an appropriate value shall not be used to combat dumping.

3. ORDER OF CONSIDERATION OF METHODS OF VALUATION.

(1) Subject to the provisions of this section, the value for duty of goods shall be determined on the basis of the transaction value of goods ascertained in accordance with Division 2.

(2) Where the value for duty of goods is not determined in accordance with Subsection (1), it shall be determined on the basis of the first of the values—

- (a) specified in Subsection (3); and
- (b) considered in the order specified in that subsection; and
- (c) that can be determined in respect of the goods; and
- (d) that can be the basis for determining the value for duty.

(3) For the purposes of Subsection (2)(a), the values are—

- (a) the transaction value of identical goods that meets the requirements specified in Division 3; and
- (b) the transaction value of similar goods that meets the requirements specified in Division 4; and
- (c) the deductive value of the goods under Division 5; and
- (d) the computed value of the goods under Division 6.

(4) Where the value for duty of goods is not determined under Subsection (2), the value for duty shall be determined under Division 7.

(5) Notwithstanding Subsection (2), on the written request of the importer of any goods being valued made prior to the commencement of the valuation of those

goods, the order of consideration of the values referred to in Subsection (3)(c) and (d) shall be reversed.

Division 2.

Transaction Value.

4. DETERMINATION OF TRANSACTION VALUE.

The transaction value of goods shall be determined—

- (a) by ascertaining the price paid or payable for the goods when the goods are sold for export to Papua New Guinea; and
- (b) by adjusting the price paid or payable in accordance with Section 6.

5. TRANSACTION VALUE AS PRIMARY BASIS OF APPRAISAL.

⁹(1) Subject to Subsection (4), the value for duty of goods is the transaction value of the goods when the goods are sold for export to Papua New Guinea and the price paid or payable for the goods can be determined and if—

- (a) there are no restriction respecting the disposition or use of the goods by the purchaser thereof, other than restrictions that—
 - (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 of the goods by the vendor to the purchaser or the price paid or payable for the goods is not subject to some condition or consideration, with respect to the goods, in respect of which a value cannot be determined; and
- (c) where any part of the proceeds of any subsequent resale, disposal or use of the goods by the purchaser thereof is to accrue, directly or indirectly, to the vendor the price paid or payable for the goods includes the value of that part of the proceeds or such price is adjusted in accordance with Section 6(1)(a), (v); and
- (d) the purchaser and the vendor of the goods are not related to each other at the time the goods are sold for export or where the purchaser and the vendor are related to each other at that time—
 - (i) their relationship did not influence the price paid or payable for the goods; or
 - (ii) the importer of the goods demonstrates that the transaction value of the goods meets the requirement specified in Subsection (3).

(2) For the purpose of Subsection (1)(d), where—

⁹ Section 5 replaced by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s2.

- (a) the purchaser and the vendor of the goods being valued are related to each other at the time the goods are sold for export; and
- (b) the officer who is determining the value of the goods has grounds to believe that the requirements specified in Subparagraph (1) of that subsection is not met,

the officer shall—

- (c) inform the importer of the goods of such grounds; and
- (d) on the written request of the importer, give written notice of such grounds.

(3) For the purposes of Subsection (1)(d)(ii), the transaction value of goods being valued shall, taking into consideration any relevant factors including, without limiting the generality of the foregoing, the factors and differences specified in Subsection (5), closely approximate one of the values—

- (a) specified in Subsection (4) in respect of identical goods or similar goods exported at the same or substantially the same time as the goods being valued; and
- (b) that is the value for duty of the goods to which it relates.

(4) The values referred to in Subsection (3) are—

- (a) the transaction value of identical goods or similar goods in a sale of those goods for export to Papua New Guinea between a vendor and a purchaser who are not related to each other at the time of the sale; or
- (b) the deductive value of identical goods or similar goods; or
- (c) the computed value of identical goods or similar goods.

(5) For the purposes of Subsection (3)—

- (a) the factors referred to are—
 - (i) the nature of the goods being valued; and
 - (ii) the nature of the industry that produces the goods being valued; and
 - (iii) the season in which goods being valued are imported; and
 - (iv) whether a difference in values is commercially significant; and
- (b) the differences referred to are any differences in respect of the sales being compared, determined on the basis of sufficient information and relating to—
 - (i) the trade levels at which the sales take place; and
 - (ii) the quantity levels of the sales; and
 - (iii) any of the amounts referred to in Section 6; and
 - (iv) the costs, charges or expenses that—

- (A) are incurred by a vendor when he sells to a purchaser to whom he is not related; and
- (B) are not incurred by a vendor when he sells to a purchaser to whom he is related.

(6) Where there is not sufficient information to determine any of the amounts required to be added to the price paid or payable in respect of any goods being valued, the value for duty of those goods shall not be determined under this division.

6. ADJUSTMENT OF PRICE PAID OR PAYABLE.

¹⁰(1) The price paid or payable in the sale of goods for export to Papua New Guinea 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, determined on the basis of sufficient information and equal to—
 - (i) commission and brokerage incurred by the purchaser in respect of the goods, (excluding buying commission); and
 - (ii) packing costs and charges incurred by the purchaser in respect of the goods, including—
 - (A) the cost of cartons, cases and other containers and coverings that are treated for Customs purposes as being part of the imported goods; and
 - (B) all expenses of packing incidental to placing the goods in the condition in which they are shipped to Papua New Guinea; and
 - (iii) the value of any goods and services—
 - (A) specified in Subsection (2); and
 - (B) determined in the manner specified in Subsection (4); and
 - (C) that are supplied, directly, or indirectly, by the purchaser of the goods free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods; and
 - (D) apportioned to the imported goods in a reasonable manner and in accordance with generally accepted accounting principles; and
 - (iv) royalties and licence fees, to the extent that such royalties and fees are not included in the price paid or payable, including payments for patents, trademarks and copyrights, in respect of the goods being valued, that the purchaser of the goods must pay, either directly or indirectly, as a condition of the sale of the goods

¹⁰ Section 6 replaced by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s3.

being valued, but excluding charges for the right to reproduce the goods in Papua New Guinea; and

- (v) the value of any part of the proceeds of any subsequent resale, disposal or use of goods by the purchaser thereof that accrues or is to accrue, directly or indirectly, to the vendor; and
 - (vi) the cost of transportation, loading and unloading, and handling charges, including all other charges and expenses associated with inland transportation and the amount (if any) of inland insurance premium, paid or payable, or ordinarily paid or payable, for placing the goods free on board at the port of export; and
 - (vii) the cost of overseas freight, overseas insurance, loading and unloading and handling charges, including other charges and expenses associated with overseas freight and any amount of overseas insurance premium in respect of goods shipped from the port of export to the port or place of importation in Papua New Guinea; and
- (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 any of the costs, charges or expenses specified in Subsection (3), if such costs, charges or expenses are identified separately from the price paid or payable for the goods; and
- (c) by disregarding any rebate of, or other decrease in, the price paid or payable for the goods, if such rebate or decrease is effected after the goods are imported.
- (2) The goods and services referred to in Subsection (1)(a)(iii)(A) are—
- (a) materials, components, parts and other goods incorporated in the imported goods; and
 - (b) tools, dies, moulds and other goods used in the production of the imported goods; and
 - (c) materials consumed in the production of the imported goods; and
 - (d) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Papua New Guinea and necessary for the production of the imported goods.
- (3) The costs, charges and expenses referred to in Subsection (1)(b) are—
- (a) any reasonable cost, charge or construction, erection, assembly or maintenance of, or technical assistance provided in respect of, the goods after the goods are imported; and
 - (b) any reasonable cost, charge or expense that is incurred in respect of the inland transportation or insurance of the goods after importation into Papua New Guinea, and any reasonable cost, charge or expense associated therewith; and

- (c) any duties and taxes paid or payable by reason of the importation of the goods into Papua New Guinea, including, without limiting the generality of the foregoing, any duties and taxes levied on the goods under any law relating to Customs.
- (4) For the purposes of Subsection (1)(a)(iii)(B)–
 - (a) the value of any goods, referred to in Subsection (2)(a) to (c) that are supplied, directly or indirectly, by the purchaser of the imported goods referred to in those paragraphs shall be determined, in relation to the goods that are supplied–
 - (i) by ascertaining–
 - (A) the cost incurred by the purchaser to acquire or lease the goods if the goods are acquired or leased from a person who is not related to the purchaser at the time of the acquisition or lease; or
 - (B) the cost incurred by the person from whom the purchaser acquires or leases the goods, if that person–
 - (I) does not produce the goods; and
 - (II) acquired or lease the goods; and
 - (III) is related to the purchaser at the time the purchaser acquired or leased the goods; and
 - (ii) by adding thereto–
 - (A) the cost of transporting the goods to the place where they are used in the production of the imported goods; and
 - (B) the value added to the goods by any repairs or modifications made after their acquisition, lease or production, as the case may be; and
 - (iii) by deducting therefrom an amount to account for any use made of the goods after their acquisition, lease or production, as the case may be, and before their use in the production of the imported goods; and
 - (b) the value of any work, plans or sketches referred to in Subsection (2)(d) that are supplied, directly or indirectly, by the purchaser of the imported goods referred to in that paragraph shall be determined by ascertaining in relation to the work, plans or sketches–
 - (i) the cost incurred by the purchaser to acquire or lease the work, plans or sketches, as the case may be, if such work, plans, or sketches–
 - (A) are not available generally to the public; and
 - (B) are acquired or leased from a person who is not related to the purchaser at the time of the acquisition or lease; or

- (ii) the cost incurred by the person from whom the purchaser acquires the work, plans or sketches if—
 - (A) that person acquired or leased the work, plans or sketches; and
 - (B) that person does not produce the work, plans sketches; and
 - (C) that person is related to the purchaser at the time the purchaser acquired or leased the work, plans or sketches; and
 - (D) the work, plans or sketches are not available generally to the public; or
- (iii) the cost to the public of obtaining copies of the work, plans or sketches, if such work, plans or sketches are available generally to the public; or
- (iv) the cost to produce the work, plans or sketches if such work, plans or sketches are produced by the purchaser or by a person related to the purchaser at the time of production.

Division 3.

Identical Goods.

7. TRANSACTION VALUE OF IDENTICAL GOODS AS VALUE FOR DUTY.

(1) Subject to the provisions of this Division, where the value for duty of goods is not determined under Division 2, the value for duty of the goods is, if it can be determined, the transaction value of identical goods, in a sale of those goods for export to Papua New Guinea, if—

- (a) that transaction value is the value for duty of the identical goods; and
- (b) the identical goods were exported at the same or substantially the same time as the goods being valued; and
- (c) the identical goods were sold—
 - (i) to a purchaser at the same or substantially the same trade levels as the purchaser of the goods being valued; and
 - (ii) in the same or substantially the same quantities as the goods being valued.

(2) Where—

- (a) identical goods were not sold under the conditions specified in Subsection (1)(c); and
- (b) the value for duty of goods being valued cannot be determined under that subsection, there shall be substituted for Subsection (1)(c) in the application of that subsection identical goods sold—

- (i) to a purchaser at the same or substantially the same trade level as the purchaser of the goods being valued but in quantities different from the quantities in which those goods were sold; or
- (ii) to a purchaser at a trade level different from that of the purchaser of the goods being valued but in the same or substantially the same quantities as the quantities in which the goods were sold; or
- (iii) to a purchaser at a trade level different from that of the purchaser of the goods being valued and in quantities different from the quantities in which those goods were sold.

8. ADJUSTMENT OF TRANSACTION VALUE OF IDENTICAL GOODS.

For the purposes of determining the value for duty of goods being valued under Section 7, the transaction value of identical goods shall be adjusted by adding thereto or deducting therefrom, as the case may be, amounts to account for—

- (a)¹¹ commercially significant differences, that are attributable to differences in distances and means of transport, between—
 - (i) the cost, charges and expenses referred to in Section 6(1)(a)(vi) and (vii) in respect of the identical goods; and
 - (ii) those costs, charges and expenses in respect of the goods being valued;
- (b) where the transaction value is in respect of identical goods sold under Section 7(2), differences in the trade levels of the purchasers of the identical goods and the goods being valued or the quantities in which the identical goods and the goods being valued were sold, or both, as the case may be.

9. SELECTION OF LOWEST TRANSACTION VALUE OF IDENTICAL GOODS.

Where in relation to goods being valued—

- (a)¹² there are two or more transaction values of identical goods that meet all the requirements specified in Section 7 and 8;
- (b) there is no such transaction value but there are two or more transaction values of identical goods sold under the conditions described in Section 7(2)(b)(i) to (iii) that meet all the requirements specified in this Division that are applicable by virtue of Section 7(2), the value for duty of the goods being valued shall be determined on the basis of the lowest such transaction value.

¹¹ Section 8(a) replaced by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s4.

¹² Section 9(a) replaced by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s5.

10. EFFECT OF ABSENCE OF SUFFICIENT INFORMATION.

Where there is not sufficient information to determine any amount referred to in Section 8 or the adjustment thereof in relation to the transaction value of identical goods, the value for duty of the goods being valued shall not be determined under this Division.

*Division 4.**Similar Goods.***11. TRANSACTION VALUE OF SIMILAR GOODS AS VALUE FOR DUTY.**

(1) Subject to Subsection (2) of this section and Sections 7(2), 8, 9 and 10, where the value for duty of goods is not determined under Division 2 or 3, the value for duty of the goods is, if it can be determined, the transaction value of similar goods in a sale of those goods for export to Papua New Guinea, if—

- (a) that transaction value is the value for duty of the similar goods; and
- (b) the similar goods were exported at the same or substantially the same time as the goods being valued; and
- (c) the similar goods were sold—
 - (i) to a purchaser at the same or substantially the same trade level as the purchaser of the goods being valued; and
 - (ii) in the same or substantially the same quantities as the goods being valued.

(2) Division 3, other than Section 7(1), applies to and in relation to this Division in respect of similar goods and wherever in that Division the expression “identical goods” is referred to there shall be substituted therefor in this Division the expression “similar goods”.

*Division 5.**Deductive Value.***12. DEDUCTIVE VALUE AS VALUE FOR DUTY.**

(1) Subject to Section 15 and Section 3(5), where the value for duty of goods is not determined under Divisions 2 to 4, the value for duty of the goods is, if it can be determined, the deductive value of the goods.

(2) The deductive value of goods being valued is—

- (a) where the goods being valued, identical goods or similar goods are sold—
 - (i) in Papua New Guinea in the condition in which they were imported; and
 - (ii) at the same or substantially the same time as the time of importation of the goods being valued,

the price per unit—

- (iii) determined in accordance with Section 13; and
- (iv) adjusted in accordance with Section 14,

at which the greatest number of units of the goods being valued, identical goods or similar goods are so sold; or

- (b) where the goods being valued, identical goods or similar goods are sold—
 - (i) in Papua New Guinea in the condition in which they were imported; and
 - (ii) before the expiration of 180 days after the importation of the goods being valued,

the price per unit—

- (iii) determined in accordance with Section 13; and
- (iv) adjusted in accordance with Section 14;

at which the greatest number of units of the goods being valued, identical goods, or similar goods are so sold at the earliest date after the time of importation of the goods being valued; or

- (c) where the goods being valued, identical goods or similar goods, after being assembled, packaged or further processed in Papua New Guinea, are sold—
 - (i) in Papua New Guinea; and
 - (ii) before the expiration of 180 days after the time of importation; and
 - (iii) the importer of the goods being valued requests that this paragraph be applied in the determination of the value for duty of those goods,

the price per unit—

- (iv) determined in accordance with Section 13; and
- (v) adjusted in accordance with Section 14,

at which the greatest number of units of the goods being valued are so sold.

13. DETERMINATION OF PRICE PER UNIT.

For the purposes of Section 12(2), the price per unit, in respect of goods being valued, identical goods or similar goods, shall be determined by ascertaining the unit

price, in respect of sales of the goods at the first trade level after importation, at which the greatest number of units of the goods is sold if—

- (a) the goods are sold to persons who, at the time of the sale, are not related to the persons from whom the goods are bought; and
- (b) the goods are sold to persons who have not supplied, directly or indirectly, free of charge or at a reduced cost for use in connection with the production and sale for export of the goods, any of the goods or services referred to in Section 6(1)(a)(iii); and
- (c) in the opinion of the Commissioner General or any person authorized by him, a sufficient number of such sales have been made to permit a determination of the price per unit of the goods.

Note Section 2 of the *Commissioner General of Inland Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993) provides that “Comptroller” shall be read as “Commissioner General”.

14. ADJUSTMENT OF PRICE PER UNIT.

(1)¹³ ¹⁴For the purpose of Section 12(2), the price per unit, in respect of goods being valued, identical goods or similar goods, shall be adjusted by deducting therefrom an amount equal to the aggregate of—

- (a) an amount, determined in the manner specified in Subsection (2) equal to—
 - (i) the amount of commission generally earned on a unit basis; or
 - (ii) the amount for 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 Papua New Guinea of goods of the same class or kind as those goods; and

- (b) the costs, charges and expenses, to the extent that such costs, charges and expenses are not deducted in respect of general expenses under Paragraph (a)—
 - (i) in respect of the transportation and insurance of the goods within Papua New Guinea; and
 - (ii) associated with such transportation and insurance and generally incurred in connection with sales in Papua New Guinea of the goods being valued, identical goods or similar goods; and
- (c) any duties and taxes paid or payable by reason of the importation of the goods into Papua New Guinea; and

¹³ Section 14(1) replaced by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s6.

¹⁴ Section 14(1) replaced by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s6.

(d) where Section 12(2)(c) applies, the amount of the value added to the goods that is attributable to the assembly, packaging or further processing in Papua New Guinea of the goods.

(2) For the purposes of Section 14(1)(a), an amount equal to the amount of commission or the amount for profit and general expenses referred to in that paragraph in respect of the valuing of imported goods, shall—

- (a) be calculated on a percentage basis; and
- (b) be determined from sufficient information that is—
 - (i) prepared in a manner consistent with generally accepted accounting principles; and
 - (ii) subject to Subsection (3), is supplied by, or on behalf of, the importer of the goods being valued.

(3) Where the amount determined from sufficient information supplied by, or on behalf of, an importer pursuant to Subsection (2) is not consistent with the amount generally earned or reflected in connection with sales in Papua New Guinea by importers who deal with vendors in a manner consistent with that of persons who are not related to each other, the sufficient information shall be based on an examination of sales in Papua New Guinea—

- (a) of the narrowest group or range of goods of the same class or kind and of the goods being valued; and
- (b) by importers dealing with vendors in a manner consistent with that of persons who are not related to each other; and
- (c) from which sufficient information can be obtained.

15. REJECTION OF DEDUCTIVE VALUE.

¹⁵Where there is not sufficient information to determine any amount referred to in Section 14(1)(d), in respect of any goods being valued, the value for duty of the goods shall not be determined under Section 12(2)(c).

Division 6.

Computed Value.

16. COMPUTED VALUE AS VALUE FOR DUTY.

¹⁶Subject to Section 3(5), where the value for duty of goods is not determined under Divisions 2 to 5, the value for duty of the goods is the computed value of the goods if it can be determined.

¹⁵ Section 15 replaced by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s7.

¹⁶ Section 16 replaced by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s8.

17. DETERMINATION OF COMPUTED VALUE.

¹⁷(1) The computed value of goods being valued is the aggregate of amounts equal to—

- (a) the costs, charges and expenses incurred in respect of, or the value of—
 - (i) materials employed in producing the goods; and
 - (ii) the production or other processing, determined in the manner specified in Subsection (2) including, without limiting the generality of the foregoing;—
 - (A) the costs, charges and expenses referred to in Section 6(1)(a)(ii); and
 - (B) the value of any of the goods and services referred to in Section (6)(1)(a)(iii), determined and apportioned to the goods being valued as referred to in that section, whether or not such goods and services have been supplied free of charge or at a reduced cost; and
 - (iii) the costs, charges and expenses incurred by the producer in respect of engineering, development work, art work, design work, plans or sketches, undertaken in Papua New Guinea, that were supplied, directly or indirectly, by the purchaser of the goods being valued for use in connection with the production and sale for export of those goods, apportioned to the goods being valued as referred to in Section 6(1)(a)(iii); and
 - (iv) the cost of transportation, loading and unloading, and handling charges, including all other charges and expenses associated with inland-transportation and any amount of inland insurance premium ordinarily payable, for placing the goods free on board at the port of export; and
 - (v) the cost of overseas freight, overseas insurance, loading and unloading, and handling charges, including other charges and expenses associated with overseas freight and any amount of overseas insurance premium ordinarily payable in respect of goods exported to the port or place of importation in Papua New Guinea; and
- (b) the amount, determined in the manner specified in Section (4), for profit and general expenses considered together as a whole, that is—
 - (i) generally reflected in sales for export to Papua New Guinea of goods of the same class or kind as the goods being valued; and
 - (ii) made by producers who sell to purchasers in Papua New Guinea where such purchasers are not related to the producers from

¹⁷ Section 17 replaced by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s9.

whom they purchase the goods at the time the goods are sold to those purchasers.

(2) For the purpose of Subsection (1)(a), the costs, charges and expenses, of the value, referred to in that subsection in respect of goods being valued shall be determined on the basis of accounts or information—

- (a) specified in Subsection (3); and
- (b) supplied by or on behalf of the producer of the goods; and
- (c) prepared in a manner consistent with generally accepted accounting principles of the country of production of the goods being valued.

(3) The accounts of information referred to in Subsection (2) are—

- (a) the commercial accounts of the producer of the goods being valued; or
- (b) other sufficient information relating to the production of the goods being valued.

(4) For the purposes of Subsection (1)(b), the amount for profit and general expenses referred to in that paragraph in respect of goods being valued shall—

- (a) be calculated on a percentage basis; and
- (b) be determined from sufficient information that—
 - (i) is prepared in a manner consistent with generally accepted accounting principles of the country of production of the goods being valued; and
 - (ii) subject to Subsection (5), is supplied by or on behalf of the producer of the goods being valued.

(5) Where the amount determined from sufficient information supplied by or on behalf of a producer pursuant to Subsection (4)(b)(iii) is not consistent with the amount generally reflected in sales for export to Papua New Guinea by producers of goods of the same class or kind who deal with importers in a manner consistent with that of persons who are not related, the sufficient information shall be based on an examination of sales for export to Papua New Guinea—

- (a) of the narrowest group or range of goods of the same class or kind, and of the goods being valued; and
- (b) by producers dealing with importers in manner consistent with that of persons who are not related; and
- (c) from which sufficient information can be obtained.

18. INTERPRETATION.

For the purposes of this Division “general expenses” means the direct and indirect costs, charges and expenses of producing and selling goods for export, other than the costs, charges and expenses referred to in Section 17(1)(a).

Division 7.

Fallback Value.

19. DETERMINATION OF VALUE UNDER THE FALLBACK METHOD.

Where the value for duty of goods is not determined under Divisions 2 to 6, it shall be determined on the basis of—

- (a) a value derived from the method, from among the methods of valuation specified in Divisions 2 to 6, that, when applied in a flexible manner to the extent necessary to arrive at a value for duty of the goods, conforms closer to the requirements with respect to that method than any other method so applied; and
- (b) information available in Papua New Guinea.

PART III. – MISCELLANEOUS.

20. PROVISIONAL CLEARANCE OF IMPORTED GOODS.

Where it becomes necessary to delay the final determination of the Customs value of imported goods, the Collector may permit the importer to clear the goods provisionally under Customs security in accordance with Section 13 of the Act.

21. COLLECTOR MAY SATISFY HIMSELF AS TO THE TRUTH OR ACCURACY OF STATEMENTS, ETC.

Where there is any doubt as to the truth or accuracy of any statement, document or declaration produced to Customs for determination of the value for duty of imported goods, the Collector shall make such enquiries as, in the opinion of the Collector, are necessary to satisfy the Collector that the elements of value declared or presented to the Customs administration in connection with the determination of the value of those goods are complete and correct.

22. PERIOD OF RETENTION OF IMPORT DOCUMENTS.

An importer of goods shall, for a period of three years commencing on the date when goods are cleared through Customs for consumption or use in Papua New Guinea—

- (a) retain in his possession all documents that evidence—
 - (i) particulars that are relevant for determining the value for duty of those goods; and
 - (ii) the price paid or payable by the importer for those goods; and
- (b) produce such documents to the Collector if requested so to do.

23. SUPPLY OF INFORMATION TO IMPORTER.

(1) Subject to Subsection (2), where an importer of goods, in writing, so requests, the Collector shall, in writing, inform that importer of the manner in which the value for duty of the goods was determined.

(2)^{18 19}Notwithstanding Subsection (1), information that—

- (a) is by its nature confidential; or
- (b) has been supplied, under confidential cover, by a Government, department of government or person,

for the purpose of determining the value for duty of the goods, shall not be disclosed except, and to the extent necessary, for the purposes of any legal proceedings arising out of the determination.

¹⁸ Section 23(2) amended by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s10.

¹⁹ Section 23(2) amended by *Customs (Ad Valorem Duties) (Amendment) Regulation 1990* (No. 16 of 1990), s10.

24. CONVERSION OF CURRENCIES.

(1)²⁰ ²¹Where, under any provision of this Regulation an amount that is required to be taken into account for the purpose of determining the value for duty of goods is not an amount that is expressed in Papua New Guinea currency, the amount to be taken into account is the equivalent of that amount in Papua New Guinea currency, ascertained according to a fair rate of exchange at the date when an entry for the goods is lodged.

(2) For the purposes of this section, where, for the purpose of avoiding doubt, the Commissioner General thinks it desirable so to do, the Commissioner General may, by notice in the National Gazette, specify a rate of exchange that shall be deemed to be, or to have been, a fair rate of exchange in relation to any currency—

- (a) on a date, or during a period preceding the date of publication of the notice; or
- (b) from the date of publication of the notice, or an earlier date specified in the notice, until the revocation of the notice.

(3)²² ²³The rate of exchange specified in relation to any currency under Subsection (2) is, in relation to the value for duty of any goods imported on the date or during the period to which the rate so specified applies, the rate of exchange that shall be applied for the purpose of Subsection (1) in respect of the currency specified in the notice.

(4) In any case in which—

- (a) the rate of exchange to be applied is not ascertained under Subsection (3); and
- (b) doubt exists as to that rate,

the Commissioner General may specify a fair rate of exchange to be applied for the purposes of the particular case.

25. APPEAL.

(1) An importer who is aggrieved by a decision taken by the Collector in relation to a determination of value under Part II may, not later than 12 months after such decision, appeal, without penalty, to the Commissioner General.

(2) The Commissioner General may—

- (a) after giving the appellant an opportunity to be heard in person, if the appellant so desires; and
- (b) after making such further inquiry as the Commissioner General considers necessary,

²⁰ Section 24(1) amended by *Customs (Ad Valorem Duties) (Amendment) Regulation 1993* (No. 13 of 1993), s(a).

²¹ Section 24(1) amended by *Customs (Ad Valorem Duties) (Amendment) Regulation 1993* (No. 13 of 1993), s(a).

²² Section 24(3) amended by *Customs (Ad Valorem Duties) (Amendment) Regulation 1993* (No. 13 of 1993), s(b).

²³ Section 24(3) amended by *Customs (Ad Valorem Duties) (Amendment) Regulation 1993* (No. 13 of 1993), s(b).

affirm, alter, or revoke, the decision appealed against, as the Commissioner General thinks fit.

(3) A decision of the Commissioner General under Subsection (2)–

(a) shall be communicated, in writing, to the appellant; and

(b) shall specify the reasons for the decision.

(4) An appellant may appeal against a decision of the Commissioner General to the National Court.

26. REVIEW.

(1) At any time, not later than 12 months after the making of a determination of value for duty of goods or other decision by an officer under Part II, the Commissioner General may review the determination of value or other decision and may–

(a) affirm, alter or revoke, the determination of value or other decision; and

(b) where the determination of value or other decision is revoked may make any other determination of value or any other decision that is required to be made for the purpose of determining the value for duty of the goods in accordance with Part II.

(2) Where, by reason that the Commissioner General, under Section 25(3), has altered or revoked a determination of value or other decision of an officer or has made a determination of value or other decision that is required to be made by reason of the revocation of a determination of value or other decision of an officer–

(a) an amount of duty that was paid is less than the amount that should have been paid; or

(b) an amount of duty that was refunded is greater than the amount that should have been refunded,

Section 102 of the Act applies in relation to any demand by a Collector for the payment of the amount of duty so short-paid or so erroneously refunded, as the case may be.

Customs (Ad Valorem Duties) Regulation 1987