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**Customs Tariff Act 1990 [Contains all amendments up to and including the *Customs Tariff (2011 Budget)( Amendment) Act 2010.* ]**

## **Customs Tariff Act 1990**

### **ARRANGEMENT OF SECTIONS**

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2. Duties of customs on imports.
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8. Determination of tariff classification.
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**AN ACT** entitled *Customs Tariff Act 1990*,

Being an Act relating to duties of customs, to be incorporated and read as one with the Customs Act 1951.

## **PART I. – PRELIMINARY.**

### **1. INTERPRETATION.**

In this Act, unless the contrary intention appears–

“**Chapter**” means a Chapter of a Section of Schedule 1;

“**Column**” means a column of a Schedule;

“**dash**” represents the symbol “-”;

“**heading**” means a heading in Schedule 1 in four or five digits;

“**Interpretation Rules**” means the general rules for the determination of Import Tariff Classification as specified in Section 8;

“**lal**” means litre of contained alcohol and is calculated by multiplying the volume of alcoholic beverage with the percentage of alcohol contained therein;

“**presented**”, in relation to goods, means imported into Papua New Guinea;

“**subject to variation on export price change**” means subject to adjustment by the Minister under Section 5(3);

“**Tariff Item**” means eight digits in Column 1;

“**this Act**” includes the Regulations;

“**volume of alcohol**” means the volume of alcohol contained in alcoholic beverages, that would be that volume of alcohol if measured at a temperature of 20o celsius and in a calculation made by reference to the specific gravity of alcohol, the specific gravity of alcohol in relation to water, at a temperature of 20o celsius and in vacuum is 0.79067.

## **PART II. – DUTIES OF CUSTOMS.**

### **2. DUTIES OF CUSTOMS ON IMPORTS.**

- (1) Subject to Subsection (2) and to this Act, duties of customs, being import duties, are imposed, in accordance with this Part, on all goods imported into Papua New Guinea whether imported before, on or after the date of coming into operation of this Act and shall be charged, collected and paid accordingly.
- (2) Subsection (1) does not apply to goods imported into Papua New Guinea before the date of coming into operation of this Act, unless they are entered for home consumption on or after the date of coming into operation of this Act.

- (3) Where for any reason, goods are entered for home consumption more than once, and the goods were first entered for home consumption before the date of coming into operation of this Act—
- (a) the provisions of Section 79 of the Customs Act 1951 are deemed to refer to the first entry for home consumption; and
  - (b) the duty imposed on the goods by this Section is the duty that would have been applicable if this Act had not been enacted.

### **3. RATE OF IMPORT DUTY.**

- (1) The import duty in respect of imported goods is the rate of duty specified under the heading “Rate of Duty” in Column 3 of Schedule 1 opposite the Tariff Item number and description of the goods.
- (2) Where the rate of import duty in Column 3 of Schedule 1 is specified as “Free” opposite the description of goods, the rate of import duty on those goods is free.
- (3) In addition to the rate of import duty referred to in Subsection (1), except for the rate of import duty on goods in Column 3 of Schedule 1 specified as “Free”, a surcharge at the rate of 1.5% is added to all import duty rates commencing 1st January 1998 through to 30 June 1999.

### **4. DUTIES OF CUSTOMS ON EXPORTS.**

Subject to the provisions of this Act, duties of customs, being export duties, are imposed in accordance with this Part on all goods exported from Papua New Guinea and shall be charged, collected and paid on all such goods accordingly.

### **5. RATE OF EXPORT DUTY.**

- (1) The export duty in respect of goods entered for export out of Papua New Guinea is the rate of duty specified in Column 3 (headed “Rate”) of Schedule 2 opposite the Tariff Item number and description of the goods.
- (2) Where no item in Schedule 2 applies to goods entered for export the rate of duty is Free.
- (3) Where, in Column 4 of Schedule 3, the rate of duty in respect of goods is marked “subject to variation on export price change”, the Minister may adjust the rate of duty in respect of those goods by a percentage equal to the percentage of any change in the export price of such goods, provided that such adjustment in the rate of duty amounts to a change of at least K0.01 per taxable unit.

## **6. PERCENTAGE RATE OF DUTY.**

- (1) Where reference is made to a percentage in relation to a rate of duty, the reference shall be read as a reference to that percentage of the value of the goods.
- (2) For the purpose of this Act, the value of any imported goods is the value for duty of the goods determined in accordance with Section 95(1) of the Customs Act 1951.

## **7. EXPORT VALUE.**

- (1) For the purpose of Schedule 2, the rate of export duty, in relation to goods entered for export out of Papua New Guinea, shall be determined according to the export value at the level of free on board (f.o.b.) which represents a satisfactory return for the exported goods that is, in all circumstances, the total price paid or payable by the buyer who intends to take delivery in the importing country.
- (2) For the purpose of this Act, the Minister may, by notice in the National Gazette, declare a value per unit of goods to be the value which shall be used for the purpose of calculating the export value of the goods subject to export duty under this Act.

## **PART III. – DETERMINATION OF TARIFF CLASSIFICATION.**

### **8. DETERMINATION OF TARIFF CLASSIFICATION.**

- (1) Goods are classified for the purposes of this Act in accordance with the Tariff Classification in Schedule 1.
- (2) The titles of Sections and Chapters incorporated in Schedule 1 are provided for ease of reference only and for all other purposes classification shall be determined according to the terms of Tariff Items and any relative Section and Chapter Notes and, provided further that such Tariff Items or Notes do not otherwise require, according to the following rules:–
  - (a) a reference in a Tariff Item to any goods shall be taken to include a reference to those goods incomplete or unfinished, provided that, as imported, the incomplete or unfinished goods have the essential character of the complete or finished goods, and shall also be taken to include a reference to those goods complete or finished (or falling to be classified as complete or finished by virtue of this provision), imported unassembled or disassembled;
  - (b) a reference in a Tariff Item to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances and a reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance;

- (c) the classification of goods consisting of more than one material or substance shall be according to the provision contained in Paragraph (d);
- (d) where, for any reason, goods are, prima facie, classifiable under two or more Tariff Items, classification shall be effected as follows:–
- (i) the Tariff Item which provides the most specific description shall be referred to other Tariff Items providing a more general description, but, where two or more Tariff Items each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the goods in a set put up for retail sale, those Tariff Items are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods;
  - (ii) mixtures, composite goods consisting of different materials or made up of different components, and goods put in sets for retail sale, which cannot be classified by reference to Subparagraph (i), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable;
  - (iii) when goods cannot be classified by reference to Subparagraphs (i) or (ii), they shall be classified under the Tariff Item which occurs last in numerical order among those which equally merit consideration;
- (e) goods which cannot be classified in accordance with Paragraphs (a) to (d) inclusive shall be classified under the Tariff Item appropriate to the goods to which they are most akin;
- (f) in addition to the provisions specified in Paragraphs (a) to (e) inclusive, the following provisions shall apply in respect of the goods referred to therein:–
- (i) camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers made of any material or substance (other than those made of precious metal, gold or silver or studded with pearls, diamonds or any other precious stones), specially shaped or fitted to contain a specific set of goods, suitable for long-term use and imported in equal quantity with the goods for which they are intended, shall be classified with such goods when of a kind normally sold therewith, but this criterion does not apply to containers which give the whole its essential character; and
  - (ii) subject to the provisions of Subparagraph (i), packing materials and packing containers imported with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods, but this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use, and the containers which are used by shipping companies for the carriage of cargo in accordance with the “CONTAINERS CONVENTION” shall not be considered as part of the goods;
- (g) the classification of imported goods referred to in the Tariff Items shall be determined according to the terms of those Tariff Items and any related Section or

Chapter Notes and, mutatis-mutandis, to the above provisions, on the understanding that only Tariff Items at the same level are comparable and for the purposes of this Subsection the relative Section and Chapter Notes also apply, unless the context otherwise requires.

#### **PART IV. – EXEMPTION FROM AND REDUCTION OF DUTY.**

##### **9. EXEMPTION FROM AND REDUCTION OF IMPORT DUTY.**

- (1) The Head of State, acting on advice, may by notice in the National Gazette–
  - (a) exempt from import duty any goods (other than goods imported in relation to a commercial project) otherwise subject to import duty under this Act; or
  - (b) substitute a reduced rate of import duty in respect of any goods subject to import duty under this Act for that specified in Schedule 1 in respect of those goods.
- (2) An exemption from or a reduced rate of import duty under Subsection (1)–
  - (a) may relate to–
    - (i) any class of goods; or
    - (ii) any goods or class of goods imported for a purpose specified in the notice; and
  - (b) may further be subject to compliance with any conditions as are specified in the notice; and
  - (c) shall continue in force for such period as is specified in the notice or until the revocation of such notice by a subsequent notice.

*Note* in terms of Section 3 of No 41 of 2000, the limitation of an exemption from import duty under Section 9(1)(a) does not apply to–

- (a) exemptions granted prior to the coming into operation of No 41 of 2000 in implement of a contractual, international or treaty obligation of the State; or
  - (b) exemptions to be granted in implement of a contractual, international or treaty obligation of this State entered into prior to the coming into operation of No 41 of 2000.
- (3) For the purposes of Subsection (1)(a), “commercial project” means a project operated so as to make a profit.

##### **9B. EXEMPTION FROM AND REDUCTION OF IMPORT DUTY.**

- (1) In this section: -

“**Affiliate**” has the meaning given in the PNG LNG Gas Agreement;

**“LNG Project”** has the meaning given in the PNG LNG Gas Agreement;

**“LNG Project Company”** has the meaning given in the PNG LNG Gas Agreement;

**“LNG Project Petroleum”** has the meaning given in the PNG LNG Gas Agreement;

**“PNG LNG Gas Agreement”** means the PNG LNG Gas Agreement dated 22 May 2008 between the Independent State of Papua New Guinea and each of Esso Highlands Limited, Esso PNG Juha Limited, Ampolex (Papua New Guinea) Limited, Ampolex (PNG Petroleum), Inc., Ampolex (Highlands) Limited, Oil Search Limited, Oil Search (PNG) Limited, Oil Search (Tumbudu) Limited, Merlin Petroleum Company, Merlin Pacific Oil Company Limited, Santos Hides Ltd, Lavana Limited, AGL Gas Developments (PNG) Pty Limited, Petroleum Resources Kutubu Limited, Petroleum Resources Gobe Limited and Eda Oil Limited, as amended, novated or replaced from time to time.

**“LNG Project Goods and Consumables”** means goods and consumables: -

- (a) that are imported into Papua New Guinea for or by the PNG LNG Companies to be solely used or consumed by the LNG Project in connection with the initial construction of the LNG Project, provided that the goods and consumables are specifically for the construction of or preparation of gas operations as defined in the Income Tax Act except goods and consumables that are in the nature of prohibited imports and prohibited exports as defined under the Customs (Prohibited imports) Regulations and the Customs (Prohibited Exports) Regulations; or
  - (b) that are imported into Papua New Guinea for or by the PNG LNG Companies to be solely used or consumed by the LNG Project in any subsequent phase of the LNG Project where total project costs exceeds USD50 million (or equivalent) as provided in the PNG LNG Gas Agreement, provided that the goods and consumables are specifically for the construction of or preparation of gas operations as defined in the Income Tax Act except goods and consumables that are in the nature of prohibited imports and prohibited exports as defined under the Customs (Prohibited imports) Regulations and the Customs (Prohibited Exports) Regulations.
- (2) Notwithstanding any other provision of this Act, no bond, rate, tax, excise, rent, charge, due, fee, duty, withholding, tariff, or other levy or impost shall be applied or payable in respect of the export of LNG Project Petroleum by an LNG Project Company or any other customer of an LNG Company.
  - (3) Notwithstanding any other provision of this Act, no bond, rate, tax, excise, rent, charge, due, fee, duty, withholding, tariff, or other levy or impost shall be applied or payable under this Act by the LNG Project Companies or any of their affiliates or any person engaged by an LNG Project Company pursuant to a written agreement on the import, export, use or movement of LNG Project Goods and Consumables to be used or consumed for or by the LNG Project in connection with: -
    - (a) the initial construction; or

(b) any subsequent phase of the project whose total cost exceeds USD50 million or equivalent.

10<sup>[8]</sup>. [REPEALED.]

## **PART V. – PROHIBITED IMPORTS AND EXPORTS.**

### **11. PROHIBITED IMPORTS.**

Subject to the provisions contained in the Customs (Prohibited Imports) Regulation, where import duty payable under Section 2 has not been paid on any goods, these goods are prohibited imports within the meaning of the Customs Act 1951.

### **12. PROHIBITED EXPORTS.**

Subject to the provisions contained in the Customs (Prohibited Exports) Regulation 1973, Export (Desiccated Coconut) Regulation 1956, Export (Fish) Regulation 1953 and the Exports (Control and Valuation) Act 1973, where export duty payable under Section 4 has not been paid on any goods, those goods are a prohibited export within the meaning of the Customs Act 1951.

## **PART VI. – REPEAL AND SAVING.**

### **13. REPEAL.**

The Acts specified in Schedule 3 are repealed.

### **14. SAVING.**

- (1) In this section, “the repealed Act” means the Acts specified in Schedule 3.
- (2) All import and export duties of customs chargeable, collectable and payable under the repealed Acts which, at the date of coming into operation of this Act, had not been charged, collected, and paid, shall, notwithstanding the coming into operation of this Act, in so far as not charged, collected and paid continue to be chargeable, collectable, and payable.

## **PART VII. – MISCELLANEOUS.**



## **15. REGULATIONS.**

The Head of State, acting on advice, may make Regulations not inconsistent with this Act, prescribing all matters that are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing penalties of fines not exceeding K1,000.00 for offences in violation of the regulations.