



SAMOA

CUSTOMS VALUATION REGULATIONS 1998

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PURSUANT to section 123 of the Customs Act 1977, **I, MALIETOA TANUMAFILI II**, Head of State, acting on the advice of Cabinet, **HEREBY MAKE** the following Regulations:

DATED at Apia this 2nd day of March 1998.

signed: **Malietao Tanumafili II**
HEAD OF STATE

REGULATIONS

PART I INTRODUCTION

1. Short title and commencement-(1) These Regulations may be cited as the Customs Valuation Regulations 1998.

(2) These Regulations shall come into force on the 1st January 1999.

2. Interpretation-(1) In these Regulations unless the contrary intention appears:

“Computed value” means the value determined in accordance with Regulation:

“Customs value” or “value”, in relation to any goods, for purposes of levying and valorem duties, means the Customs value of those goods determined in accordance with the provisions set out in these Regulations:

“Country of export”, or “the country from which any goods are exported”, means the country from which the goods are shipped directly to Samoa or, as the case may be, goods exported to Samoa from any country but passing through any other country on their voyage to Samoa (whether transhipped in that other country or not) shall be deemed to be shipped direct from the first mentioned country:

"Country of Importation" means country or Customs territory of importation:

"Deductive value" means the value determined in accordance with Regulation 7:

"Documents" means documents in any form, whether or not signed or initialled or otherwise authenticated by their maker; and includes all forms of writing material, all information recorded, transmitted, or stored by means of tape recorders, computers, or other devices, and all material subsequently derived from information so recorded or stored, labels, markings, and other forms of writing that identify any thing of which the form part or to which they are attached by any means, books, maps, plans, graphs, and drawings, photographs, films, negatives, tapes and other devices in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced:

"Effective date" means 1 January 1999:

"Generally accepted accounting principles" refers to any generally recognised consensus or substantial authoritative support regarding –

- (a) Which changes in assets and liabilities should be recorded;
- (b) How the assets and liabilities and changes in them should be measured;
- (c) What information should be disclosed and how it should be disclosed; and
- (d) Which financial statements should be prepared.

"Goods of the same class or kind", 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 or similar goods in relation to the goods being valued; and
- (b) For the purposes of –
 - (i) Regulation 7, were exported from any country; and

(ii) Regulation 8, were produced in and exported from the country in and from which the goods being valued were produced and exported;

“Identical goods”, 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 country in which the goods being valued were produced; and
- (c) Were produced by or on behalf of the person who produced the goods being valued, but does not include imported goods where engineering, development work, artwork, design work, plans, or sketches undertaken in Samoa were supplied, directly or indirectly, by the buyer 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.

“Packing costs” means the cost of all containers (exclusive of instruments of international traffic) and coverings of whatever nature and of packing whether for labour or materials used in placing goods, in condition, packed ready for shipment to Samoa:

“Price paid or payable”, in relation to any goods, means the aggregate of all amounts paid or payable by the buyer or anyone else to or for the benefit of the seller in respect of the goods and includes all payments (whether direct or indirect inclusive of all costs, charges and expenses incurred for sourcing, arranging, procuring, packaging, freighting, transporting, insuring and related services incidental to the international shipment of the goods from the country of exportation to the place of importation in Samoa):

“Produced” includes grown, manufactured, and mined:

“Records” include all papers, books, registers, discs, films, tapes, sound tracks, or other devices or things in or on which information is recorded or stored:

“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 country in which the goods being valued were produced; and

(c) Were produced by or on behalf of the person who produced the goods being valued -

but does not include imported goods where engineering, development work, artwork, design work, plans, or sketches undertaken in Samoa were supplied, directly or indirectly, by the buyer 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 respect of the determination 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 Regulations 3 and 4.

(2) In these Regulations, unless the context otherwise requires the term ‘assist’ means any of the following if supplied directly or indirectly, and free of charge or at a reduced cost, by the buyer of imported goods for use in connection with the production or the sale for export to Samoa of the goods -

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds, and similar items incorporated in the imported goods;

(iii) goods consumed in the production of the imported goods;

(iv) engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in Samoa and are

necessary for the production of the imported goods.

(3) No service or work to which sub-regulation (2)(iv) of this regulation applies is to be treated as an assist if the service or work is -

(i) performed by an individual domiciled within Samoa;

(ii) performed by that individual while acting as an employee or agent of the buyer of the imported goods; and

(iii) incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within Samoa.

(4) The following apply in determining the value of assists described in sub-regulation (2)(iv) of this regulation -

(i) the value of an assist that is available in the public domain is the cost of obtaining copies of the assist;

(ii) if the production of an asset occurred in Samoa and one or more foreign countries, the value of the assist is the value added outside Samoa;

(iii) if the assist was purchased or leased by the buyer from an unrelated person, the value of the assist is the cost of the purchase or of the lease.

(5) For the purposes of these Regulations, persons shall be deemed to be related only if -

(a) They are officers or directors of one another's businesses; or

(b) They are legally recognised partners in business; or

(c) They are employer and employee; or

(d) Any person directly or indirectly owns, controls or holds 5 percent 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 a third persons; or

- (g) Together they directly or indirectly control a third person; or
 - (h) They are members of the same family.
- (6) For the purposes of these Regulations persons shall be deemed 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 one another or if 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.
- (7) For the purposes of these Regulations, where there are no goods that were produced by or on behalf of the person who produced the goods being valued and that are other wise 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 shall be deemed to be identical goods or similar goods, as the case may be.
- (8) For the purposes of these Regulations charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the Customs value in any case where -
- (a) The charges are distinguished from the price actually paid or payable for the goods; and
 - (b) Such goods are actually sold at the price declared as the price actually paid or payable; and
 - (c) The buyer, if required, can demonstrate that -
 - (i) the financing arrangement was made in writing;
 - (ii) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.
- (9) The provisions of these regulations shall apply to the appraisement of goods imported into Samoa on or after the effective date.
- (10) Imported goods will be appraised on the basis, and in the order, of the following -

- (a) The value for duty of imported goods shall be determined in accordance with Regulations 3 to 10;
 - (b) The Customs Value of goods shall if possible be appraised on the basis of the transaction value of the goods in accordance with conditions set out in Regulation 3;
 - (c) Where the value for duty of goods cannot be appraised in accordance with Regulation 3, it shall be appraised in the following order and on the following basis -
 - (i) the transaction value of identical goods that meet the requirements set out in Regulation 5;
 - (ii) the transaction value of similar goods that meet the requirements set out in Regulation 6;
 - (iii) the deductive value of the goods as set out in Regulation 7;
 - (iv) the computed value of the goods as set out in Regulation 8.
- (11) Upon receipt of a written request from the importer to the Comptroller, the order of consideration of the valuation basis provided for in paragraphs (iii) and (iv) of sub-regulation (10)(c) shall be reversed and confirmed in writing by the Comptroller.
- (12) Where the value for duty is not appraised on the basis of any of the methods referred to in paragraphs (i) to (iv) of sub-regulation (10)(c), the Customs value of those goods shall be appraised under Regulation 9.
- (13) Information submitted by an importer, buyer or producer in regard to the appraisement of goods may not be rejected by Customs because of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles.

PART II
RULES ON CUSTOMS VALUATIONS

3. Transaction value as the primary basis of valuation-

(1) The Customs value of imported goods shall be their transaction value, that is, the price paid or payable for the goods when sold for export to Samoa, adjusted in accordance with Regulation 4, if

- (a) There are no restrictions respecting the disposition or use of the goods by the buyer, 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; or
- (b) The sale of the goods or the price paid or payable for the goods is not subject to some condition or consideration in respect of which a value cannot be determined; or
- (c) Where any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer is to accrue, directly or indirectly, to the seller, the price paid or payable for the goods includes the value of that part of the proceeds or can be adjusted in accordance with Regulation 4 of this Regulations; or
- (d) The buyer and seller of the goods are not related at the time the goods are sold for export or, where the buyer and seller are related at that time -
 - (i) their relationship did not influence the price paid or payable for the goods; or
 - (ii) the importer demonstrates that the transaction value of the goods meets the requirements set out in sub-regulation (2) of this Regulation.

(2) In a sale between related persons, for the purpose of showing that the relationship did not influence the transaction value, the importer may produce evidence that the transaction value for the goods being valued, taking into consideration any

relevant factors including such factors and differences as may be prescribed, closely approximates the Customs value of other goods exported at the same time or substantially at the same time as the goods being valued, being -

- (a) The transaction value of identical goods or similar goods in respect of a sale of those goods for export to Samoa between a seller and buyer who are not related at the time of the sale; or
- (b) The deductive value of identical or similar goods determined in accordance with Regulation 7; or
- (c) The computed value of identical or similar goods determined in accordance with Regulation 8.

(3) Where sub-regulation (2) of this Regulation applies, the importer shall, without limiting the generality of sub-regulation (2), provide the following information -

- (a) The nature of the goods being valued;
- (b) The nature of the industry that produces the goods being valued;
- (c) The season in which the goods being valued are imported;
- (d) Whether a difference in values is commercially significant;
- (e) The trade levels at which the sales take place;
- (f) The quantity levels of the sales;
- (g) Any of the amounts referred to in Regulation 4;
- (h) The costs, charges or expenses incurred by a seller when the seller sells to a buyer to whom the seller is not related that are not incurred when the seller sells to a buyer to whom the seller is related.

(i) Any other information as may be required by the Comptroller.

(4) In any case where the Comptroller or proper officer is of the opinion that the relationship between the buyer and the seller of any goods influenced the price paid or payable for the goods, he shall inform the importer, in writing if so requested, of the grounds on which he formed his opinion, and shall give the importer a reasonable opportunity to satisfy him that the relationship did not influence the price.

(5) Where, in the opinion of the Comptroller, the Customs value cannot be determined under this regulation or the Comptroller has reason to doubt the truth or accuracy of the declared Customs value and, after having sought further explanation or other evidence that the declared Customs value represents the total amount actually paid or payable for the imported goods, the Comptroller is still not satisfied that the Customs value of the goods can be determined under this Regulation, the Comptroller may determine the Customs value of the goods by proceeding sequentially through Regulations 5 to 9 of these Regulations to the first such Regulation under which the Customs value can, in the opinion of the Comptroller, be determined.

(6) Notwithstanding sub-regulation (4), on the written request of the importer to the Comptroller, the order of consideration of the valuation basis provided for in Regulations 7 and 8 shall be reversed.

4. Adjustment of price paid or payable-(1) In determining the transaction value of goods under Regulation 3, the price paid or payable for the goods shall be adjusted -

(a) By adding thereto amounts, to the extent that each such amount is not otherwise included in the price paid or payable for the goods and is determined on the basis of sufficient information, equal to -

(i) commissions and brokerage in respect of the goods incurred by the buyer, other than fees paid or payable by the buyer to his agent for the service of representing him overseas in respect of the purchase of the goods; and

(ii) the packing costs and charges incurred by the buyer in respect of the goods, including the costs of cartons, cases, and other containers and coverings that are treated for Customs purposes as being part of the imported goods and all expenses of packing incidental to placing the goods in the condition in which they are shipped to Samoa; and

(iii) the value of any of the following goods and services -

- (A) materials, component parts, and other goods incorporated in the imported goods;
- (B) tools, dies, moulds, and other goods utilized in the production of the imported goods;
- (C) materials consumed in the production of the imported goods;
- (D) engineering, development work, artwork, designwork, plans and sketches undertaken elsewhere than in Samoa and necessary for the production of the imported goods;

determined in the manner as maybe prescribed, 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, apportioned to the imported goods in a reasonable manner and in accordance with generally accepted accounting principles; and

(iv) royalties and license fees including payments for patents, trademarks, and copyrights in respect of the imported goods that the buyer must pay, directly or indirectly, as a condition of the sale of the goods for export to Samoa, exclusive of charges for the right to reproduce the imported goods in Samoa; and

(v) the value of any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer that accrues or is to accrue, directly or indirectly, to the seller; and

(vi) the value of any materials, component parts, and other goods incorporated in the imported goods for the purpose of repair to, or refurbishment of, those goods prior to export of the goods to Samoa, and the price paid for the service of repair and refurbishment, as the case may be; and

(vii) the cost of transportation and insurance of, and the loading, unloading and handling

charges, and other (direct or indirect) charges and expenses associated with the procurement, packaging and transportation of the imported goods to Samoa;

- (b) By deducting therefrom amounts, to the extent that each such amount is otherwise included in the price paid or payable for the goods, equal to -

(i) any of the following costs, charges, or expenses -

(A) any reasonable cost, charge, or expense that is incurred for the construction, erection, assembly, or maintenance of, or technical assistance provided in respect of, the goods after the goods are imported;

(B) Any reasonable cost, charge, or expense that is incurred in respect of the transportation or insurance of the goods within Samoa and any reasonable cost change, or expense associated therewith;

(C) any Customs duties and other taxes payable in Samoa by reason of the importation or sale of the goods -

if the cost, charge, or expense is identified separately from the balance of the price paid or payable for the goods.

(2) The price paid or payable in respect of goods sold for export to Samoa shall not be adjusted to take account of any rebate of or other decreases in, the price paid or payable for the goods that is effected after the goods are imported.

(3) Where any adjustment in terms of the foregoing sub-regulation cannot, in the opinion of the Comptroller, be made because of the lack of sufficient information, the transaction value of the goods being valued cannot be determined under Regulation 3.

5. Transaction value of identical goods as Customs value-(1) Subject to sub-regulations (2) to (4), where the Customs value of imported goods cannot, in the opinion of the Comptroller, be determined under Regulation 3, the Customs value of the goods shall be the transaction value of identical

goods in respect of a sale of those goods for export to Samoa if that transaction value is the Customs value of the identical goods and the identical goods were exported at the same or substantially the same time as the goods being valued and were sold under the following conditions -

- (a) To a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and
- (b) In the same or substantially the same quantities as the goods being valued.

(2) Where the Customs value of imported goods cannot be determined under sub-regulation (1) of this Regulation because identical, goods were not sold under the conditions described in sub-regulation (1)(a) and (b), there shall be substituted therefor identical goods sold under any of the following conditions -

- (a) To a buyer at the same or substantially the same trade level as the buyer of the goods being valued but in quantities different from the quantities in which those goods were sold; or
- (b) To a buyer at a trade level different from that of the buyer of the goods being valued but in the same; or
- (c) To a buyer at a trade level different from that of the buyer of the goods being valued and in quantities different from the quantities in which those goods were sold.

(3) For the purposes of determining the Customs value of the imported goods under the sub-regulation (1), the transaction value of the identical goods shall be adjusted by adding thereto or deducting therefrom, as the case may be, amounts to account for -

- (a) Commercially significant differences between the costs, charges, and expenses referred to in Regulation 4(1)(a)(vi) in respect of the identical goods and those costs, charges, and expenses in respect of the goods being valued that are attributable to differences in distances and modes of transport;
- (b) Where the transaction value is in respect of identical goods sold under the conditions described in any

of paragraphs (a) to (c) of sub-regulation (2), differences in the trade levels of the buyers 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 -

if each amount can, in the opinion of the Comptroller, be determined on the basis of sufficient information. Where any such amount cannot be so determined, the Customs value of the goods being valued shall not be determined on the basis of the transaction value of those identical goods under this Regulation.

(4) Where, in relation to imported goods being valued, there are two or more transaction values of identical goods that meet all the requirements set out in sub-regulation (1) and (3) or where there is no such transaction value but there are two or more transaction values of identical goods sold under the conditions described in any of paragraphs (a) to (c) of sub-regulation (2) that meet all the requirements set out in this Regulation that are applicable by virtue of sub-regulation (2), the Customs value of the goods being valued shall be determined on the basis of the lowest such transaction value.

6. Transaction value of similar goods as the Customs value-(1) Subject to sub-regulation (2) and sub-regulations (2) to (4) of Regulation 5, where the Customs value of imported goods cannot, in the opinion of the Comptroller, be determined under Regulation 5, the Customs value of the goods shall be transaction value of the similar goods in respect of a sale of those goods for export to Samoa if that transaction value is the Customs value of the similar goods and the similar goods were exported at the same or substantially the same time as the goods being valued and were sold under the following conditions -

- (a) To a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and
- (b) In the same or substantially the same quantities as the goods being valued.

(2) Sub-regulations (2) to (4) of Regulation 4, shall apply to this Regulation in respect of similar goods as if every

references in those sub-regulations to "identical goods" were a reference to "similar goods".

7. Deductive value as Customs value-(1) Subject to sub-regulations (5) and (6) of Regulation 3, where the Customs value cannot, in the opinion of the Comptroller, be determined under Regulation 6, the Customs value of the goods shall be the deductive value in respect of the goods.

(2) Where the goods being valued or identical goods or similar goods are sold in Samoa in the condition in which they were imported at the same or substantially the same time as the time of importation of the goods being valued, the deductive value of the goods being valued shall be the price per unit in respect of sales described in sub-regulation (5) determined in accordance with that sub-regulation and adjusted in accordance with sub-regulation (6), at which the greatest number of units of the goods being valued or identical goods or similar goods are so sold.

(3) Where the goods being valued or identical goods or similar goods are sold in Samoa in the condition in which they were imported before the expiration of 90 days after the importation of the goods being valued but are not so sold at the same or substantially the same time as the time of that importation, the deductive value of the goods being valued shall be the price per unit in respect of sales described in sub-regulation (5), determined in accordance with that sub-regulation and adjusted in accordance with sub-regulation (6), at which the greatest number of units of the goods being valued or identical goods or similar goods are so sold at the earliest date after the importation of the goods being valued.

(4) Where the goods being valued or identical goods or similar goods are sold in Samoa in the circumstances described in sub-regulation (2) or sub-regulation (3), but the goods being valued, after being assembled, packaged, or further processed in Samoa, are sold in Samoa before the expiration of 90 days after the importation thereof and the importer of the goods being valued requests that this sub-regulation be applied in the determination of the Customs value of those goods, the deductive value of the goods being valued shall be the price per unit in respect of sales described in sub-regulation (5),

determined in accordance with that sub-regulation and adjusted in accordance with sub-regulation (6), at which the greatest number of units of the goods being valued are so sold.

(5) For the purposes of sub-regulations (2) to (4), the price per unit in respect of any goods being valued or 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 their importation to persons who -

- (a) Are not related to the persons from whom they buy the goods at the time the goods are sold to them; and
- (b) 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 Regulation 4(1)(a)(iii);

at which the greatest number of units of the goods is sold where in the opinion of the Comptroller, a sufficient number of such sales have been made to permit a determination of the price per unit of the goods.

(6) For the purposes of sub-regulations (2) to (4), the price per unit in respect of any goods being valued or identical goods or similar goods, shall be adjusted by deducting therefrom as amount equal to the aggregate of -

- (a) An amount determined in accordance with sub-regulation (7), 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 Samoa of goods of the same class or kind as those goods.

- (b) Reasonable costs charges and expenses that are incurred in respect of the transportation and insurance of the goods within Samoa and the costs, charges, and expenses associated therewith to the extent that an amount for such costs,

charges and expenses is not included in respect of general expenses under paragraph (a);

(c) The costs, charges, and expenses referred to in Regulation 4(1)(b)(i) incurred in respect of the goods, to the extent that an amount for such costs, charges, and expenses is not deducted in respect of general expenses under paragraph (a);

(d) Any Customs duties or other taxes payable in Samoa by reason of the importation or sale 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);

(e) Where sub-regulation (4) applies, the amount of the value added to the goods that is attributable to the assembly, packaging, or further processing in Samoa of the goods, if that amount is determined, in the opinion of the Comptroller, on the basis of sufficient information.

(7) The amount considered to be equal to the amount of commission or the amount for profit and general expenses referred to in sub-regulation (6)(a) shall be calculated on a percentage basis and determined on the basis of the information prepared in a manner consistent with generally accepted accounting principles that is supplied -

(a) By or on behalf of the importer of the goods being valued; or

(b) Where the information supplied by or on behalf to the importer goods being valued is not sufficient information, but an examination of sales in Samoa of the narrowest group or range of goods being valued from which sufficient information can, in the opinion of the Comptroller, be obtained.

(8) Where an amount referred to sub-regulation (6)(e) in respect of any goods being valued cannot, in the opinion of the Comptroller, be determined on the basis of sufficient information, the Customs value of the goods cannot be determined on the basis of the deductive value under sub-regulation (4).

8. Computed value as Customs value-(1) Subject to sub-regulations (3) and (5) of Regulation 3, where the Customs value of imported goods cannot, in the opinion of the Comptroller be determined under Regulation 7 of these Regulations, the Customs value of the goods shall be the computed value in respect of those goods.

(2) The computed value of the goods being valued is the aggregate of the amounts equal to -

- (a) The costs, charges, and expenses incurred in respect of, or the value of -
 - (i) materials employed in producing the goods being valued; and
 - (ii) the production or other processing of the goods being valued, determined in the manner prescribed, including, without limiting the generality of the foregoing;
 - (iii) the costs, charges, and expenses referred to in Regulation 4(1)(a)(ii);
 - (iv) the value of any of the goods and services referred to in Regulation 4(1)(a)(iii) determined and apportioned to the goods being valued as referred to in that Regulation, whether or not such goods and services have been supplied free of charge or at a reduced cost;
 - (v) the costs, charges, and expenses incurred by the producer in respect of engineering, development work, art work, design work, plans, or sketches undertaken in Samoa that were supplied, directly or indirectly, by the buyer of the goods being valued for use in connection with the production and the sale for export of those goods to the extent that such elements are charged to the producer of the goods, apportioned to the goods being valued as referred to in Regulation 4(1)(a)(iii);
- (b) The amount, determined in accordance with sub-regulation (4) for profit and general expenses, considered together as a whole, generally reflected in sales for export to Samoa of goods of the same class or kind as the goods being valued,

made by the producers of the goods to buyers in Samoa who are not related to the producers from whom they buy the goods at the time the goods are sold to them.

(3) For the purposes of this Regulation, the expression "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 sub-regulation (2)(a).

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

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

9. Residual basis of valuation-(1) Where the Customs value of imported goods cannot, in opinion of the Comptroller, be determined under Regulation 8, it shall be determined on information available in Samoa on the basis of a value derived from the methods of valuation set out in Regulations 3 to 8 interpreted in a flexible manner and reasonably adjusted to the extent necessary to arrive at a Customs value of goods.

(2) A Customs value shall not be determined on the basis of -

- (a) The selling price in Samoa of goods produced in Samoa; or
- (b) A basis which provides for the acceptance of the higher of 2 alternative values; or
- (c) The price of goods on the domestic market of the country of exportation; or

- (d) The cost of production, other than computed values that have been determined for identical or similar goods in accordance with Regulation 8; or
- (e) The price of goods for export to a country other than Samoa, unless the goods were imported into Samoa; or
- (f) Minimum Customs values; or
- (g) Arbitrary or fictitious values.

10. Determination of Customs value by Comptroller-(1)

The Customs value of goods pursuant to the Customs Act and these regulations shall be determined by the Comptroller and duty shall be payable in accordance with that determination unless, pursuant to this regulation, a different amount is proved to be the correct Customs value of the goods.

(2) If, on the basis of an objection received from the importer or for any other reason, the Comptroller is satisfied that any determination made under sub-regulation (1) in respect of any goods is inconsistent with these regulations or incorrect for any other reason, he may amend his determination in respect of that determination accordingly and duty shall be payable in accordance with that amended determination.

(3) If any importer disagrees with any determination by the Comptroller of the Customs value of any goods, he may object to that value by making application and paying a fee of \$100.00 to the Comptroller, stating the grounds of his objection and the amount that he considers should be the Customs value of the goods.

(4) An objection under this section shall be given in writing to the Comptroller within 14 days after any determination made under sub-regulation (1) or within such further time as may be allowed by the Comptroller.

(5) The Comptroller shall consider the objection and inform the importer in writing of his decision.

(6) Where the Comptroller amends his determination of the Customs value of any goods pursuant to sub-regulation (2) otherwise than as a result of an objection received from the importer of these goods he shall give notice to the importer of the amended determination.

(7) If any importer is dissatisfied with the Comptroller's decision in respect of his objection under sub-regulation (3) against a determination, he may appeal to the Minister against that determination.

(8) Every such appeal pursuant to sub-regulation (7) shall be made by giving such notice of appeal within 28 days after the date on which the appellant was notified in writing under sub-regulation (5) of the decision or within such further time as the Minister may allow application either before or after the expiration of those 28 days.

(9) In the determination of any appeal, the Minister may confirm or modify the determination appealed against.

(10) Notwithstanding anything in this regulation, where in the course of determining any appeal, it becomes necessary to delay the final determination of such appeal, the appellant shall nevertheless be given delivery of his goods from Customs control subject to the Comptroller receiving such security as he thinks sufficient to cover the full amount of duty.

11. Supply of information-(1) Upon the written request by the importer of any goods, the Comptroller shall give notice to that importer in writing of the Customs value of the goods, and the basis of the determination of that Customs value including the provisions of these Regulations applying thereto.

(2) A notice under sub-regulation (1) will apply only to the imported goods being valued and will not serve as authority with respect to the valuation of any other goods.

12. Time tolerance for the acceptance of invoice prices-

(1) The tolerance for the acceptance of invoice prices paid or payable may be accepted where the contract is dated not more than 3 months before the date specified.

(2) The Comptroller may extend the time limit referred to in sub-regulation (1) in respect of -

(a) Goods of a kind usually sold for delivery more than three months after the date of the contract; and

(b) Goods manufactured to a special order, provided the delivery is made within the contractual period.

(3) In periods of abnormal price fluctuations the periods of tolerance referred to in sub-regulation (1) and (2), may be suspended by the Comptroller.

13. Verification of information-(1) Where the Comptroller is not satisfied with the correctness of any entry or information laid before him pursuant to these Regulations, he may detain the goods for any period that is reasonably necessary to enable him to have the goods examined and, if necessary, to cause an investigation to be made, whether in Samoa or elsewhere, into the importation of the goods.

(2) Without limiting sub-regulation (1), the Comptroller may, if he thinks fit, require from any person making entry of any goods proof by declaration or the production of documents (in addition to any declaration or documents otherwise required under the Customs Act or by Regulations thereunder) of the correctness of the entry, and may refuse to deliver the goods or to pass the entry pending such proof.

(3) The Comptroller may refuse to deliver any goods which are the subject matter of an examination or investigation carried out pursuant to this regulation or to pass an entry for those goods until he is satisfied as to the correctness of the entry or the information submitted to him.

14. Incorrect and false information-(1) Every person who knowingly makes a false declaration or provides information required to be provided pursuant to these regulations, that is false or defective in any particular commits an offence.

(2) Every person who commits an offence against this Regulation is liable to the maximum fine available under the Customs Act.

(3) For the purposes of these regulations, every declaration, invoice, certificate, or written statement required or authorised by or under the Customs Act or regulations made thereunder, to be made or produced by the importer or any person authorised to make an entry shall be deemed to form part of that entry.

(4) For the purposes of these regulations, every amendment of an entry or declaration shall be deemed to form part of that

entry, but not so as to relieve any person from any penalty incurred in respect of the entry before its amendment.

15. Importers to keep records-(1) Every person who imports goods, or causes goods to be imported, for sale or for any industrial, occupational, commercial, institutional or other like use, shall keep at his or place of business in Samoa, or at such other place in Samoa as may be approved by the Comptroller, such records in respect of those goods in such manner, and for such period of time not exceeding 10 years as may be prescribed.

(2) Where an officer of Customs so requests, a person who is required pursuant to sub-regulation (1) to keep any records shall -

(a) Promptly make those records available to the officer; and

(b) Answer truthfully any questions asked by the officer in respect of such records.

(3) Where any records required to be kept pursuant to sub-regulation (1) are kept on or in any mechanical or electronic device, including any computer, the owner of that device shall operate or cause the device to be operated, at the person's own expense, so as to make the records readily available to the officer.

(4) Every person who fails to comply with any of the provisions of this regulation commits an offence.

(5) Every person who commits an offence against this regulation is liable to the maximum fine available under the Customs Act.

16. Comptroller may alter assessments-(1) If the Comptroller has reason to believe or suspect that the amount of duties declared by any person is less than the amount payable under the Customs Acts or regulations made thereunder, he may assess the duties payable at such amount as he thinks proper.

(2) Pursuant to sub-regulation (1), the Comptroller may from time to time and at any time may make such alterations in or additions to an assessment as the Comptroller thinks necessary in order to ensure the correctness thereof, notwithstanding the fact that the goods to which the assessment

relates are no longer subject to the control of the Customs or that the duties originally assessed may have been paid.

(3) If any such alteration or addition has the effect of imposing any fresh liability or increasing any existing liability, notice shall be given by the Comptroller to the importer or owner concerned.

(4) Every assessment made by the Comptroller pursuant to these regulations shall be taken to be correct and any additional duties paid, unless the contrary is proved.

17. Production of Valuation Declaration on first entry-

(1) Subject to such exemptions and conditions as may further be prescribed, on the first entry (other than an entry for removal) of any goods, the importer or such other person as may be prescribed or determined by the Comptroller shall make and produce to the Comptroller or other proper officer a declaration of the value of the goods imported in such form and manner as may be prescribed or determined.

(2) Every importer or such other person as may be prescribed shall provide such additional information as the Comptroller or proper officer requires which evidences the particulars of the goods and the price paid or payable for those goods between the seller of the goods and the buyer of the goods.

(3) Unless the Comptroller otherwise directs in relation to any class or classes of goods or transactions, the Comptroller or other proper officer may retain the documents so produced, or a legible copy thereof made by carbon or other duplicating process made by or on behalf of the seller or consignor of the goods.

(4) Unless the Comptroller otherwise directs in relation to any class or classes of goods or transactions, every importer, or such other person as may be prescribed or determined by the Comptroller, who is required pursuant to the provisions of these regulations to make entry of any goods, shall keep all documents, or legible copies thereof, which evidence the particulars of the goods and the price paid or payable for those goods between the seller of the goods and the buyer of the goods, for a period not exceeding 7 years from the date on

which such entry was required to be made under the provisions of the Customs Act.

(5) Subject to any conditions that the Comptroller may impose, any importer, or such other person as may be prescribed, who is required pursuant to sub-regulation (4), to keep documents or legible copies thereof as aforesaid, may, in lieu thereof, transfer the information contained therein on to or into any mechanical or electronic device and shall keep that information for a period not less than 10 years from the date on which the entry was required to be made under the provisions of the Customs Act.

(6) The Comptroller or other proper officer may enter the business premises of the importer or such other person as may be prescribed to examine any document or legible copy thereof required to be kept pursuant to sub-regulation (5) of this regulation, and require him to truly answer all questions put to him by the Comptroller or other proper officer relating to such document or legible copy thereof, or information as aforesaid, and in the case of any information transferred on to or into any mechanical or electronic device pursuant to sub-regulation (5) of this regulation, require him to operate the mechanical or electronic device at his own expense so as to allow the Comptroller or other proper officer to readily ascertain the information contained therein.

(7) Every person who fails to comply with these regulations commits an offence and shall be liable to the maximum fine available under the Customs Act.

18. Provisions for the valuation of imported goods for value added goods and services tax purposes – For the purposes of subsection (2) of section 13 of the Value Added Goods and Services Tax Act 1993, the value of goods imported into Samoa shall be the sum of the amount of -

(a) The value of the goods determined in accordance with Part I and Part II of these Regulations (whether or not duty is payable); and

(b) Any duties, taxes (other than tax levied or charged under the Value Added Goods & Services Tax Act, 1993) and other charges that are charged, paid or payable on goods upon the importation or

removal from a bonded or Customs warehouse for home consumption in Samoa; and

- (c) The amount paid or payable to transport the goods to Samoa and to insure the goods for such transport, if not already included under paragraph (a).

PART III
PROVISION FOR THE VALUATION OF EXPORTED
GOODS FOR CUSTOMS PURPOSES

19. Value of Exported goods – The value of exported goods shall be taken to be the price which a purchaser would be prepared to give for the goods on board on an aircraft or ship in any airport or port in Samoa prior to the exportation of such goods or, where such value is not easily ascertainable, the Comptroller may estimate such value.