

CUSTOMS (AMENDMENT) ACT 1998

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ACT NO. 57 OF 1998



I assent.

[L.S.]

K. K. T. MARA
President

[18 December 1998]

AN ACT

TO AMEND THE CUSTOMS ACT 1986

ENACTED by the Parliament of the Fiji Islands—

Short title and commencement

1.—(1) This Act may be cited as the Customs (Amendment) Act 1998.

(2) This Act comes into force on a date to be appointed by the Minister by notice in the *Gazette*.

(3) The Minister may appoint different dates for the coming into force of different provisions of this Act.

Interpretation

2. In this Act “principal Act” means the Customs Act 1986 (No. 11 of 1986).

Section 2 amended

3. Section 2 of the principal Act is amended by adding the following definitions—

““exporter” includes an owner or an owner’s agent, or any other person for the time being possessed of or beneficially interested in any goods at the time of their exportation;

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“identifier” means the identifier allocated to a registered user by the Comptroller under section 36C;

“licensee” means a licensee of a bonded warehouse or an export warehouse;

“system” means a Customs automated cargo reporting or entry processing system;”.

Report

4. Section 18 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting “or by means of an electronic message” after “prescribed form”; and

(ii) by adding “or air waybill” at the end;

(b) in subsection (4)(b) by deleting “particular” and substituting “particulars”.

Entries

5. Section 30 of the principal Act is amended—

(a) in subsection (1) by inserting “or by means of an electronic message transmitted to the system” after “prescribed”;

(b) by inserting after subsection (1) the following new subsection—

“(1A) An import entry may be made by document or by computer.”.

New section 30A inserted

6. The principal Act is amended by inserting after section 30 the following new section—

“When entry of imported goods deemed to be made

30A. For the purpose of this Act, an entry of goods to which section 30 applies is deemed to have been made when a lodgement number has been allocated to that entry either electronically or manually.”.

Particulars of entries

7. Section 32(a) of the principal Act is amended by inserting “or by means of an electronic message transmitted to the system” after “proper officer”.

Provisional entries

8. Section 33 of the principal Act is amended—

(a) in subsection (1) by deleting “passing of” after “6 months of the” and substituting “issue of a warrant number for”;

(b) in subsection (3)—

(i) by deleting “passing of” in the 1st line and substituting “issue of a warrant number for”; and

- (ii) by deleting “and the passing of the perfect entry” after “prescribed documentary evidence” and substituting “to the satisfaction of the Comptroller”; and
- (c) in paragraph (a) of subsection (3) by deleting “of the passing of the perfect entry” and substituting “of the issue of the warrant number”.

New section 34A inserted

9. The principal Act is amended by inserting after section 34 the following new section—

“Assessment and payment of duty

34A.—(1) An entry for goods or a claim for refund or drawback in respect of goods made under this Act is deemed to be an assessment by the importer, exporter or licensee, as the case may be, as to the duty payable or refundable in respect of those goods.

(2) The Comptroller may approve a person who is required to pay any duty, fee, charge or penalty under the customs laws to pay the duty, fee, charge or penalty by electronic transfer of funds.”.

New Part inserted.

10. The principal Act is amended by inserting after Part VII the following new Part—

“Part VIIA—CUSTOMS AUTOMATED ENTRY PROCESSING SYSTEM

Access to system

36A. No person may transmit to, or receive information from, a system unless the person is registered by the Comptroller as a user of the system.

Registered users

36B.—(1) A person who wishes to be registered as a user of a system may apply in writing to the Comptroller in the prescribed form and must provide the prescribed information in relation to the application.

(2) The Comptroller may require an applicant under subsection (1) to provide any additional information the Comptroller considers necessary for the purpose of the application.

(3) The Comptroller may—

- (a) register an applicant subject to any conditions (including the payment of any prescribed fee) the Comptroller thinks fit to impose; or
- (b) refuse to register an applicant.

(4) The Comptroller must, in writing, notify an applicant of the decision made under subsection (3).

(5) A person aggrieved by a decision of the Comptroller under subsection (3) or section 36E(1) may appeal to the Minister who may confirm or vary the decision.

Registered users to be allocated identifier

36C.—(1) A person who is registered as a user of a system must be allocated by the Comptroller for use in relation to the system an identifier in a form and of a nature determined by the Comptroller.

(2) A registered user who is allocated an identifier under subsection (1) must use the identifier for the purpose of transmitting information to, or receiving information from, the system.

(3) The Comptroller may, by notice in writing, impose conditions on a particular registered user, or on registered users generally, relating to the use and security of an identifier or identifiers.

Use of identifier

36D.—(1) If any information is transmitted to a system using an identifier issued to a registered user by the Comptroller for the purpose, the transmission of the information is, unless the contrary is proved and subject to subsection (2), evidence that the registered user to whom the identifier has been issued has transmitted the information.

- (2) If —
- (a) an identifier is used by a person who is not entitled to use it; and
 - (b) the registered user to whom the identifier was issued has, prior to the unauthorised use of that identifier, notified the Customs in writing that the identifier is no longer secure,

subsection (1) does not apply.

Cancellation of registration of registered user

36E.—(1) If at any time the Comptroller is satisfied that a registered user of a system has—

- (a) failed to comply with a condition of registration imposed by the Comptroller under section 36B(3)(a);
- (b) failed to comply with, or acted in contravention of, a condition imposed by the Comptroller under section 36C(3) relating to the use and security of the registered user's identifier; or

- (c) been convicted of an offence under this Act relating to improper access to or interference with a system,

the Comptroller may cancel the registration of the registered user.

(2) Cancellation under subsection (1) is done by giving notice in writing to the registered user stating that the registration is cancelled and setting out the reasons for the cancellation.

Customs to keep records of transmission

36F.—(1) The Customs must keep a record of every transmission sent to or received from a registered user using a system.

(2) A record kept under subsection (1) must be kept for 5 years from the date of the sending of or the receipt of the transmission, or for any other period.”.

Entry of warehouse goods

11. Section 47(3) of the principal Act is amended by deleting everything after “when” and substituting “a lodgement number has been allocated either electronically or manually.”.

Controller may impose conditions on export warehouse licences

12. Section 63F(2) of the principal Act is amended by deleting “exort” and substituting “export warehouse”.

Section 63G replaced

13. Section 63G of the principal Act is repealed and replaced by the following—

“Failure to comply with conditions

63G. A person who fails to comply with any conditions imposed under section 63F(1) commits an offence and is liable on conviction to a fine of \$5,000.”.

Loading

14. Section 65(1) of the principal Act is amended by deleting everything after “export” in paragraph (a) and substituting the following—

“unless the exporter or the exporter’s agent—

- (i) has previously delivered to an officer an entry outwards in the prescribed form; or
- (ii) in the case of an entry made by means of an electronic message – has transmitted the appropriate message to a system and the system has allocated a lodgement number in respect of that message; and
- (iii) has paid all duties and charges payable upon the goods.” .

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15. Section 92 of the principal Act is amended—

- (a) in subsection (3) by—
- (i) deleting “entry of home consumption” and substituting “entry for home consumption”; and
 - (ii) inserting “or upon transmission to the system of an electronic message” after “export of the goods”; and
- (b) in subsection (5) by inserting “or upon transmission to the system of an electronic message” after “proper officer”.

Rates of duty applicable

16. Section 94(3) of the principal Act is amended by adding “or are transmitted to the system by a registered user” at the end.

New section 101A inserted

17. The principal Act is amended by inserting after section 101 the following new section—

“Power to amend assessments of duty made by importers, exporters or licensees

101A.(1) If the Comptroller is satisfied, as a result of an investigation carried out under section 114B or for any other reason, that an assessment of duty payable or refundable made by an importer, exporter or licensee contravenes the customs laws or is for any other reason incorrect, the Comptroller may amend the assessment and demand any short-paid duty.

- (2) Notice in writing must be given to the importer, exporter or licensee of—
- (a) an amended assessment made under subsection (1); and
 - (b) the basis for the amended assessment, and where applicable, the relevant provision of any written law.
- (3) Subsection (1) applies whether or not the goods have been released from the control of the Customs and whether or not any duty assessed has been paid.
- (4) An importer, exporter or licensee who is dissatisfied with a decision of the Comptroller under this section may, within 15 working days after the date on which notice of the decision was given, appeal the decision to the Court of Review.”.

New sections inserted

18. The principal Act is amended by inserting after section 114 the following new sections—

“Keeping of business records

114A.(1) Every licensee, importer, and exporter must keep or cause to be kept

in the Fiji Islands in the English language all business records and other prescribed information needed to enable an officer to be satisfied as to the correctness and completeness of the particulars shown in any entry or claim lodged with Customs.

(2) The business records and other prescribed information kept under subsection (1) must be kept for at least 5 years.

(3) Every licensee, importer and exporter must, when required by an officer—

- (a) make the records and the prescribed information kept under subsection (1) available to the Customs;
- (b) provide copies of the records and the prescribed information as required; and
- (c) answer any questions relating to matters arising under this Act asked by an officer in respect of them.

(4) If, for the purposes of complying with subsection (2), information is recorded or stored by means of an electronic or other device, the licensee, importer or exporter, or an agent of the licensee, importer or exporter must, at the request of an officer, operate the device, or cause it to be operated, to make the information available to the officer.

Powers of officers to examine business records

114B. If a person has exported, imported, warehoused, removed from a warehouse or transhipped any goods or has made a claim for refund or drawback dealing with part or all of the goods, an officer may—

- (a) at all reasonable times within 5 years after the entry has been lodged or the claim for refund or drawback of duty has been made, for the purpose of this section enter and remain on the premises in which the records required under section 114A(1) are kept;
- (b) have full and free access, at all reasonable times, to any relevant business document or other accounting book, record, report or document kept on the premises; and
- (c) inspect, examine, make copies of, or take extracts from, any such document, book, record or report,

for the purpose of verifying any information provided to the Customs and being satisfied that all entries, forms and declarations relating to the goods are an accurate and complete record of the matters required to be reported on.”.

New sections inserted

19. The principal Act is amended by inserting after section 137 the following new sections—

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"Penalty for making false statements

137A. If—

- (a) a person, either knowingly, recklessly or otherwise—
 - (i) makes a statement to an officer that is false or misleading in a material particular; or
 - (ii) omits from a statement made to an officer any information without which the statement is misleading in a material particular; and
- (b) the amount of duty properly payable on particular goods exceeds the amount of duty that would have been payable on those goods if the statement was not false or misleading,

the Comptroller may, within 12 months after the statement was made, by written notice, require the owner of the goods to pay, within 90 days after service of the notice, a penalty equal to twice the excess amount of the duty, or a penalty of \$50, whichever is the greater.

(2) A notice under subsection (1) must be served on the owner of the goods or on the agent of the owner.

(3) If an amount required to be paid in accordance with subsection (1) is not paid after 90 days, the amount due becomes a debt to the Government and may be recovered in a court of competent jurisdiction.

(4) For the purpose of subsection (1), an entry, or a claim for refund or drawback, communicated to the Customs in any period is to be treated as a statement made to the Comptroller.

If the Comptroller serves a notice under subsection (2) in relation to a statement or an omission from a statement made by any person, proceedings under section 137 must not be instituted in relation to that statement or omission.

Application for remission of penalty

137B. (1) If a penalty is payable under section 137A by an owner of any goods as a result of a statement or an omission from a statement by any person, the Comptroller may, on written application made by the owner to the Comptroller, within 30 days after the notice was served under subsection 137A(2), remit the whole or any part of the penalty on one or more of the grounds provided for by section 137C or may refuse to remit the penalty.

(2) In making a decision on an application for remission of a penalty, the Comptroller must have regard to the grounds for remission provided for by section 137C, and only those grounds.

Grounds for remission of penalty

137C. The grounds for remission of a penalty under section 137B(1) are that the person who made the entry or claim—

- (a) voluntarily disclosed an error or omission to the Customs or sought written advice from the Customs before the Customs notified the person in writing that—
 - (i) the goods to which the entry or claim relates had been selected for examination by Customs;
 - (ii) the documents relating to the entry or claim were required to be presented to the Customs; or
 - (iii) the Customs intended to conduct an audit or investigation relating to a selection of entries or claims including the entry or claim, or relating to entries or claims made over a period of time including the time the entry or claim was made;
- (b) satisfies the Comptroller that the relevant facts stated pertaining to the entry or claim, although incorrect, were reasonable to state having regard to the information available to the person at the time the entry or claim was prepared;
- (c) has relied on a Customs ruling in relation to specific goods or a specific matter and, as a result, has not paid the amount of the duty that, but for the ruling would be payable on the goods; or
- (d) took all reasonable steps to ensure that the information provided was complete and correct.

Obligation to pay penalty not suspended by appeal

137D. The obligation to pay, and the right to receive and recover, any penalty imposed under section 137A are not suspended by any appeal to the Court of Review or any other legal proceedings.”.

Counterfeiting documents, etc.,

20. Section 138(d) of the principal Act is amended by deleting “counterfeits” and substituting “counterfeits”.

New sections inserted

21. The principal Act is amended by inserting after section 143 the following new sections—

“Interference with system

143A. (1) A person who knowingly—

- (a) falsifies any record or information stored in a system;
- (b) damages or impairs a system; or

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- (c) deletes, damages or impairs any duplicate tape or disk or other medium on which any information obtained from a system is held or stored, except with the permission of the Comptroller,

commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 2 years.

Offences in relation to security of, or unauthorised use of identifiers

143B. (1) A registered user of a system or an employee or agent of a registered user who fails to comply with any conditions imposed by the Comptroller relating to the security of the registered user's identifier commits an offence and is liable on conviction to the penalties provided by section 143.

- (2) A person who—

- (a) not being a registered user, uses an identifier without the authority of the registered user; or
- (b) being a registered user, uses the identifier of any other registered user,

commits an offence and is liable on conviction to the penalties provided by section 143.”.

Power of the Comptroller to compound offence by agreement

22. Section 155 of the principal Act is amended by adding the following new subsection—

- “(4) This section does not apply to any offence based on a statement which has been the subject of a penalty notice under section 137A(1).”.

New section 165A inserted

23. The principal Act is amended by inserting after section 165 the following new section—

“Customs records of electronic transmissions admissible in evidence

165A. (1) The Customs must keep a record of all electronic transmissions made by the system for a period of 5 years after the transmission is communicated to or by the Customs.

- (2) In any proceedings under this Act, a record retained by the Customs under this section—

- (a) is admissible in evidence; and
- (b) is *prima facie* evidence—
- (i) if the record purports to be a record of a transmission made to the Customs, that the person whose identifier was used for the purpose of the transmission made the statements contained in the transmission; and

- (ii) if the record purports to be a record of a transmission made by the Customs, that the Customs made the statements contained in the transmission.”.

Presentation and making of entries

24. Section 189 of the principal Act is amended—

- (a) in subsection (1) by inserting “or by means of an electronic message transmitted to the system” at the end; and
- (b) by repealing subsection (3) and substituting—
“(3) An entry is not deemed to have been made until a lodgement number has been allocated either manually or electronically.”.

Schedule amended

25. The Schedule to the principal Act is amended by adding the following item—

- “(iii) any penalty imposed under section 137A.”.

Passed by the House of Representatives this 26th day of November 1998.

Passed by the Senate this 9th day of December 1998.