

Customs (Amendment) Act No. 2 of 2003

(Certified on 6th January, 2003)

1. D.O 10/2002

AN ACT TO AMEND THE CUSTOMS ORDINANCE

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows: -

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| 1 | This Act may be cited as the Customs (Amendment) Act No. 2 of 2003 | Short title |
| 2 | Section 51 of the Customs Ordinance (hereinafter referred to as the “principal enactment”) is hereby amended by the substitution for the words “by declaration by the importer or his agent”, of the words “by a declaration made by the importer or his agent on a form of such size and colour as may be specified by the Director-General by notification published in the Gazette.” | Amendment of section 51 of Chapter 235 |
| 3 | .The following new sections are hereby inserted immediately after section 51 of the principal enactment and shall have effect as sections 51A, 51B and 51C of that enactment :- | Insertion of new section 51A, 51B and 51C in the principal enactment |

When officer in doubt be may call for further information

51A (1) (a) Whenever an officer of customs has reason to doubt the truth or accuracy of any particulars contained in a bill of entry or a declaration made under section 51 or the documents presented to him in support of a bill of entry under section 47, the officer of customs may require the importer or his agent or any other party connected with the importation of goods, to furnish such other information, including documentary or other evidence in proof of the fact that the declared customs value represents the total amount actually paid or is payable for the imported goods as adjusted in accordance with Article 8 of Schedule E.

(b) After the receipt of further information or in the absence of any response, if the officer of customs still has reasonable doubt as to the truth or accuracy of the declared customs value, it shall be deemed that the customs value of the imported goods in question cannot be determined under the provisions of Article 1 of Schedule E and the importer, if so requests, shall be informed by the officer in writing of the grounds for such doubt and be afforded an opportunity to be heard.

© The officer of customs may thereafter proceed to determine the customs value in accordance with the other provisions of Schedule E and amend the value as appropriate.

(2) If an officer of customs is satisfied as a result of an examination or investigation, or an audit carried out under section 128A, at any time prior to or after the clearance of the goods that the value declared by the importer or his agent under an Article of Schedule E under which the value was initially accepted, is not appropriate the officer of customs may amend the value in accordance with the appropriate Article of Schedule E.

(3) For the purpose of this Ordinance, the customs value shall be the amended value under subsection (1) or (2).

(4) Upon a written request, an explanation shall be given in writing to the importer, on how the customs value of the importer's goods was determined under subsection (2).

(5) Subsection (2) shall apply to goods whether or not such goods have been released from the control of the customs or any duty assessed on them has been paid.

(6) An importer who is dissatisfied with a decision of the officer, under this section may, within ten working days after the date on which notice of the decision is given, appeal to the Director-General against that decision. The right of appeal shall be available to an importer whether or not the imported goods have been released to him and whether or not any part of the customs duty has been paid. The decision of the Director-General on the appeal and the reasons for such a decision shall be in writing.

(7) Where the importer desires to clear the goods pending the determination of his appeal the Director-General may, except in case where fraud is suspected allow the clearance of the goods upon furnishing security for the payment of the customs duties and other levies for which the goods may be liable.

Importer to
keep records
for three years

51B. (1) every Importer, agent or others concerned in the importation, movement and storage of imported goods shall keep or cause to be kept in Sri Lanka such records for a period of three years from the date of importation as may be prescribed.

(2) Every such person shall whenever required by an officer of customs –

(a) Make the records available to such officer :

(b) Provide copies of the records as required : and

© answer any questions relating to matters arising under the Ordinance.

Confidentiality to be strictly maintained

51C All information which are confidential in nature or are provided in confidence for the purpose of customs valuation shall be so treated by the officer of customs and shall not be disclosed without the written permission of the persons or government providing such information, except to the extent that it may be required to be disclosed in the course of judicial proceedings.

Amendment of section 52 of the principal enactment

4. Section 52 of the principal enactment is hereby amended by the substitution for the words “is not in accordance with Schedule “E” of the words “according to section 51 is a false declaration”.

Insertion of new section 52a in the principal enactment

5. The following new section is hereby inserted immediately after section 52 and shall have effect as section 52A of the principal enactment : -

“Penalty for failing to keep, destroying or altering records & c

52A. Every person who in contravention of the provisions of the Ordinance, fails to keep records which are required to be kept under section 51B or destroys, alters or conceals any book register, record or other document required to be kept under this Ordinance or sends or attempts to send out of Sri Lanka any such book, register, record or document commits an offence and shall be liable to a penalty not exceeding five hundred thousand rupees”.

Amendment of section 101 of the principal enactment

6. Section 101 of the principal enactment is hereby amended in subsection (1) thereof –

(a) by the substitution in paragraph (f), for the words “duties : and”, of the words,” duties” :

(b) by the substitution in paragraph (g), for the words

“defaced”, of the words” defaced : and” : and

© by the addition, at the end of the paragraph (g) of that subsection, of the following : -

“(h) for assessment of value for the customs purposes under section 51”.

7. The following new section is hereby inserted immediately after section 128 of the principal enactment and shall have effect as section 128A of the principal enactment :-

Insertion of new section 128A in the principal enactment.

Power to enter for the purpose of audit or examination of records

128A. (1) The Director-General or any officer of customs authorized in that behalf in writing by the Director-General may –

- (a) at all reasonable hours of the day or night enter any building or place where records are kept in accordance with section 51B and audit or examine such records on any matter pertaining to customs either in relation to specific transactions or to the adequacy and integrity of the manual or electronic systems by which such records are created and stores;
- (b) open and examine any receptacle where any book of account, register, record or any other document may be found for the purpose of the preceding provisions of this Ordinance :
- (c) examine and take copies of, or make extracts from or take possession of any book of account, register, record or other document found in such place or building
- (d) operate any compute found in any building and make copies or take printouts of the whole or part of any entries recorded or stored therein.

(2) Where an officer authorized by the Director-General under subsection (1) of this section takes into his possession any book of account, register, record or other documents from any person, such officer shall issue to that person a memorandum specifying the book, register, record or document he has taken into his possession.

(3) Any book of account, register, record or other document taken into his possession under subsection (1) by any officer may be retained in the possession of such officer for the examination of such book, register, record or document or for the institution of legal proceedings against the person to whom such book, register, record or other document belongs.

(4) The Director-General or any authorized officer or Customs may request any person in charge or occupation of any building or place to assist the Director-General or such officer to enter and search that building or place and if such person when so requested fails to assist the Director-General or such officer he shall be guilty of an offence.

(5) Any person who obstructs the Director-General or an officer of Customs in exercising any of his powers under this section shall be guilty of an offence.

(6) A person who is guilty of an offence under subsection (4) or (5) shall be liable to a penalty not exceeding one hundred thousand rupees,”

8. Section 167 of the principal enactment is hereby amended by the insertion immediately after the definition “customs house” of the following

Amendment of section 167 of the principal enactment

“document” includes any information contained in an electronic records, printed on a paper, stored, recorded or copied on optical or magnetic media and produced by whatever means;”

9. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala Text shall prevail.

Sinhala text to prevail in case of inconsistency

10. Schedule E to the principal enactment is hereby repealed and the following Schedule is substituted therefor :-

Substitution of Schedule E to the principal enactment

Provided however, notwithstanding the repeal of the Schedule all actions and proceedings taken under the repealed Schedule and pending on the day proceeding the date on which the new Schedule came into force -

(a) shall be deemed to have been or to be, as the case may be, duly taken under the repealed Schedule : and

(b) may be proceeded with or continued under the repealed Schedule as though that Schedule had not been repealed.

SCHEDULE "E"
Customs Valuation Rules

(Section 51A)

Article 1

1. The Customs value of any imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to Sri Lanka as adjusted in accordance with the provisions of Article 8 :

Provided however-

- (a) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions that –
 - (i) Are imposed or required by law or by the public authorities in Sri Lanka ;
 - (ii) Limit the geographical area in which the goods may be resold; or
 - (iii) Do not substantially affect the value of the goods.
 - (b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued:
 - (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 8 ; and
 - (d) that the buyer and seller are not related, or where the buyer and the seller are related, that the transaction value is accepted for customs purposes under the provisions of paragraph 2.
- 2 (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related within the meaning of Article 9 shall not in itself be ground for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If in the light of information provided by the importer or otherwise, the Customs Administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and the importer shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the goods shall be in writing.
- (b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time –

- (i) The transaction value in sales to unrelated buyers of identical or similar goods for export to Sri Lanka ;
- (ii) The Customs value of identical or similar goods as determined under the provisions of Article 5.
- (iii) The Customs value of identical or similar goods as determined under the provisions of Article 6.

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

- © The tests set forth in paragraph 2 (b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2(b).

Article 2

1. (a) If the Customs value of the imported goods cannot be determined under the provisions of Article 1. the customs value shall be the transaction value of identical goods sold for export to Sri Lanka and exported at or about the same time as the goods being valued.
 - (b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and in different quantities or either of them, adjusted to take account of differences attributable to commercial level and to quantity or either of them, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.
2. Where the costs and charges referred to in paragraph 2 of Article 8 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.
 3. If in applying this Article, more than one transaction value of identical goods is found, the lowest of such value shall be used in determining the customs value of the imported goods.

Article 3

- 1 (a) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the customs value shall be the transaction value of similar goods sold for export to Sri Lanka and exported at or about the same time as the goods being valued.
 - (b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and in different quantities, or either of them, adjusted to take account of differences attributable to commercial level and to quantity or either of them shall be used provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment whether the adjustment leads to an increase or a decrease in the value.
- 2 Where the costs and charges referred to in paragraph 2 of Article 8 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.
 - 3 If in applying this Article, more than one transaction value of similar goods is found, the lowest of such values shall be used to determine the customs value of the imported goods.

Article 4

If the customs value of the imported goods cannot be determined under the provisions of articles 1,2 and 3, the customs value shall be determined under the provisions of Article 5 or, when the customs value cannot be determined under that Article, under the provisions of Article 6 except that at the request of the importer, the order of application of Articles 5 and 6 shall be reversed.

Article 5

- 1 (a) If the imported goods or identical or similar imported goods are sold in Sri Lanka in the condition as imported, the customs value of the imported goods under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following :-

- (i) Either the commission usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in Sri Lanka of imported goods of the same class or kind :
 - (ii) The usual costs of transport and insurance and associated costs incurred within Sri Lanka :
 - (iii) Where appropriate, the costs and charges referred to in paragraph 2 of Article 8 : and
 - (iv) The customs duties and other national taxes payable in Sri Lanka by reason of the importation or sale of the goods.
- (b) If neither the imported goods nor identical nor similar goods are sold at or about the time of importation of the goods being valued, the customs value shall subject otherwise to the provisions of paragraph 1 (a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in Sri Lanka in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.
- 2 If neither the imported goods nor identical nor similar goods are sold in Sri Lanka in the condition as imported, then if the importer so requests, the customs value shall be based on the unit price at which the imported goods after further processing are sold in the greatest aggregate quantity to persons in Sri Lanka who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1 (a).

Article 6

1. The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of –
- (a) The cost or value of materials and fabrication or other processing employed in producing the imported goods :
 - (b) An amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producer in the country of exportation for export to Sri Lanka :
- © The cost or value of all other expenses incurred as set out in paragraph 2 of Article 8.

- 2, The Director General of Customs may not require or compel any person not resident in Sri Lanka to produce for examination, or to allow access to any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Article may be verified in another country by the Director General of customs with the agreement of the producer and provided sufficient advance notice is given to the Government of the country in question and the latter does not object to the investigation.

Article 7

1. If the customs value of the imported goods cannot be determined under the provisions of Article 1 to 6 both inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of the agreement on implementation of Article vii of the General Agreement on Tariffs and Trade 1994 and on the basis of data available in Sri Lanka.
2. No customs value shall be determined under the provisions of this Article on the basis of –
 - (a) The selling price in Sri Lanka of goods produced in Sri Lanka.
 - (b) A systems which provides for the acceptance for customs purposes of the higher of two alternative values :
 - © The price of goods on the domestic market of the country of exportation :
 - (d) The cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of article 6 :
 - (e) The price of the goods for export to a country other than Sri Lanka :
 - (f) Minimum customs value : or
 - (g) Arbitrary or fictitious values.
3. If the importer so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

Article 8

1. In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods –
 - (a) The following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods :-

- (i) Commissions and brokerage, except buying commissions :
 - (ii) The cost of containers which are treated as being one for customs purposes with the goods in question :
 - (iii) The cost of packing whether for labour or materials.
- (b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable : -
- (i) Materials, component, parts and similar items incorporated in the imported goods :
 - (ii) Tools, dies, moulds and similar items used in the production of the imported goods :
 - (iii) Materials consumed in the production of the imported goods :`
 - (iv) Engineering, development, artwork, design work and plans and sketches undertaken elsewhere than in Sri Lanka and necessary for the production of the imported goods.
- © Royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of the sale of the goods being valued to the extent that such royalties and fees are not included in the price actually paid or payable :
- (d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller
- (e) The following costs : -
- (i) The cost of transport of the imported goods to the port of Sri Lanka :
 - (ii) Loading, unloading and handling charges associated with the transport of the imported goods to the port of Sri Lanka :
And
 - (iii) The cost of insurance
2. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.
- 3 No addition shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

Article 9

In this Schedule unless the context otherwise require –

“Customs value of imported goods” means the value of goods for the purposes of levying ad valorem duties of customs on imported goods :

“Sri Lanka” includes the customs territory of Sri Lanka :

“Produced” includes grown, manufactured and mined :

“Identical goods” means, goods which are the same in all respects, including physical characteristics, quality and reputation : Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical :

“Similar goods” means, goods which although not alike in all respects have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar.

“Identical goods” and “similar goods” do not include as the case may be, goods which incorporate or reflect engineering development artwork, design work and plans and sketches for which no adjustment has been made under paragraph 1(b) (iv) of Article 8 because such elements were undertaken in Sri Lanka :

Goods shall not be regarded as “identical goods” or “similar goods” unless they were produced in the same country as the goods being valued

Goods produced by a different person shall be taken into account only when there are no identical goods or similar goods as the case may be, produced by the same person as the goods being valued :

“goods of the same class or kind” means goods which fall within a group or range of goods produced by a particular industry or industry sector and includes identical or similar goods :

Persons shall be deemed to be related only if –

- (a) They are officers or directors of one another’s businesses :
- (b) They are legally recognized partners in business :
- © They are employer and employee :
- (d) Any person directly or indirectly owns, controls or holds 5 percent or more of the outstanding voting stock or shares or both of them :
- (e) One of them directly or indirectly controls other :

- (f) Both of them are directly or indirectly controlled by a third person :
- (g) Together they directly or indirectly control a third person : or
- (h) They are members of the same family.

Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however, described of the other shall be deemed to be related for the purposes of this Schedule if they fall within the above categories.

Article 10

Notwithstanding the provisions of this Schedule, the Minister may, with the approval of the Cabinet of Ministers, in the interest of national economy or for any other reasons, by Order published in the Gazette fix, for such period as may be specified in that Order, minimum values for any goods, and the duties on those goods shall be charged on the basis of such minimum values.