



ANALYSIS

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1980, No. 14

An Act to introduce a new Customs Tariff incorporating Customs duties and Import Levies (6 November 1980)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title - (1) This Act may be cited as the Customs Tariff Act 1980.

(2) This Act shall come into force on a day to be publicly notified by the Minister of Customs.

2. Interpretation - (1) In this Act, unless the context otherwise requires, -

"Bulk cargo container" means an article of transport equipment, being a lift van, movable tank, or other similar structure, -

- (a) Of a permanent character and accordingly strong enough to be suitable for repeated use; and
- (b) Specially designed to facilitate the carriage of goods by one or more modes of transport, without immediate repacking; and

- (c) Fitted with devices permitting its ready handling and its transfer from one mode of transport to another; and
- (d) So designed as to be easy to fill and empty; and
- (e) Having an internal volume of one cubic metre ... or more - and includes the normal accessories and equipment of the container, when imported with the container and used exclusively with it; but does not include any vehicle, or any ordinary packing case, crate, box or other similar article used for packing:

"Customs duty" or "import duty" means any duty payable on the importation thereof; and includes duty payable under this Act on goods produced in manufacturing warehouse; and shall also be taken to mean the rates of duty for the time being applicable under the Tariff:

"Customs Tariff" or "the Tariff" means the Customs Tariff of the Cook Islands (comprising the Standard Tariff set in part I thereof and the provisions set out in Part II thereof), as set out in the First Schedule to this Act; and includes all notes to the Tariff, or to any part, section, chapter, subchapter, heading, subheading, or item thereof, set out in that schedule; and also includes any modification or amendment of the Tariff or of the said notes that may hereafter be made:

"import Levy" means any import levy payable on goods on the importation thereof assessed in accordance with the provisions of the Import Levy Act 1972; and shall also be taken to mean the rates of import levy for the time being applicable under the Tariff:

"Minister" means the Minister of Customs:

"Standard Tariff" means the Standard Tariff comprised in Part I of the Customs Tariff; and includes any modification or amendment thereof that may hereafter be made:

"Tariff headings" or "headings" means the headings of the Standard Tariff printed in capital letters, being the headings of the Customs Co-operation Council Nomenclature established by the Convention for the Classification of Goods in Customs Tariffs signed in Brussels on the 15th day of December 1950; and includes any modification or amendment thereof that may hereafter be made:

"Tariff items" means the Tariff items of the Standard Tariff identified by 6 digits; and includes the headings thereto so identified:

"Tariff subheadings" or "subheadings" means a subheading in the Standard Tariff and not identified by any number.

(2) For the purposes of Section 3 of the Customs Act 1913, this Act shall be deemed to form part of the Customs Acts.

PART I - THE CUSTOMS TARIFF

3. The Customs Tariff - (1) Subject to the provisions of this Act, the Customs Act 1913 and the Import Levy Act 1972, Customs duties and import levies shall be levied, collected, and paid in accordance with the Customs Tariff, as set out in the First Schedule to this Act, on all goods imported into the Cook Islands or entered for home consumption after the commencement of this Act.

(2) Notwithstanding subsection (1) of this section, the Minister may from time to time, in his discretion and in accordance with Part II of the Customs Tariff, approve in respect of the entry of goods on any of the classes specified in the said Part II the appropriate rate of duty and import levy or exemption specified in the said Part II.

4. Extension of Part II of the Tariff - the High Commissioner may, from time to time, by Order in Executive Council, amend Part II of the Tariff by modifying or amending the classes or kinds of goods specified therein, and may in like manner revoke any concession thus created or modified or added thereto.

5. Alteration to nomenclature - the High Commissioner may from time to time, by Order in Executive Council, amend the Tariff -

- (a) By revoking, or amending any heading, heading number, subheading, item, or item number, or the title of any part, section, chapter, or subchapter of the Tariff, or by inserting any new headings, heading number, subheading, item, item number, or title, in which manner he thinks necessary for the purpose of ensuring that the Tariff conforms to any international nomenclature; or
- (b) By revoking, suspending, or amending any provisions of the notes forming part of the Tariff, or inserting any new provision in the notes, for the purpose of ensuring the proper operation of the Tariff; or
- (c) By revoking, suspending, or amending any statistical requirement of the Tariff.

PART II - CUSTOMS DUTIES

6. Determination relating to certain goods - (1) In respect of any subheading or item of the Tariff where provisions is made for the determination of the Minister relating to certain goods, the Minister may from time to time, by notice in the Gazette, determine the goods that may be entered under the subheading or item, and may in like manner determine the conditions under which such goods may be imported into the Cook Islands.

(2) Any notice under this section may from time to time in like manner be varied or revoked.

7. Power to alter duties - The High Commissioner may, from time to time, by Order in Executive Council, reduce or increase any or all of the rates of duty imposed by the Tariff.

8. Dumping Duty - (1) Subject to the provisions of this section, in any of the cases specified in the subsection (2) of this section the Minister may from time to time by notice in the Gazette direct that there shall, in addition to any other duties of Customs, be imposed on goods imported into the Cook Islands a special duty of Customs (in this section referred to as a dumping duty), and such duty shall be levied, collected, and paid accordingly.

(2) If in the opinion of the Minister the importation into the Cook Islands from any country of any goods of a class or kind produced or manufactured in the Cook Islands, a dumping duty may be levied in respect of any such goods imported into the Cook Islands in any of the following cases, namely:

- (a) If the actual selling price of the goods to any importer is less than their current domestic value determined in accordance with the provisions of the Customs Act 1913:
- (b) If the actual selling price of the goods to any importer is in the opinion of the Minister less than the cost of production, with a reasonable profit added thereto, of similar goods in the country of exportation to the Cook Islands at the time of such exportation:
- (c) If the Minister is satisfied that, because of an association in business or a compensatory arrangement between the exporter and the importer or a third party, the goods are being sold on the open market in the Cook Islands at a loss, or a profit lower than the profit normally made on the open market of identical or equivalent goods.

- (3) The rate or amount of dumping duty levied under this section shall be determined as follows:
- (a) In the case of goods to which paragraph (a) of subsection (2) of this section applies, the dumping duty shall be an amount to be determined by the Minister, not exceeding the difference between the actual selling price of the goods and their current domestic value:
 - (b) In the case of goods to which paragraph (b) of subsection (2) of this section applies, the dumping duty shall be an amount to be determined by the Minister, not exceeding the difference between the actual selling price of the goods and the cost of production, with a reasonable profit added thereto, of similar goods in the country of origin or the country of exportation to the Cook Islands at the time of such exportation:
 - (c) In the case of goods which paragraph (c) of subsection (2) of this section applies, the dumping duty shall be an amount to be determined by the Minister, not exceeding the difference between the price at which the goods are being sold on the open market in the Cook Islands and such selling price as the Minister may determine, having regard to the profit margin normally made by an independent seller in the Cook Islands on sales of identical or equivalent goods to an independent purchaser.
- (4) For the purposes of paragraphs (a) and (b) of subsection (2) and paragraphs (a) and (b) of subsection (3) of this section, the actual selling price of the goods shall be deemed not to exceed the amount payable in accordance with the usual commercial practice by the importer or purchaser in respect of those goods, exclusive of any charges that are taken into account in determining the current domestic value of goods in accordance with the Customs Act 1913. In every such case the amount payable as aforesaid in respect of any goods shall be ascertained as if the parties had agreed that payment for those goods should be made in the Cook Islands. If in relation to this section any question arises as to whether or not any payment is in accordance with usual commercial practice, it shall be determined by the Minister.
- (5) For the purposes of paragraph (c) or subsection (2) and paragraph (c) or subsection (3) of this section the goods referred to as being sold on the open market in the Cook Islands shall include not only such goods sold in the same state as imported, but also any goods sold in the Cook Islands which use such goods, either in a further form of manufacture or mixed with, in combination with, or sold in conjunction with any other goods, whether imported or otherwise.
- (6) If at any time it appears to the Minister that the payment of any dumping duty is being evaded or avoided by the importation of any goods otherwise than on sale or in any other manner, he may determine, for the purposes of this section, the actual selling price of the goods, the cost of production, or the current domestic value thereof, and dumping duty may be levied accordingly.
- (7) For the purposes of this section, 2 persons shall be deemed to be associated in business with each other if, whether directly or indirectly, either of them has any interest in the business or property of the other, or both have a common interest in any business or property, or some third person has an interest in the business or property or both of them.
- (8) Notwithstanding anything in this section, a Collector of Customs shall have the right to require and take security for the payment of any revenue which may become due under this section and, until the required security is given pursuant to Part V of the Customs Act 1913, he may refuse to pass any entry or to do any other act in the execution of his office in relation to any matter in respect of which the security is required.

PART III - IMPORT LEVY

9. Power to alter import levy - The High Commissioner may, from time to time, by Order in Executive Council, reduce or increase any or all of the rates of import levy imposed by the Tariff.

PART IV - MISCELLANEOUS

10. Orders in Executive Council to be laid before Legislative Assembly - (1) Every Order in Executive Council made under this Act shall be laid before the Legislative Assembly within fourteen days after the making thereof if the Legislative Assembly is then in session, and if not, then within fourteen days after the commencement of the next ensuing session.

(2) If the Legislative Assembly resolves that any such Order in Executive Council should be revoked or varied, it shall thereupon be revoked or varied in accordance with the terms of the resolution.

(3) If any Order in Executive Council under this Act is revoked or varied pursuant to a resolution of the Legislative Assembly any duty or import levy collected under or by virtue of such Order in excess of the duty or import levy otherwise payable shall, so far as the resolution so provides, be refunded.

11. Incidence of altered duties or import levies - Section 143 of the Customs Act 1913 shall apply to any alteration in the law relating to the liability of any goods to duty or import levy, or the rate of duty or import levy, in respect of goods warehoused or produced in a manufacturing warehouse.

12. Repeals, revocations and amendments - (1) To the extent that they form part of the law of the Cook Islands, the enactments specified in the Second Schedule to this Act are hereby repealed.

(2) To the extent that they form part of the law of the Cook Islands, the Orders in Executive Council and regulations specified in the Third Schedule to this Act are hereby revoked.

(3) The enactments specified in the Fourth Schedule to this Act are hereby amended in the manner indicated in that Schedule.

This Act is administered by the Customs Department.