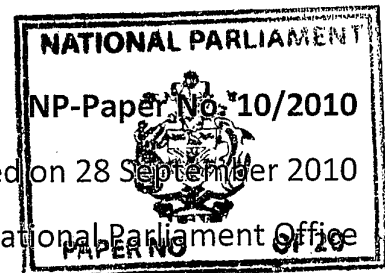




**NATIONAL PARLIAMENT OF SOLOMON ISLANDS
BILLS AND LEGISLATION COMMITTEE**

**Report on the Customs Valuation
(Amendment) Bill 2010**



Presented on 28 September 2010

National Parliament Office

Contents

1	Introduction	2
	Terms of Reference	2
	Functions of the Committee	3
	Membership	3
2	Policy Background	4
	Purpose of the Bill	4
	Background	4
3	Review of the Bill	5
	Secondary Materials	5
	Public Hearing	5
4	Issues Arising	6
	Comparative Analysis of CIF and FOB	7
	Customs Revenue collection Capacity	8
	Customs valuation and its effects on prices of goods	8
	Under valuation of Imported Goods	9
	Economic Modelling Analysis	9
	Administration of Bill	10
	Consultation	10
	Public Awareness by Ministry	10
5	Recommendations	11
6	Appendices	12

1 INTRODUCTION

The Bills and Legislation Committee (Committee) has completed its review of the Customs Valuation (Amendment) *Bill 2010* (“**Bill**”) introduced in the House during the current (1st) meeting of Parliament by the Minister for Finance and Treasury. The Bill was submitted to the Speaker through the Clerk to Parliament as required under the *Standing Orders*¹. The Speaker examined the Bill² and authorised it to be introduced in the current Parliament meeting.

The Bill was read the first time on Monday 27 September 2010 and read the Second time on the same day during which the Second Reading debate was adjourned to Tuesday 28 September 2010 to allow the Committee to complete its report and give Members adequate time to review the report. On 27 September 2010, the Bills and Legislation Committee considered the Bill and heard evidence from a range of stakeholders. The Solomon Islands Chamber of Commerce and Industry was also invited to appear as witness but were not able to attend and therefore submitted a written submission instead. The Committee met again on Tuesday 28 September before the House sat and following its deliberations the Committee makes this report to Parliament, with recommendations, for the information of Members and for Parliament’s consideration.

Terms of Reference

Pursuant to its mandate under the *Standing Orders*, the terms of reference of the Committee in this instance is to examine the Bill and to report its observations and recommendations on the Bill to Parliament.

¹ *Standing Order 44* (1).

² As required by *Standing Order 45* (1).

Functions of the Committee

The Bills and Legislation Committee is established under *Standing Order 71*, an Order made pursuant to the *Constitution*³, and under that Order has the functions, together with the necessary powers to discharge such, to:

- (a) examine such matters as may be referred to it by Parliament or the Government;
- (b) review all draft legislation prepared for introduction into Parliament;
- (c) examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- (d) monitor all motions adopted by Parliament which require legislative action;
- (e) review current or proposed legislative measures to the extent it deems necessary;
- (f) examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
- (g) make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

Membership

The current members of the Bills and Legislation Committee (9th Parliament) are:

Hon. Stanley Festus Sofu, MP (Chair)

Hon. Steve Abana, MP

Hon. Mathew Cooper Wale, MP

Hon. Rick Houenipwela, MP

Hon. Milner Tozaka, MP

Hon. Alfred Ghiro, MP

³ Section 62, *Constitution of Solomon Islands* 1978.

2 POLICY BACKGROUND

Purpose of the Bill

The objective of the Customs Valuation (Amendment) *Bill 2010* is to rectify a minor error which was overlooked in the Customs Valuation Act passed in 2009. The Amendment seeks to “*maintain the current calculation method of import duty based on the cost, insurance and freight (CIF) charges rather than on the free on board value (FOB) introduced under the principal Act.*”⁴

Background

Under the current Customs legislation duty is charged based on CIF determination. It has been found that the application of the CIF was omitted in the Customs Valuation and Offence Act 2009. The Act mistakenly allows for FOB determination which relates to only the domestic costs incurred by the importer. This would mean that import duties will be calculated based on domestic costs and do not take into account additional costs incurred when getting the goods into the country. Clearly this would mean revenue loss to the government through uncollected revenue and lower valuations for all goods entering the country.

The amendment seeks to maintain the current calculation method of import duty based on the CIF charges rather than changing to a FOB which would have been introduced because of the error in the Principal Act. The amendment will allow correction to the Act and will enable it to fully operate and achieve the policy objectives. The amendment seeks to amend section 7(e) of the Principal Act. To remove calculation of import duty based on FOB value and replaces it with CIF value. The CIF value is based on the current section 13 of the Customs Act which will be repealed by the Principal Act.

Minor adjustments are also done to section 8, 10, 11 and 13 of the Principal Act. These minor adjustments provide clarity to the Act and also include provision where prescribed matters, conditions and circumstances may be set from time to time.

⁴ Explanatory Notes, Customs Valuation Bill (Amendment) 2010

3 REVIEW OF THE BILL

In its review of the Bill, the Committee heard from certain key witnesses and received written submissions from one relevant stakeholder.

Written Submission

The Committee received a written submission from the Solomon Islands Chamber of Commerce and Industry on their position and view on the Bill.

Public Hearing

The Committee held a public hearing on Monday 27th September 2010, with the view to hear from relevant officials of the Ministry and key stakeholders. The following witnesses appeared before the Committee at the hearing:

- Comptroller of Customs & Excise, Ministry of Finance and Treasury;
- Director of Economic Reform Unit, Ministry of Finance and Treasury;
- Technical Advisors and Policy Analysts, Ministry of Finance and Treasury;
- Permanent Secretary, Ministry of Commerce, Industry, Labour and Immigration;
- Legal Draftsman, Attorney General's Chamber;
- Senior Crown Counsel, Attorney General's Chamber.

A complete list of witnesses who appeared at the hearing is annexed as **Appendix 2**.

4 ISSUES ARISING

From its preliminary research and evidence gathered at the hearing, the Committee identified a number of issues arising from its review of the Customs Valuation (Amendment) Bill 2010. These are considered in this Chapter, together with responses from witnesses and, where necessary, recommendations of the Committee on a specific issue.

Comparative Analysis of CIF and FOB

The Committee was interested in the comparative analysis of the two methods of calculating transaction costs on imported goods and also posed a question to witnesses on the formula used in determining the value of CIF on imported goods.

In response, the Comptroller of Customs & Excise within the Ministry of Finance and Treasury informed the Committee that a significant difference can be noted between the two methods, not only in terms of the formula but in the amount of import duty. The Committee was informed that the Free on Board (FOB) does not include freight and insurance and as such would incur lower duty; whilst the cost, insurance and freight (CIF) includes freight and insurance and the value for duty would be higher and therefore the calculation of duty would of course be higher. In terms of revenue returns for the government, the CIF method will boost the capacity of the Customs and Excise department to improve on its import duty implementation.

The Chamber of Commerce in its written submission and in contrast to the other stakeholders submitted that charging tax on the CIF formula is in reality destroying businesses as it imposes tax on both the ocean freight as well as the cost of goods imported. The Chamber of Commerce further argued that imported items would be cheaper if calculated on the FOB formula and stated the following points in their submission:

- (a) Import duty based on CIF calculation and not FOB is puzzling. Why impose a tax on ocean freight when what is to be taxed should only be the cost of goods. This taxation is double jeopardy for importers. GST is computed based on the CIF+ import duty - taxing the import duty as well. This taxation is destroying businesses.*

(b) The argument for FOB is that things get imported cheaper. If it is just the importer that profits without passing on as a price reduction to increase turnover. The real issue is charging GST/VAT that cannot be claimed back as is the case in most countries. Reducing duty either by going FOB or a reduction in rates and introducing a proper GST/VAT regime would be best for all.

(c) FOB is much better than the current CIF base for calculation of Customs duty. Internationally, FOB is the standard for Duty calculations on imports and creates a fairer playing field. The freight is not part of the purchase of the goods. Freight is a transport component and when included into the cost of goods imposes unfair cost for the goods that are freighted the longest distances.⁵

The Chamber of Commerce in their submission on the other hand strongly recommends that FOB be the method of taxation.

Customs Revenue collection Capacity

Another issue that has been raised by the Committee is in terms of the implication of the CIF method on the capacity of the government to improve on revenue collection.

The Committee heard from the Comptroller of Customs that the proposed amendment will positively impact the capacity of the government to improve on its revenue collection and at the same time will have the power to scrutinize import values that are declared to Customs. The Ministry of Finance informed the Committee that one of the tasks faced by government is to ensure that the correct amount of revenue due to the Customs & Excise department is collected and that individuals and businesses in Solomon Islands appropriately pay for the correct amount of duties.

The Committee also heard that the adoption of the CIF method will have a direct and positive impact on the government revenues. It will result in substantial gains in the Customs revenue import duty.

⁵ Written Submission of Chamber of Commerce, Evidence submitted on 27 September 2010.

Customs Valuation and its effects on prices of goods

One of the issues raised by the Committee was affordability of consumable goods. The committee sought clarification on the effect of the customs valuation on the prices of consumable goods. The current practice is, customs impose a customs value on all imported goods. For Solomon Islands, the customs value is determined based on the Cost Insurance Freight (CIF) process. Importers pay the required customs value in customs clearance processes and remove these goods to be sold at higher prices to cover the incurred cost.

Due to the location of Solomon Islands, goods imported into the country bear high freight cost, which in turn affects the selling prices of goods.

The Committee was concerned of the selling prices of imported goods and whether there are any control mechanisms in place to control the negative impact this has on consumers. The Director of Economic Reform Unit from the Ministry of Finance and Treasury assured the Committee that the Bill when implemented will have less impact on the consumers. In giving evidence before the Committee he stated that;

"...I'll say that the current duties charged on CIF, I think all of us are aware of that, and that doesn't increase the government revenue for that matter; the only increase in government revenue will come from catching people who do not properly value their item and I think that's where the revenue from the government will come and if people fully provide a good and reliable information on those items I would say the cost would not change because if an importer import duties that is unlikely to pass that cost to people unless they cheat on the information that they provide to custom officers..."⁶

Although Director assured the Committee that the Bill will have less negative effect on consumers, however the Committee was not informed of whether there were control mechanisms provided for in this Bill to regulate such negative impact on the consumers.

⁶ Mr. Dentana Mckinnie, Director Economic Policy & Reform Unit, MoFT; Evidence given on Monday 27 September 2010.

Under Valuation of imported goods

A number of Importers have been found to have undervalued their imported goods according to the Customs Comptroller. The rates used in determining the customs value of imported goods depends on the type of goods. Some importers have undervalued their goods by falsifying documents in an attempt to avoid paying customs duty. Such illegal practices result in loss of government revenues.

In a case where goods had been undervalued by the importer, the comptroller had to find means to uplift the value to a realistic level. Customs and Excise have no existing legislation that spells out proper valuation method that works in harmony with international customs practices. The bill sought to address this issue. It provides guidelines procedures on customs valuation methods, as well as defining maximum penalty units for people who make false declaration on the transaction value of their imported goods. The Custom Comptroller in responding to this concern informed the Committee that *"there are seven steps with which Custom and the Importers will follow to determine the correct transaction value and the process is specified under the Principal Act"*.⁷

Further to that the Committee was also concerned with the issue of persons defrauding the Government by falsifying documents and inquired whether there are measures available under the Principal Act to severely deal with this problem. The Custom Comptroller further added in his evidence before the Committee that there are penalties that are prescribed under the Principal Act for persons that falsify documents with the intent to defraud the Government.

Economic Modelling Analysis

The Committee also enquired whether Economic Modelling was done on the impact of under valuation of imported goods and items on government revenue. The Custom Comptroller informed the Committee that there was no formal analysis or modelling done on government revenue to determine such impact on the revenue. He further stated that *"... the increase to government revenue will only come when we catch people who undervalue their items..."*⁸

⁷ Mr. Nathan Kama, Comptroller of Customs & Excise, MoFT, Evidence, 27 September 2010

⁸ Mr. Nathan Kama, Comptroller of Customs & Excise, MoFT, Evidence, 27 September 2010

The Committee noted that although there was no economic modelling on government revenue, the Bill aims to increase government revenue when importers are caught under valuing the imported items and as a result these items are re-valued again by the Customs Department. This re-valuation will then increase the revenue of the government.

Administration of Bill

The Committee further enquired whether there are adequate resources to implement the Bill once passed and whether proper training will be offered to staff to carry out the administrative requirements of the Bill.

In his evidence, the Director Economic Policy & Reform Unit, Ministry of Finance and Treasury informed the Committee that there are adequate resources within the Ministry to deal with the administrative requirements of the Bill and that technical training is also offered to the staff of the Ministry to ensure that they effectively dispense their duties as required of them under the Act.

Public Awareness and Consultation

The Committee questioned the officials of the Ministry of Finance regarding the level of consultation involved in the development of the Bill. The Committee would like to see active public involvement in law making processes, as a matter of accountability, transparency, openness and public information and awareness on legislation.

In response, the Director of the Economic Reform Unit informed the Committee that wide consultation has been done with both private and government agencies regarding the principle Act and this amending Bill.

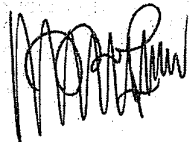
Public Awareness by Ministry

The Committee further noted that once this Bill is passed a general awareness must be held to inform the public that there is no new cost associated to this Bill and to ensure that no one takes advantage of this amendment.

5 RECOMMENDATIONS

The Committee has reviewed the Bill and recommends that the government monitor matters raised in this report, in terms of assessing its implementation and effectiveness in achieving its important objectives, and report to Parliament 12 months after the commencement of the Act, and in particular recommends:

1. That the Ministry of Finance and Treasury in consultation with the Ministry of Commerce, Industry, Labour and Immigration supports the implementation of this Bill.
2. That the Ministry of Finance and Treasury formulate an awareness program to inform consumers and the public on the implications of the Bill once passed.
3. That the Ministry of Finance must ensure that there is an Economic Modelling policy to determine sky rocketing pricing of goods and serious inflationary measures in relation to government revenue.
4. That the Ministry of Finance and Treasury must review the VAT regime and seriously consider a policy option.
5. That the Ministry of Finance and Treasury in the interim must review the GST Act to exclude the duty component from the calculation of GST imposed at the Port of Entry.



Hon. Stanley Festus Sofu

Chairman

Bills and Legislation Committee

Tuesday 28 September 2010

APPENDIX 1: MINUTES



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Deliberative Proceedings 1

Friday 24 September 2010

Dining Room, Parliament House, 1:30pm

Members Present

Hon. Stanley Festus Sofu, MP (Chair)
Hon. Matthew Cooper Wale, MP
Hon. Rick Houenipwela, MP

Secretariat:

Mr. Noel Matea, Committee Secretariat

1. Opening Prayer / Welcome

The Hon. Mathew Wale said the opening prayer.

The Chair welcomed Committee members and Secretariat

2. Deliberation

The Committee deliberated and resolved that a public hearing into the Customs Valuation (Amendment) Bill 2010 be convened on Monday 27th September 2010, after adjournment of Parliament.

On the suggestion from Hon. Mathew Wale, the Committee agreed to have a letter from the Committee to the Prime Minister to amend Government Business ending Friday 1st October 2010 to allow for the Committee to convene a public hearing on Monday 27th September 2010.

3. Close

Hon. Rick Houenipwela said the closing prayer.

Meeting ended 2:00pm



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings 2

Public Hearing

Monday 27th September 2010

Conference Room 2, Parliament House, 2:30pm

1. Members Present

Hon. Stanley Festus Sofu, MP (Chair)
Hon. Steve Abana, MP
Hon. Matthew Cooper Wale, MP
Hon. Rick Houenipwela, MP
Hon. Milner Tozaka, MP
Hon. Alfred Ghire, MP

Secretariat:

Mr. Noel Matea, Committee Secretariat

Witnesses:

Mr. Nathan Kama, Comptroller of Customs & Excise, MoFT
Mr. Dentana Mckinnie, Director Economic Policy & Reform Unit, MoFT
Mr. Barnabas Anga, Permanent Secretary, Ministry of Commerce, Industry, Labour and Immigration
Mr. Rupeni Nawaqakuta, Legislative Drafting Advisor, Attorney General's Chamber
Ms. Joanna Kenilorea, Senior Crown Counsel, Attorney General's Chamber

In – Attendance:

Mr. Leighton Morrell, Technical Advisor, MoFT
Ms. Christine Heiser, Technical Advisor, MoFT

Mr. Shaun Anthony, Senior Technical Advisor, Economic Reform Unit, MoFT
Mr. Dennis Meone, Policy Analyst, Economic Reform Unit, MoFT
Ms. Norma Qurusu, Policy Analyst, Economic Reform Unit, MoFT

2. Opening Prayer / Welcome

Hon. Steve Abana said the opening prayer.

The Chair welcomed the Committee and witnesses to the public hearing into the Customs Valuation (Amendment) Bill 2010.

3. Hearing into the Customs Valuation (Amendment) Bill 2010

The Chairman made a brief opening statement and called on witnesses to make an opening statement to the Committee as they so wished.

The Witnesses made their opening statements to their position on the Bill.

The Committee questioned the witnesses.

The evidence concluded and the witnesses withdrew.

4. Close

The Chair thanked the witnesses for their attendance.

Hon. Rick Houenipwela said the closing prayer.

Meeting ended 3:30pm.



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Deliberative Proceedings 3

Tuesday, 29 September 2010

Conference Room 2, Parliament House, 10:30am

Members Present

Hon. Stanley Festus Sofu, MP (Chair)
Hon. Matthew Cooper Wale, MP
Hon. Rick Houenipwela, MP
Hon. Dr. Derek Sikua, MP
Hon. Milner Tozaka, MP
Hon. Steve Abana, MP
Hon. Alfred Ghiro, MP

Secretariat:

Mr. Noel Matea, Clerk to Committee
Ms. Alice Willy, Committee Secretariat

4. Opening Prayer / Welcome

Hon. Dr. Derek Sikua said the opening prayer.

The Chair welcomed Committee members and Secretariat

1. Chair's Report on the Customs Valuation (Amendment) Bill 2010

The Secretariat brief Committee on the draft Report of the Customs Valuation (Amendment) Bill 2010.

The Committee deliberated.

Consideration of the report concluded.

The Committee resolved on the motion of the Honourable Chair that the report be the report of the Committee to Parliament as amended.

5. Close

Hon. Milner Tozaka said the closing prayer.

Meeting ended 10:30am

APPENDIX 2: WITNESSES

Witnesses who appeared before the Bills and Legislation Committee on 21 July 2009 were:

1. **Mr. Nathan Kama** , Comptroller of Customs, Ministry of Finance and Treasury
2. **Mr. Dentana Mckinnie**, Director Economic Policy & Reform Unit, Ministry of Finance and Treasury
3. **Mr. Barnabas Anga**, Permanent Secretary, Ministry of Commerce, Industry, Labour and Immigration
4. **Mr. Rupeni Nawaqakuta**, Legislative Drafting Advisor, Attorney General's Chamber
5. **Ms. Joanna Kenilorea**, Senior Crown Counsel, Attorney General's Chamber

In-Attendance:

6. **Mr. Leighton Morrel**, Technical Advisor, MoFT
7. **Ms. Christine Heiser**, Technical Advisor, MoFT
8. **Mr. Shaun Anthony**, Senior Technical Advisor, MoFT
9. **Mr. Dennis Meone**, Policy Analyst, Economic Reform Unit, MoFT
10. **Ms. Norma Qurusu**, Policy Analyst, Economic Reform Unit, MoFT

APPENDIX 3: LIST OF WRITTEN SUBMISSION

1. Solomon Islands Chamber of Commerce and Industry (attached)