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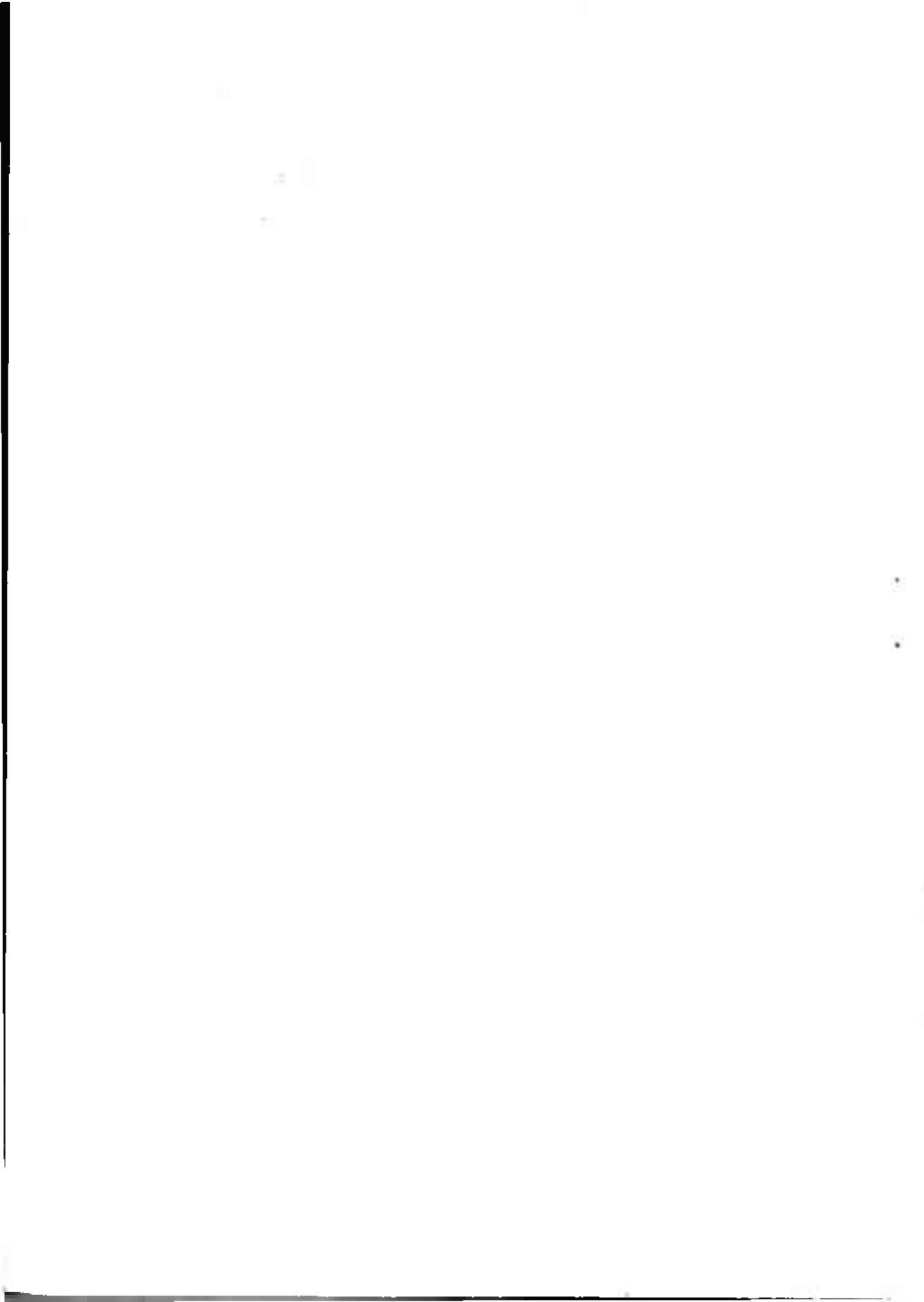
CUSTOMS AND EXCISE MANAGEMENT (AMENDMENT) ACT, 2003



ARRANGMENT OF SECTIONS

SECTION :

1. Amendment of Cap. 84 Laws of the Federation of Nigeria 1990.
2. Substitution for Section 57 of the Principal Act.
3. Substitution for First Schedule.
4. Citation.



CUSTOMS AND EXCISE MANAGEMENT (AMENDMENT) ACT, 2003
2003 ACT No. 20

AN ACT TO AMEND THE CUSTOMS AND EXCISE MANAGEMENT ACT TO PROVIDE FOR A
 NEW METHOD OF VALUATION OF GOODS BASED ON THE TRANSACTION VALUE.

ENACTED by The National Assembly of The Federal Republic of Nigeria—

[10th July, 2003]

Commence-
ment.

Amendment
of Cap. 84
LFN 1990.

Substitution
for Section
57 of the
Principal Act.

1. The Customs and Excise Management Act (referred to in this Act as “the Principal Act”) is amended as set out in this Act.

2. Substitute for Section 57 of the Principal Act a new Section 57.

“57—(1) The Minister may make regulations—

(a) regulating with respect to ships and aircraft respectively the loading of goods for exportation or as stores and the embarking of passengers for a destination outside Nigeria ;

(b) prescribing the procedure to be followed and the documents to be produced and information to be furnished by any person conveying goods out of Nigeria by land or inland waters ; and

(c) regulating with respect to concessions and privileges granted to some exported goods or stores pursuant to any trade relationship between the Federal Republic of Nigeria or any other country.

(2) A person who contravenes any regulation made under this Section is liable to a fine three times the value of the goods and any goods in respect of which the offence is committed shall be forfeited”.

3. Substitute for the First Schedule to the Principal Act a new First Schedule.—

Substitution
for First
Schedule.

SCHEDULE

FIRST SCHEDULE

VALUE OF IMPORTED GOODS

Transaction
value of
goods
general.

1. The customs value of goods bought or imported for use in Nigeria shall be the transaction value of the goods adjusted in accordance with the provisions of paragraph 7 (1) of this Schedule, provided that—

(a) there are no restrictions as to the disposition or use of the goods by the buyer, other than restrictions which—

(i) are imposed or required by law or by any public authority in Nigeria, or

(ii) limit the geographical area in which the goods may be resold, or

(iii) do not substantially affect the value of the goods ;

(b) the sale or price of the goods is not subject to some condition or consideration for which a value cannot be ascribed or determined with respect to the goods being valued ;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer shall accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of paragraph 7(1) of this Schedule ; and

(d) the buyer and seller are not related as defined in paragraph 16 (2) (c) of this Schedule and if related, that buyer has proved to the satisfaction of the Board that the relationship has not influenced the price of the goods by showing that—

(i) the price of identical or similar goods in a transaction between persons for export to Nigeria, at or about the same period of time, closely approximates to the price of the goods to be valued,

(ii) the customs value of identical or similar goods as determined under the provisions of paragraph 4 of this Schedule in a transaction between unrelated persons, at or about the same period of time, closely approximates to the price of the goods to be valued,

(iii) the customs value of identical or similar goods as determined under the provisions of paragraph 5 of this Schedule in a transaction between unrelated persons, at or about the same period of time, closely approximates to the price of goods to be valued.

Transaction
value of
identical
goods.

2.—(1) If the Customs value of any goods imported into Nigeria cannot be determined under the provisions of paragraph 1 of this Schedule, the Customs value of the imported goods shall be transaction value of identical goods already accepted under paragraph 1 of this Schedule sold for export to Nigeria and exported at or about the same time, at the same commercial level and in substantially the same quantity, as the goods being valued, adjustment having been made under paragraph 10 (1) and (2) of this Schedule to take account of significant difference in costs and charges between

the imported goods and the identical goods arising from differences in distances and modes of transport.

(2) Where identical goods as mentioned in sub-paragraph (1) of this paragraph are found but are not at the same commercial level and in substantially the same quantity as the goods being valued, the transaction value of the goods shall still be used as the Customs Value of the goods being valued, provided that—

(a) adjustment can be made by demonstrated evidence to take account of the differences attributable to commercial level and quantity ; and

(b) where the adjustment of the transaction value of the identical goods as stated in this sub-paragraph leads to a value different in figure from the transaction value already accepted for the identical goods under paragraph 1 of this Schedule, the higher value or figure shall be used as the customs value of the goods being valued.

3.—(1) If the Customs value of any goods imported into Nigeria cannot be determined under the provisions of paragraph 2 of this Schedule, then the customs value of the imported goods shall be the transaction value of similar goods already accepted under paragraph 1 of this Schedule sold for export to Nigeria and exported at or about the same time, at the same commercial level and in substantially the same quantity, as the goods being valued, adjustment having been made under paragraph 10 (1) and (2) of this Schedule to take account of significant difference in cost and charges between the imported goods and the similar goods arising from differences in distances and modes of transport.

Transaction
value of
similar
goods.

(2) Where similar goods as mentioned in paragraph 2 (1) of this Schedule are found but are not at the same commercial level and in substantially the same quantity as the goods being valued, the transaction value of such goods shall still be used as the customs value of the goods being valued, provided that—

(a) adjustment can be made by demonstrated evidence to take account of the differences attributable to commercial level and quantity ;

(b) where the adjustment of the transaction value of the similar goods as stated in this sub-paragraph leads to a value different in figure from the transaction value already accepted for the similar goods under paragraph 1 of this Schedule, the higher value or figure shall be used as the customs value of the goods being valued.

4.—(1) Where the customs value of goods imported into Nigeria cannot be determined under the provisions of paragraph 1, 2 or 3 of this Schedule, the customs value shall be based on the unit price at which the imported goods, identical or similar goods (in that order) are sold in Nigeria in the conditions as imported, in the greatest aggregate quantity, at or about the time of importation of the goods being valued, to persons who are not related to the persons from whom they buy those goods, subject to deductions for the following—

Sale Value.

(a) commissions usually paid, or agreed to be paid, additions usually made for

profit, and any general expenses in connection with the sales in Nigeria of goods of the same class or kind, whether imported from the same country or not ;

(b) the usual costs of transport and insurance and associated costs within Nigeria of the same identical, or similar goods (in that order) whether imported from the same country or not ; and

(c) the customs duties, other Federal, State or Local Government taxes payable in Nigeria by reason of the importation or sale of the same, identical or similar goods (in that order).

(2) Where identical or similar goods to the goods being value are used to calculate the customs value as mentioned in sub-paragraph (1) of this paragraph, the goods should have been imported into Nigeria at the earliest date but not later than 90 days from the date of importation of the goods to be valued.

(3) If the goods imported into Nigeria, identical or similar goods are not sold in Nigeria in the condition as imported, the customs valued of the goods shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity or persons in Nigeria, who are not related to the persons from whom they buy those goods, due allowance being made for the value added by the processing and the deductions provided for in sub-paragraph (1) of this paragraph.

Computed
Value.

5.—(1) If the customs value of goods imported into Nigeria cannot be determined under the provisions of paragraph 1, 2, 3 or 4 of this Schedule, the Customs value shall be based on a computed value which shall consist of—

(a) the cost of value of materials and fabrication of 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 producers in the country of exportation for export to Nigeria ; and

(c) the cost or value of all other expenses made under paragraph 7 (2) of this Schedule.

(2) For the purposes of determining a computed value of any goods—

(a) no person who is not resident in Nigeria shall be required or compelled to produce for examination, or to allow access to, any account or other record ;

(b) information supplied by the producer of the goods or any other person, may be verified in another country by the Board through the Federal Government of Nigeria, with the agreement of the producer of the goods, provided sufficient advance notice is given to the Government of the producer's country and that Government does not objects to the investigation.

Reasonable
value.

6.—(1) Where the customs value of goods imported into Nigeria cannot be determined under the provisions of paragraphs 1, 2, 3, 4, or 5 of this Schedule, the Customs Value shall be determined using reasonable means consistent with the principles and general provisions of this Schedule, and on the basis of data available in Nigeria.

(2) No customs value shall be determined under the provisions of sub-paragraph (1) of this paragraph on the basis of—

(a) the selling price in Nigeria of identical or similar goods produced in Nigeria ;
or

(b) a system which provides for the acceptance for customs value purposes of the higher of two alternatives ; or

(c) the price of goods on the domestic market of the country of exportation ; or

(d) the cost of production of the goods being valued, other than computed values determined for identical or similar goods in accordance with the provisions of paragraph 5 of this Schedule ; or

(e) the price of goods for export to a country other than Nigeria ; or

(f) minimum customs values ; or

(g) arbitrary or fictitious values.

(3) For purposes of determining customs value under sub-paragraph (1) of this paragraph, the Board may—

(a) use to the greatest extent possible, Customs Value previously determined under paragraphs 1, 2, 3, 4 and 5 of this Schedule ; and

(b) be reasonably flexible in the application of the methods already enumerated in paragraphs 1, 2, 3, 4, and 5 of this Schedule.

7.—(1) For the purposes of determining the customs value under the provisions of paragraph 1 of this Schedule, there shall be added to the price actually paid or payable for the goods imported into Nigeria—

(a) 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) commission and brokerage, except buying commission,

(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) to the extent that the value has not been included in the price actually paid or payable, the value, apportioned as appropriate, of the following goods and services, where supplied directly or indirectly by the importer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods—

(i) a material, component, part and similar items incorporated in the imported goods,

(ii) a tool, die, mould, and similar item used in the production of the imported goods,

(iii) a material consumed in the production of the imported goods,

Additions
for purposes
of
determining
customs
value.

(iv) engineering, development, art work, design work, plan, and sketch undertaken elsewhere than in Nigeria and necessary for the production of the imported goods ;

(c) royalty and licence fee related to the goods being valued which the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalty and fee are not included in the price actually paid or payable ; and

(d) the value of any part of the proceeds of any subsequent resale , disposal or use of the imported goods which accrues directly or indirectly to the exporter.

(2) In determining the customs value under the provisions of paragraph 1 of this Schedule, there shall also be added to the price actually paid or payable—

(a) the cost of transporting the imported goods to the port or place of importation ;

(b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation ; and

(c) the cost of insurance.

(3) An addition or a deduction to the price actually paid or payable shall be made, in any valuation under this Schedule only on the basis of objective and quantifiable data, and as provided for in this Schedule.

Sequential
order of
valuation.

8.—(1) The valuation methods enumerated in paragraphs 1, 2, 3, 4, 5, and 6 of this Schedule shall be followed sequentially, so however that the buyer of the goods being valued shall have the right, on a request in writing to the Board made within three days of the valuation, to demand that the sequential order as enumeration in paragraphs 4 and 5 of this Schedule be changed, stating in the request the reasons for the demand.

(2) On receipt of a request in writing from the buyer under sub-paragraph (1) of this paragraph, the Board shall consider the request and shall, if satisfied with the reasons contained in the request, accordingly change the sequential order of valuation, and communicate the change in writing to the buyer or his agent not later than 7 days from the date of receipt of the request.

(3) Where the Board is not satisfied with the reasons given by the buyer for a change in the sequential order of valuation, it shall, within 7 days of receipt of the request, communicate its decision to the buyer or his agent and the decision of the Board on the issue shall be final.

(4) Every buyer shall have the right, on a written request to the Board, to have a written explanation from the Board, not later than 10 days from the date of receipt of the letter containing the determination, as to how the Customs Value of goods imported by him into Nigeria was determined.

9.—(1) Where the conversion of currency is necessary for the determination of the customs value of any good, the rate of exchange to be used shall be that duly published by the Federal Ministry of Finance and shall reflect as effectively as possible, in respect of the period covered by the document of publication, the current value of the currency in commercial transaction in terms of the Naira.

Currency
conversion.

(2) The conversion rate to be used shall be that in effect at the time of entry of the goods into Nigeria.

10.—(1) If, in the course of determining the customs value of goods imported into Nigeria, it becomes necessary to delay the final determination of the customs value, the buyer of the goods shall be permitted by the Board to clear and take possession of the imported goods if, where so required, the buyer provides—

Delayed
valuation.

(a) adequate surety for payment of any customs duty that may be payable ; or
(b) a deposit or some other appropriate instrument, covering the ultimate payment of any customs duty that may be payable ; or

(c) any other form of guarantee which, in the opinion of the Board, is sufficient to ensure payment of any customs duty that may be payable on the delayed valuation.

(2) Delay in the final determination of customs value as stated in sub-paragraph (1) of this paragraph shall not be later than 30 days from the date of valuation commenced.

11.—An information which is by nature confidential or which is provided on a confidential basis for the purposes of Customs valuation shall be treated as strictly confidential by the Board, to be disclosed only—

Restriction
on the
disclosure of
information.

(a) on the specific permission of the person or government providing such information ; or

(b) to the extent required in any judicial proceedings ; or

(c) to the extent required by the Board in satisfying itself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

12.—(1) When a declaration has been presented and the Board has reason to doubt the truth or accuracy of the particulars or documents produced in support of the declaration, the Board may request the importer of the goods to provide further explanation, including document or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of paragraph 7 (1) of this Schedule.

Administrative
and
compliance
matters.

(2) If, after receiving further information, or in the absence of a response, the Board still has reason to doubt the truth or accuracy of the declared value, it shall be deemed, having regard to the provisions of paragraph 6 (1) of this Schedule, that the customs value of the imported goods cannot be determined under the provisions of paragraph 7 (1) of this Schedule but the Board shall, before taking final decision, communicate to the buyer, in writing if requested, its grounds for doubting the truth or accuracy of the particulars or documents produced and the buyer shall be given a reasonable opportunity to respond.

(3) When a final decision is made, the Board shall communicate to the buyer in writing its decision and the grounds for the decision.

(4) Every buyer shall keep records of all his transactions which shall be produced to the Board on demand.

Appeals.

13.—(1) If a buyer or his agent is not satisfied with the customs valuation of his imported goods, he may, within 7 days of becoming aware of the valuation, appeal to the Customs Area Comptroller in charge of the area where the valuation took place stating the reason for the appeal.

(2) The Customs Area Comptroller concerned shall consider the appeal and shall, within 21 days of receipt of the appeal, communicate to the buyer or his agent the result of the appeal.

(3) Where the buyer or his agent is not satisfied with the decision of the Customs Area Comptroller, he may, within 14 days of receipt of the decision, appeal to the Comptroller-General of Customs.

(4) The Comptroller-General of Customs shall, not later than 10 days from the date of receipt of the appeal, communicate to the buyer or his agent, the result of the appeal.

(5) If a buyer or his agent is not satisfied with the decision of the Comptroller-General he may, within 14 days of his becoming aware of the decision, institute an action in Court.

(6) Nothing in this Schedule shall be construed as preventing the Board from collecting the assessed Customs duties before accepting an appeal, so however that where an appeal succeeds, the buyer shall be entitled to a refund of any excess duty paid

Application
of GATT
1994.

14. For purposes of the interpretation of Customs valuation under this Act, the provisions of Article VII of the General Agreement on Tariffs and Trade 1994 as contained in the Agreement on the implementation of Article VII, together with all the notes to the Articles, and all the Annexes to those Articles, shall apply.

Amendment.

15. No amendment or alteration shall be made to this Schedule except with the consent of the members to the General Agreement on Tariffs and Trade 1994 as contained in the Agreement on the implementation of Article VII of the General Agreement on Tariffs and Trade 1994 Agreement.

Interpretation.

16.—(1) In this Schedule—

“Commercial level” means the step at which the goods are changing hands, the first commercial level being between the seller and the buyer, the second being between the buyer and the first buyer in Nigeria and subsequently in that order ;

“Customs value of goods imported into Nigeria” means the value of goods for the purposes of levying *ad valorem* duties of Customs on goods imported into Nigeria ;

“date of importation” means the date of entry of the imported goods into Nigeria ;

“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 ;

"identical goods" and "similar goods" excludes, as the case may be, goods which incorporate or reflect engineering, development, art work, design work, plans and sketches for which no adjustment has been made under paragraph 7 (1) (b) (iv) of this Schedule because they were undertaken in Nigeria ;

"Identical goods" means goods which are the same in all respect, including physical characteristics, quality and reputation, so however that minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical ;

"price actually paid or payable" includes all payments made or to be made as a condition of sale of the imported goods, by the buyer to or for the benefit of the seller, or by the buyer to or for the benefit of a third party to satisfy an obligation of the seller.

"produced" includes grown, manufactured and mined ;

"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 inter-changeable considering the quality of the goods, their reputation and the existence of a trademark ;

"transaction value" means the price actually paid or payable for goods when sold for export to Nigeria.

(2) In this Schedule—

Schedule.

(a) except the contrary is specifically stated in a particular paragraph, goods shall not be regarded as identical goods or similar goods unless they were produced in the same country as the goods being valued ;

(b) goods produced by a different person shall be taken into account when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued ;

(c) persons shall be deemed to be related if—

(i) they are officers or directors of each others business, or

(ii) they are legally recognized partners in business, or

(iii) they are employer and employee, or

(iv) one of them, directly or indirectly, owns, controls or holds at least 5 per cent of the outstanding voting stock of shares of both of them, or

(v) one of them, directly or indirectly, controls the other, or

(vi) both of them are directly or indirectly controlled by a third person, or

(vii) together they directly or indirectly control a third person, or

(viii) they are members of the same family, or

(ix) they are associated in business with each other as sole agent, sole distributor or sole concessionaire, however described and fall into any of the proceeding provisions of this sub-paragraph."

Citation. 4. This Act may be cited as the Customs and Excise Management (Amendment) Act, 2003.

I certify, in accordance with Section 2 (1) of the Acts Authentication Act, Cap. 4, Laws of the Federation of Nigeria 1990, that this is a true copy of the Act passed by both Houses of the National Assembly.

IBRAHIM SALIM, CON.
Clerk to the National Assembly
8th Day of July, 2003

EXPLANATORY MEMORANDUM

The Act amends the Customs and Excise Management Act, Cap. 84, Laws of the Federation of Nigeria and provides a new method of valuation of goods imported into Nigeria based on the transaction value as contained in the General Agreement on Tariffs and Trade 1994.

SCHEDULE TO CUSTOMS AND EXCISE MANAGEMENT (AMENDMENT) BILL, 2003

| (1) | (2) | (3) | (4) | (5) |
|--|---|---|------------------------------|--|
| <i>Short Title of the Bill</i> | <i>Long Title of the Bill</i> | <i>Summary of the Contents of the Bill</i> | <i>Date passed by Senate</i> | <i>Date passed by House of Representatives</i> |
| The Customs and Excise Management (Amendment) Bill 2003. | An Act to amend the Customs and Excise Management Act Cap. 84 Laws of the Federation of Nigerian 1990 to provide a new method of valuation of goods imported into Nigeria based on the transaction value. | The Bill seeks to amend the Customs and Excise Management Act Cap. 84, Laws of the Federation of Nigeria 1990 to provide a new method of valuation of goods imported into Nigeria based on the transaction value as contained in the General Agreement on Tariffs and Trade 1994. | 28-5-2002 | 6-5-2003 |

I certify, that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. 4, Laws of the Federation of Nigeria 1990.

I ASSENT.



IBRAHIM SALIM, CON
Clerk to the National Assembly
 8th Day of July, 2003

CHIEF OLUSEGUN OBASANJO, GCFR
President of the Federal Republic of Nigeria
 10th Day of July, 2003

