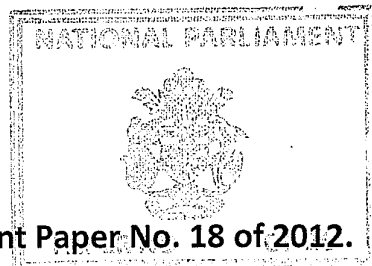




NATIONAL PARLIAMENT OF SOLOMON ISLANDS
BILLS AND LEGISLATION COMMITTEE

**Report on the *Customs and Excise*
(Amendment) Bill 2012 (No. 8 of
2012)**



National Parliament Paper No. 18 of 2012.

Presented on 21st November 2012

National Parliament Office

How to contact the Committee

Members of the Bills and Legislation Committee can be contacted through the Committee Secretariat. Written correspondences and enquiries should be directed to:

The Director of Committees

National Parliament of Solomon Islands

Vavaya Ridge, P.O. Box G.19, Honiara

Internet: www.parliament.gov.sb

Email: blc@parliament.gov.sb

Telephone: +677 28520/ +677 23424

Facsimile: +677 22472

Terms of reference

That the Bills and Legislation Committee –

- (a) review and examines the *Customs and Excise (Amendment) Bill 2012 (No. 8 of 2012)*; and**
- (b) report its observation and recommendations on the Bill to Parliament.**

Committee membership

Hon. Manasseh Sogavare	Chairman
Hon. Dr. Derek Sikua	Member
Hon. John Maneniaru	Member
Hon. Milner Tozaka	Member
Hon. James Tora	Member
Hon. Matthew Cooper Wale	Member
Hon. Sam Induri	Member
Hon. Douglas Ete	Member

Secretariat

Mr. Wilson Ani'i, Committee Secretary
Mr. Jefferson Hallu, Committee Secretary
Mrs. Emily Kupenga, Senior Administration Officer

Hansard

Mr. Liam Sau, Assistant Editor.

Chair's foreword

The Customs and Excise Act is an important legislation in regulating tariffs that has been laid upon specific goods. It is a vital source of revenue for the government and the nation as a whole. Hence, proper regulation of the tariffs to be imposed on imported and exported commodities requires a vigilant regulatory regime.

Devolving powers to government Ministries by Parliament is a feature underlying the Westminster system which we adopt. The rationale commonly held for such principle is based on the notion that a Minister is in the best position to administratively implement what the legislature has decided upon. However, in doing so the principles of the separation of powers must be respected.

Therefore, if legislative powers or functions are devolved to government Ministries, such Ministerial power must be exercised properly within the bounds of the law. In order to do so, essential administrative mechanisms must be effectively implemented to ensure the proper exercise of Ministerial powers.

Finally, whilst the Committee appreciates the effort of the government in the ongoing reforms to update our laws according to our ever changing circumstances, the Committee is concerned of the timeframe usually given for the proposed laws to be scrutinised by the Committee before presenting its findings to Parliament. The Committee would greatly appreciate that sufficient time is given for the proper scrutiny of proposed laws.

With these remarks, I am pleased to present the Report on *Customs and Excise (Amendment) Bill 2012, No. 8 of 2012*.

I thank all of you who have participated in one form or another in making this report possible.



Hon. Manasseh Sogavare

Committee Chair

Acknowledgment

The Committee acknowledged the commitment of the Clerk to National Parliament, the Committee Secretariat, and staff of the National Parliament for the sound secretariat support that enabled the professional conduct of the Hearing.

Sincere thanks to all the members of the Committee who were present and provided probing questions to bring out better understanding of the subject matter.

The Committee would also like to thank all individuals and organisations who appeared before the Committee as witnesses at the hearing. Thank you for responding positively to the Committee's invitation and for attending the Committee hearing. This report would not have been possible without the valuable information provided to assist the Committee to undertake its important oversight role of ensuring accountability to the people of Solomon Islands.

Contents

Terms of reference	3
Committee membership	4
Chair's foreword	5
Acknowledgment	6
Summary of recommendations	8
Chapter 1 – Introduction	9
Background to the inquiry	9
Terms of reference	9
Conduct of the inquiry	9
Submission.....	10
Hearing.....	10
Chapter 2 – The power to change the First Schedule.....	11
Background.....	11
Rationale for empowering the Minister	11
Ministerial Power	11
<i>Committee comment</i>	12
Administrative Decision	13
<i>Committee comment</i>	13
Conclusion	15
Appendix 1 – Minutes – Committee deliberation	16
Appendix 2 - Functions of the Bills and Legislation Committee	18
Appendix 3 – Minutes – Hearing.....	19
Appendix 4 - List of witnesses.....	21
Appendix 5 – Extract – Section 7 <i>Customs and Excise Act (Amendment) Act 2002</i>.	22
Appendix 6 – <i>QQQ v. Comptroller of Customs, HCSI, Case No.260/1991</i>	23
Appendix 7 – Section 62 of the Interpretation and General Provision Act [Cap. 85]	29
Appendix 8 – Section 59 of the national Constitution.	30

Summary of recommendations

After examining all of the witnesses and the evidence before it, the Committee recommends the following –

Recommendation 1: That the Ministry of Finance properly implements the necessary mechanisms, both in the Inland Revenue Division and the Customs and Excise Division, that will enable the Minister to properly exercise his or her powers.

Recommendation 2: That the Attorney General clarifies the legal position in relation to the legislative competence of the Minister as envisaged by Clause 7(2) of the Bill.

Recommendation 3: That the Bill is commended to Parliament for consideration.

Chapter 1 – Introduction

This Chapter provides a background to the inquiry, an overview of the Committee's terms of reference, and a description of the inquiry process.

Background to the inquiry

- 1.1 On 14th November 2012, the Minister of Finance, through the Attorney Generals Chambers, submitted to Parliament notice of presentation of the Bill in accordance to Standing Orders 45 and 46.
- 1.2 On 16th November 2012, the Committee deliberated to have a one-day hearing into the Bill.¹
- 1.3 The Committee sent out invitations to identified stakeholders to give evidence at a hearing held 16th November 2012. Given the time constraints, some of the stakeholders were not able to appear at the hearing nor were able to provide written submissions.

Terms of reference

- 1.4 The inquiry's terms of reference are set out in page 3. The Committee may report to Parliament on matters referred to it either by the Parliament or the Government.² It also has the power to initiate inquiry to consider other matters relating to legislation.³ Other functions of the Committee are contained in **Appendix 2**.
- 1.5 The Committee presents its observations and recommendations on the Bill to Parliament on Tuesday 20th November 2012.

Conduct of the inquiry

- 1.6 The inquiry process included seeking written submissions and a public hearing at Parliament House. A total of four (4) stakeholders were identified and invited to make

¹ Appendix 1.

² Standing Order 68(5), *Standing Orders of the National Parliament of Solomon Islands*, Paper No. 41 of 81, National Parliament of Solomon Islands.

³ Standing Order 71(f), *Ibid*.

written submissions or to appear in person at the hearing, or both. All stakeholders appeared as witnesses before the Committee on November 16th 2012.

Submission

1.7 There were no written submissions received by the Committee.

Hearing

1.8 A public hearing was held for a day (Friday 16th November 2012) at the Parliament House.⁴

1.9 A list of individuals and organisations who responded to the Committee's invitation to respond to the inquiry is contained in **Appendix 4**.

⁴ See Appendix 3 for Minutes

Chapter 2 – The power to change the First Schedule

This Chapter provides background information on the Bill, in particular what the Bill intends to achieve, the issues that emanates from the discussions, and the Committee's view of the issues.

Background

- 2.1** This Bill seeks to amend section 7 of the *Customs and Excise Act* [Cap. 121] ('the Act') by empowering the Minister to replace or amend the First Schedule.
- 2.2** An extract of section 7 of the Act is contained in **Appendix 5**.
- 2.3** In his opening statement, the Director of the Economic Reform Unit explained that the proposed changes to the Bill empowers the Minister to replace or amend the First Schedule as supposed to the current practises where the Minister can alter the rates. This change will facilitate regular timely updates of excise and export duties.⁵

Rationale for empowering the Minister

Ministerial Power

- 2.4** Hitherto, the responsible Minister has been assuming the power to replace or amend the First Schedule. This has been held by the Courts to be beyond the powers granted to the Minister. A decision by the Minister to replace or amend the First Schedule was held by the Courts to be *ultra vires*.⁶ Hence, the need to empower the Minister to amend or replace the First Schedule.
- 2.5** When asked the background of the QQQ case, the Legal Draftsman explained that the power vested in the Minister by virtue of section 7 of the Act applies only to altering the rates in the Schedule and not amending or replacing the Schedule in its entirety or in part. The gist of the case was that the Minister assumed the power in Section 7 of the Act to also amend or replace the First Schedule to the Act. This was held by the Court to be *ultra vires* or beyond the powers granted to the Minister by section 7 of the Act. The Court also held that if the power granted to the Minister should also extend to

⁵ Selwyn Takana, *Hansard Transcript*, 16th November 2012.

⁶ *QQQ v Comptroller of Customs*, Civil Case No. 260 of 1991. See Appendix 6.

amending or replacing the Schedule, then that provision should be expressly provided for in the Act, and only Parliament has the power to do so.⁷

- 2.6** The Committee is aware that certain changes were made to the Schedule after the QQQ case. When asked to explain the legality of those changes given that the Minister has not yet assumed that power, the Legal Draftsman further explained that after the QQQ case,

*...we incorporated all the amendments that have been made by orders into the First Schedule...whatever had been done earlier was legalised before it was incorporate into this Act... since 1995 we have not done any changes...*⁸

- 2.7** The Legal Draftsman further explained that since then, the changes to the Schedule has not been regularised because of the effect of the QQQ case. In support of this contention, he agrees that empowering the Minister to amend or replace the schedule is necessary for regulatory purposes. As a safeguard, any such amendment made to the Schedule is required to be tabled in Parliament for scrutiny purposes.⁹

Committee comment

- 2.8** The current Act gives the Minister the power to determine the rate of duty imposes on exported or imported goods. The Minister when implementing this provision made ministerial orders that sets the rates to be used in the calculation of import and export duties. The important thing to note here is that the rates are determined by the Minister and not by Parliament. The Minister therefore is able to make amendments as and when it is required.
- 2.9** This is not the same in regards to the First Schedule to the Act. Unlike the determination of rates that is done by the Minister as provided for under the Act, amending section 7 to empower the Minister to replace or amend the First Schedule should not be pursued for the following reasons. The First Schedule to the Act was part of an Act of Parliament that was enacted by Parliament, whereas the duty rates or the actual rates used to calculate the duties are not enacted by Parliament itself but by the Minister through the powers conferred to the Minister by Act. The Committee is concerned that devolving the power to the Minister to amend the First Schedule

⁷ Ranjit Hewegama, *Hansard Transcript*, 16th November 2012.

⁸ *Ibid*, p.3.

⁹ Section 62, *Interpretation and General Provisions Act*, [Cap. 85]. See Appendix 7.

without bringing the amendment to Parliament can be seen as usurping the powers and responsibilities of the legislature. The Constitution, being the supreme law of the land, expressly provided that the power to make laws is vested in Parliament.¹⁰ The Committee is concerned that the doctrine of the separation of powers must be respected.

- 2.10** The Committee is therefore of the view that the proposal to give power to the Minister to amend the First Schedule cannot be so since the First Schedule was established by an Act of Parliament and not a Ministerial Order as in the case of duty rates. The Committee therefore seeks legal clarification from the Attorney General on this matter.

Administrative Decision

- 2.11** The need to empower the Minister to change the Schedule would be favourable for administrative purposes. The Comptroller of Customs explained the need for the amendment is due to several reasons. Firstly, the harmonized system currently in use is the 2002 version, an old version, compared to the current 2012 version that other countries are using. However, an update to the current version would not be legally possible without an enabling proviso. Hence the need to empower the Minister to do so in order to regularly update the Schedule.¹¹

- 2.12** Secondly, although a change to the Schedule is required to be tabled in Parliament, Parliament does not meet regularly and that would affect the timely update of the Schedule when moving from one version to another. Therefore, empowering the Minister to make changes to the Schedule is necessary for the timely update of the Harmonised System in par with international best practices.

Committee comment

- 2.13** Whilst the committee appreciates the explanations given by the Ministry that the amendment will make things simpler for Customs department administratively, the Committee is concerned that what is proposed here may deny Parliament the opportunity to perform its oversight responsibility since Parliament may not have the opportunity to scrutinize future changes to the Schedule.

- 2.14** The Committee is of the view that if the Minister is to be granted the power sought, then changes to the Schedule must be tabled in Parliament for the interest of the nation as a whole. However, if the Minister is granted the power sought, then

¹⁰ Section 59, the Constitution. See Appendix 8.

¹¹ Nathan Kama, *Hansard Transcript*, 16th November 2012.

necessary administrative mechanisms must be effectively established so that the Minister properly exercises the power to change the Schedule.

Conclusion

- 2.15** There may be compelling reasons to empower the Minister to make changes to the First Schedule. We note that the justifications offered for the amendment is for administrative efficiency in the respective department of the Ministry.
- 2.16** One of the fundamental reasons why the Committee is skeptical of the proposed amendment is the doctrine of the separation of powers. It is essential that the independence and impartiality of each arm of government be maintained. This cannot be achieved if the proposed amendment in effect usurps the legislative responsibility to make laws.
- 2.17** The Committee is also skeptical of the proposed amendment because by granting the Minister the power to make changes to the Schedule, Parliament may be denied the opportunity to scrutinize the changes in order to be accountable to the people of this country.

Recommendation: That the Ministry of Finance properly implements the necessary mechanisms, both in the Inland Revenue Division and the Customs and Excise Division, that will enable the Minister to properly exercise his or her powers.

Recommendation: That the Attorney General clarifies the legal position in relation to the legislative competence of the Minister as envisaged by Clause 7(2) of the Bill.

Recommendation: That the Bill is commended to Parliament for consideration.

Appendix 1 – Minutes – Committee deliberation



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of the deliberative meeting into the ‘Customs and Exercise (Amendment) Bill 2012 and the Customs and Exercise (Amendment) (No.2) Bill 2012’

Meeting No 1: Deliberative Meeting

Friday 16th November 2012
Conference Room II, Parliament House, 10:02am.

1. Members Present

Hon. Manasseh D. Sogavare (Chairman)
Hon. Dr. Derek Sikua
Hon. James Tora
Hon. John Maneniaru

Absent

Hon. Mathew Cooper Wale
Hon. Milner Tozaka
Hon. Sam Iduri
Hon. Douglas Ete

Secretariat

Mr Jefferson Hallu, Committee Secretariat
Mr Wilson Anii, Committee Secretariat

2. Prayer and Chair’s Opening Remarks

The Chairman say the opening prayer.
The Chair welcomed Members and thanked them for attending.
The Chair brief Committee Members that according to the Statement of Government Business for next week there is urgency to bring the two Bills forward for the Committee’s scrutiny.

3. ‘Customs and Exercise (Amendment) Bill 2012 and the Customs and Exercise (Amendment) (No.2) Bill 2012.’

The Committee Secretariat provided a brief on the two Bills and a proposed list of stake holders for the inquiry into the Bill. Committee members were asked to make comments on what approach to take for the inquiry. The Chair then invited Committee members to comment on the proposed list of stake holders.

During discussions Committee members resolved that;

Policy of the Bill

- 1) The Customs Division, the Inland Revenue Division and the Economic Reform Unit of the Ministry of Finance & Treasury and the Attorney Generals Chambers Legal Drafting to make first appearance before the Committee to explain the policy behind the drafting of the Bill and the various issues covered under the clauses of the two Bills.

Written Submissions

- 2) Stake holders be asked to make written submissions before appearing though not necessary due to the urgency to conduct the Public hearing into the Bill.

Public Hearing

- 3) The public hearing into the two (2) Bills be conducted in the afternoon starting at 2:00pm due to the urgency of writing the Committee Report on the Bills before the second reading in the Chamber.

4. Resolutions

The Committee resolved that;

- 1) The Stake holders involved in the formulation of the Bill be invited to make first appearance before the Committee to present the policy behind the Bill.
- 2) Written submissions be sought from relevant stake holders though not necessary due to the urgency to write up the Committee Report on the Bills before the second reading.
- 3) The public hearing into the two Bills be held in the afternoon at 2:00pm due to the urgency to bring the Committee Report before the second reading of the Bills in Parliament.

5. Close

Meeting closed at 10:22am.

Appendix 2 - Functions of the Bills and Legislation Committee

71. BILLS AND LEGISLATION COMMITTEE

LN 23/1995

There shall be a Standing Select Committee designated the Bills and Legislation Committee whose functions, in addition to the provisions of orders 50 and 55, shall be 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.

Appendix 3 – Minutes – Hearing



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

MINUTES OF PROCEEDINGS INTO THE 'CUSTOMS AND EXERCISE (AMENDMENT) BILL 2012' AND THE 'CUSTOMS AND EXERCISE (AMENDMENT) (NO.2) BILL 2012'

Meeting No 2: Public Hearing

Friday 16th November 2012

Conference Room 2, Parliament House, 2:03pm

Members Present

Hon. Manasseh Sogavare, MP (Chair)

Hon. Dr Derek Sikua, MP

Hon. James Tora, MP

Members Absent

Hon. Mathew Wale, MP

Hon. Milner Tozaka, MP

Hon. John Maneniaru, MP

Hon. Douglas Ete, MP

Hon. Sam Iduri, MP

Stakeholders (Witnesses)

Nathan Kama- Comptroller of Customs, Ministry of Finance & Treasury (MOFT)

Mark Beu- Commissioner of Inland Revenue Division, IRD, MOFT

Selwyn Takana- Director Economic Reform Unit(Ag)(ERU), MOFT

Lonsdale Lungana- Policy Analyst, ERU, MOFT

Philip De La Rue- RAMSI Advisor, ERU, MOFT

Norma Qurusu- Policy Analyst, ERU, MOFT

Ranjit Hewagama- Legal Draftsman, Attorney Generals (AG) Chambers

Anthony Makabo- Senior Crown Counsel, AG Chambers

George Henry Tapo- Deputy Commissioner, IRD, MOFT

Joseph Dokekana- Assistant Deputy Commissioner, IRD, MOFT

Secretariat

Mr Jefferson Hallu, Committee Secretary

Mr Wilson Anii, Committee Secretary

In-attendance

Liam Sau- Hansard Dept

Steve Hachi- Media Dept

1. Welcome & Opening Statement

The Chairman acknowledges and thanked the stake holders (witnesses) for responding to the invitation to appear before the committee for the public hearing into the 'Customs and Exercise (Amendment) Bill 2012' and the 'Customs and Exercise (Amendment) (No.2) Bill 2012'. Chairman apologise for the short notice given and commented that these two Bills are

now being prioritised due to the statement of Government business for next week's Parliament meeting.

2. Hearing into the 'Customs and Exercise (Amendment) Bill 2012 and Customs and Exercise (Amendment) (No.2) Bill 2012.'

The Chairman made a brief opening statement and invited the witnesses to make opening statements to the Committee on the two Bills.

The following presented their opening statement;

- a. Selwyn Takana- ERU, MOFT
- b. Ranjit Hewagama- Legal Draftsman, AG Chambers
- c. Nathan kama- Comptroller of Customs, MOFT

The Committee questioned, made comments and seek clarification from the witnesses on the;

- policy issues of the Bills,
- on the various issues covered in the Bills clause by clause.

The evidence concluded and the Chair thanked the witnesses for their attendance.

3. Closing

The hearing closed at 3:30pm.

Appendix 4 - List of witnesses

The Committee acknowledges and appreciates the attendance of the following witnesses who appeared before the Committee on the 16th of November 2012.

NAME	ORGANISATION
1. Mr. Selwyn Takana, Director, Economic reform Unit. 2. Lonsdale Lungana, Policy Analyst, ERU. 3. Philip De La Rue, RAMSI Advisor, ERU. 4. Norma Qurusu, Policy Analyst, ERU. 5. Mr. Nathan Kama, Comptroller of Customs. 6. Mr. Mark Bell, Commissioner, Inland Revenue Division. 7. George Henry Tapo, Deputy Commissioner, IRD. 8. Joseph Dokekana, Assistant Deputy Commissioner, IRD.	Ministry of Finance and Treasury
9. Mr. Ranjit Hewegama, Legal Draftsman 10. Anthony Makabo- Senior Crown Counsel, AG Chambers	The Attorney-General Chambers

Appendix 5 – Extract – Section 7 *Customs and Excise Act (Amendment) Act 2002.*

PART II DUTIES, PROHIBITIONS, DRAWBACKS AND REFUNDS OF DUTY

Customs and excise duties

14 of 1966, s. 5
9 of 1963, s. 3
LN 46A of 1978
9 of 1974, s. 3

7. It shall be lawful for the Minister from time to time, by order -

(a) to impose; import or export duties of customs upon any goods whatsoever which may be imported into or exported from Solomon Islands and to revoke, suspend, reduce, increase or alter any such duties, and to provide for the importation or exportation of any goods without payment of customs duty thereon:

Provided that all import or export duties of customs and all exemptions from duties of customs set out in the First Schedule shall continue in force until revoked, suspended, reduced, increased or altered in the manner provided in this Act;

First Schedule

(b) to impose excise duties upon any goods whatsoever manufactured in Solomon Islands and to revoke, suspend, reduce, increase or alter any such duties and to provide for exemptions therefrom.

Appendix 6 – *QQQ v. Comptroller of Customs, HCSI, Case No.260/1991*

IN THE HIGH COURT OF SOLOMON ISLANDS

Civil Case No. 260 of 1991

QQQ WHOLESALE LIMITED

-v-

CONTROLLER OF CUSTOMS

High Court of Solomon Islands
(G.J.Muria J)

Hearing: 12 December 1991
Judgment: 31 January 1992

Jennifer Corrin for Appellant
Charles Ashley for the Respondent

Muria J: The petitioner was ordered by Magistrates Court on 23 October 1991 to pay to the Comptroller of Customs the sum of \$4,139.20 being for duty due and underpaid on 2,990 cartons of assorted juice imported from overseas. The goods arrived on 29 May 1990 and were valued at \$20,696-00. Duty was then calculated at 30% which worked out to be \$6,208.00 which the petitioner paid. Subsequently it was discovered that the proper percentage of duty to be charged was 50% and not 30%. This, the respondent says, was based on the Customs and Excise (Duties) (Amendment) (No.3) Order 1990 which appears in Legal Notice No.33 of 1990 (hereinafter referred to as "the No.3 Order"). That Order was effective as of 23 March 1990.

The petitioner does not dispute the facts of the case but it disputes the percentage of duty to be charged. Counsel for the petitioner contended that the proper rate of duty payable is 30% which the petitioner had already paid. Counsel bases her argument on the Customs and Excise (Duties) (Amendment) (No.8) Order 1990 published in Legal Notice No. 47 of 1990, (hereinafter referred to as "the No.8 Order").

In support of its petition, the petitioner pursues four grounds namely

"(a) the learned Magistrate erred in holding that section 7 of the Customs and Excise Act does not empower the Minister to amend and / or delete the First Schedule to the Customs and Excise Act (Cap 58);

(b) the learned Magistrate erred in holding that the Customs and Excise (Duties) (Amendment) (No 8) Order, 1990 is ultra vires;

(c) the learned Magistrate erred in holding that there is a difference between amending the said Schedule and amending the parts in the said Schedule;

(d) alternatively, that if the learned Magistrate was correct in his finding that the Minister has no power to amend the First Schedule to the Customs and Excise Act (Cap 58) that the Customs and Excise (Duties) (Amendment) (No.3) Order, 1990, contained in Legal Notice 33 of 1990 is also ultra vires and the learned Magistrate erred in holding that the said duty was still in place".

It became apparent in the course of arguments that the case turns upon the proper construction of section 7 of the Customs and Excise Act (Cap.58). That section provides:

"7. It shall be lawful for the Minister from time to time by order-

(a) to impose import or export duties of customs upon any goods whatsoever which may be imported into or exported from Solomon Islands and to revoke, suspend, reduce, increase or alter any such duties, and to provide for the importation or exportation of any goods without payment of customs duty thereon:

Provided that all import or export duties of customs and all exemptions from duties of customs set out in the First Schedule shall continue in force until revoked, suspended, reduced, increased or altered in the manner provided in this Ordinance;

(b) [repealed by Customs & Excise Act No.9 of 1974]

(c) to impose excise duties upon any goods whatsoever manufactured in Solomon Islands and to revoke, suspend, reduce, increase or alter any such duties and to provide for exemptions therefrom."

In order to appreciate how the powers under this section has been exercised it is necessary to look at the provisions of the section and the Orders made pursuant to the powers conferred by the section.

The Customs and Excise Act came into force on 1st April 1960. Section 7 then did not have paragraphs (a), (b) or (c) and the powers conferred by the section did not include the power to "suspend" but only the powers to *revoke, reduce, increase or alter any such duties*. By the Customs (Amendment) Act No.9 of 1963 Section 7 was divided into paragraphs (a) and (b) and the word "suspend" was added in paragraph (a) and in the proviso. Thus the High Commissioner (now the Minister) was empowered to suspend duties which before 1963 he could not have done except to revoke, reduce, increase or alter any such duties Section 7 was further amended in 1966 by the Customs (Amendment) Act No. 14 of 1966 which added paragraph (c). Also it was this 1966 amendment that changed the long title to the Act and it became the Customs and Excise Act. The last amendment to section 7 was made by the Customs and Excise (Amendment) Act No.9 of 1974 - which deleted paragraph (b) and thereby removing from the Minister the power to amend part II of the First Schedule.

The general tenor of the language used in section 7 is permissive and the words used by Parliament showing the powers which the Minister is permitted to exercise under the section are clear and unambiguous. Parliament has given the Minister powers to impose duties on any goods whatsoever which may be imported into, export from or manufactured in Solomon Islands and to revoke, suspend, reduce, increase or alter any such duties.

In order to appreciate the Orders made pursuant to the powers conferred by section 7 before and after Independence, it is necessary to briefly look at it in the light of the legislative authorities' prevailing at the time. Before 1970 the legislative power over the then Protectorate was vested in the High Commissioner who made laws with the advice of and consent of the Legislative Council for the peace order and good government of the Protectorate. This is provided for under section 31 of the British Solomon Islands Order 1967 which states:

"31. Subject to the provisions of this Order, the High Commissioner, with the advice and consent of the Legislative Council, may make laws for the peace, order and good government of the Protectorate."

The High Commissioner also had executive powers which he could exercise under section 7 of the Customs and Excise Act by making orders which he was empowered to make. However when he exercised his powers under section 7, the High Court Commissioner was required to consult with the Executive Council as provided under section 8 of the said British Solomon Islands Order 1967 which states:

"8(1) Subject to the provisions of this section, the High Commissioner shall consult the Executive Council in the exercise of all powers conferred upon him by this Order or by any other law for the time being in force in the Protectorate, except

(a) any power conferred upon him by this Order which he is empowered to exercise in his discretion; or

(b) any power conferred upon him by any other law which he is empowered, either expressly or by implication, to exercise without consulting the Council.

With the changeover to Governing Council in 1970 the legislative structure was basically the same except that the High Commissioner could make laws with the advice and consent of the Governing Council (see section 33 of the British Solomon Islands Order 1970) and when exercising his powers under section 7 of the Customs and Exercise

Act, he was required to consult with the Governing Council (see section 22 of the said Order).

The next legislative change came in 1974 when the British Solomon Islands Order 1974 was made and established the Legislative Assembly. Section 48 of the Order vested the legislative power over the Protectorate in the Governor who acted with the advice and consent of the Legislative Assembly. In exercising his powers under any law, such as section 7 of the Customs and Exercise Act, the Governor had to consult the Council of Ministers - (see section 22 of the Order) There were other amendments in 1975, 1976 and 1977 to the British Solomon Islands Order 1974 but the law-making powers remained basically the same until July 1978.

On Independence the power to make laws for the peace order and good government of Solomon Islands is vested in the National Parliament of Solomon Islands. Section 59(1) of the Constitutions provides:

"59(1) Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Solomon islands."

Each Minister exercises functions assigned to him by the Governor General under section 37 of the Constitution. Since Independence therefore, the powers conferred by section 7 of the Customs and Excise Act are exercisable by the Minister responsible. The next question is what is the extent of the Minister's powers under section 7 of the Act? Has he the same extent of powers as those previously exercised by the High Commissioner? As we have already seen, prior to Independence, the legislative power to make laws for the peace order and good government of the then Protectorate was vested in the High Commissioner and later the Governor who exercised that power with the advice and consent of the Legislative Council, later, with the advice and consent of the Governing Council and later still, with the advice and consent of the Council of Ministers. The High Commissioner, and later, the Governor therefore also had the power to amend those laws as it was done in the Customs and Excise (Amendment) Act No.9 of 1974. Further when one looks at the Customs and Excise (Duties)(No. 4) Order 1974 one sees the Governor in the exercise of his legislative power amended the Act by deleting the whole of the First Schedule and substituting therefore a new Schedule. Again on 1st February 1978, just a few months before Independence, the Governor after consultation with the Council of Ministers exercised his legislative power by making the Customs and Excise (Duties) Order 1978 which amended the Act by deleting the First schedule and substituting therefore a new schedule. Thus, the High Commissioner possessed with the legislative competence to make laws must, as a matter of law, also possess the power to amend the Customs and Excise Act by deleting or repealing the First Schedule and substituting therefore a new schedule in addition to his powers to make orders imposing duties or revoking, suspending, reducing, increasing or altering any such duties.

On attainment of Independence, the power to enact laws has been given to the National Parliament and hence, only Parliament can amend the Customs and Excise Act by deleting the First Schedule and substituting therefore a new Schedule unless the power to do so has been expressly conferred on some other subordinate authority. The Minister can only lawfully under section 7 make orders to impose duties and to revoke, suspend, reduce, increase or alter any such duties. The change of name from "High Commissioner" to "Minister" does not automatically entitle the Minister to exercise all the powers which were once exercised by the High Commissioner under section 7, but only such powers as the law authorises him to exercise.

Turning to the grounds of the petition, the first ground complains that the learned Magistrate erred in holding that section 7 of the Customs and Excise Act does not empower the Minister to amend and/or

delete the First Schedule to the Act. As the second ground is closely connected with the first I will consider them together. The powers conferred by section 7, if exercised by the Minister, would have amending effects on the First Schedule to the Act. An order revoking or reducing or increasing any of the duties is in effect amending the First Schedule. Such an amendment affects the subject matter of the Schedule, that is, the items in the Schedule. But it is a different matter altogether when an amendment is made deleting the whole of the First Schedule and substituting therefore a new Schedule. This is because such an amendment amounts to an amendment of the Act by repealing the entire Schedule and replacing it with a new one. The schedule is part of the Act just as much as section 7 which introduces it and as such it can only be amended by Parliament amend the principal Act has been delegated to the Minister.

Section 7 clearly shows that it confers powers on the Minister only to impose duties and *to revoke, suspend, reduce, increase or alter any such duties*. Those words are plain words and Parliament has used those plain words to make its intention clear beyond doubt. As such the court is obliged especially in a taxing statute such as the Act we are concerned with, to give to those words their plain meanings unless the context clearly shows that such a construction cannot be given to those words. This I believe is the view as expressed by Viscount Haldane LC in *Lumsden -v- IR Commrs.* [1914] A.C. 877 at 896 where he said:

".....the duty of judges in construing 'Statues is to adhere to the literal construction unless the context renders it plain that such a construction cannot be put on the words.' This rule is especially important in cases of statutes which impose taxation"

I am obliged to give to the words *revoke, suspend, reduce, increase or alter any such duties* their plain meanings and there is nothing that I can see that renders such a construction inappropriate to those words. As such the powers exercisable by the Minister under section 7 do not confer any power on the Minister to make amendments to the principal Act. Paragraph 2 of Customs and Excise (Duties)(Amendment) (No.8) Order 1990, LN No. 47 of 1990, purports to delete the entire First Schedule and replace it with a new Schedule. That is in fact an amendment to the Act by repealing or deleting the whole of the First Schedule and substituting therefore a new schedule. The court is therefore obliged to see whether the Minister has acted within his delegated power or not. In my judgement when the Minister made the No.8 Order purporting to deleting the whole of the First Schedule and substituting therefore a new Schedule, he was in effect amending the Act and as such he was acting beyond his powers given to him by section 7. The learned Magistrate was therefore correct to hold that the Minister does not have such power and when he made the No.8 Order which has the effect of amending the Act, he was acting beyond the limits of his powers given to him by section 7. The result therefore is that the Customs and Excise (Duties) (Amendment)(No 8) Order 1990 is ultra vires.

The first and second grounds of petition are dismissed.

The third ground of complaint is that the learned Magistrate erred in holding that there is a difference between 'mending the said schedule' and 'amending parts of the said schedule.' On the face of it, there appears to be no difference between the two expressions since any amendments to the parts of the schedule can be regarded as amending the schedule. Section 7, as I have already stated, give the Minister power to 'revoke, suspend, reduce, increase or alter' customs and excise duties. In the event the Minister makes an order, for example, to increase customs duties on particular items in the First Schedule, he is amending the said Schedule even if the increase affects only one or more of the items in the said schedule. However, where, as in this case, the Minister exercised his powers under section 7 and sought to repeal or delete the whole of the First Schedule to the Act and replace it with a new Schedule he was not simply amending the First Schedule or parts of the said Schedule hut he was in fact effecting an amendment to the Act. Although I agree with Counsel that, there is no difference between 'amending the said Schedule' and 'amending parts of the schedule' as the two can have the same result, that is, an amendment to the Schedule, it is the nature or the character of the proposed amendment that determines whether it is simply an amendment to the Schedule or an amendment, to the Act. Having seen the Customs and Excise (Duties) (Amendment) (No.8) Order 1990 it is clearly intended to have the effect of amending the principal Act by repealing the entire First Schedule and substitute therefore a new Schedule.

However despite my finding that there may well be no difference between the phrases "amending the

said Schedule" and "amending parts of the said Schedule" the conclusion reached by the learned Magistrate is one which I entirely agree with.

The third ground of the petition is also dismissed.

The fourth ground is an argument in the alternative. Counsel for the petitioner argues that if it is correct that the Minister has no power to amend the First Schedule to the customs and Excise Act, then the Customs and Excise (Duties)(Amendment) (No.3) Order, 1990 must also be ultra vires.

As I have already stated earlier in this judgement, that when the Minister exercises his powers under section 7 and makes an order, for example, 'increasing' the duties on one or more of the items contained in the First Schedule, he is amending parts of the schedule which in effect, is amending the Schedule. What the Minister has done by the Customs and Excise (Duties)(Amendment) (No.8) Order 1990 is not amending the First Schedule but effectively has sought to amend the principal law. That, as I have already found, is beyond the powers of the Minister as conferred on him by section 7 of the Act. The Customs and Excise (Duties)(Amendment) (No.3) Order 1990 in my view does not seek to do what the No.8 order seeks to do. The No.3 Order seeks only to amend the subject matters contained in the First Schedule which is within the Minister's powers exercisable under section 7 of the Act. The Customs and Excise (Duties)(Amendment)(No. 3) Order 1990 contained in Legal Notice No. 33 of 1990 is therefore not ultra vires, and the learned Magistrate was correct in holding that the existing duties on item 053.5 (fruit juices and vegetable juices unfermented) as stated in the No. 3 Order is still in place.

Before leaving this matter I wish to add a comment on a point upon which counsel for the petitioner took objection. Following the bearing of this matter on 10.12.91 after which I reserved judgement, I subsequently called for a further hearing on 12-12-91. The purpose of the subsequent hearing was to enable me to ascertain whether the new First Schedule referred to in paragraph (2) in the Customs and Excise (Duties) (Amendment)(No.8) Order 1990 - [Legal Notice No. 47] does in fact exist or not. The Minister who made the order and the Government Printer who published the Order in the Government Gazette were called. Counsel for the petitioner objected to calling the Minister and the Government Printer on basis that the court has no power to call them to give evidence and that their evidence were inadmissible. Paragraph (2) of the Order in question says

"(2) the First Schedule to the Customs and Excise Act is hereby deleted and the new Schedule appearing herein substituted therefore"

The new schedule referred to in the Order forms part of the Order and as such evidence is receivable to show whether it exists or not and whether it is published along with the rest of the Order or not. The extraordinary Gazette Notice published on 17th April 1990 stated that Legal Notice No. 47 (which contains the Order in question) was published as a supplement to the Gazette.

The Gazette is prima facie evidence of the Order issued by the Minister but I cannot accept that I can simply rely on the Gazette Notice as evidence of the Order and its contents especially where matters forming part of the Order are omitted. The court must be able to ascertain the fact of the existence of those matters forming part of the Order. The new Schedule referred to in paragraph (2) of the Order has not been included with the Order and to ascertain the existence of that Schedule, this court is entitled to hear evidence from the Minister and the Government Printer whose evidence are admissible in such circumstances.

In any case this Court is invested with the power to order or direct evidence to be taken at the hearing of any matter to establish any particular fact. This would appear to be the general tenor of Order 39 rule 3(2) of the High Court (Civil Procedure) Rules, 1964. Further I would be very reluctant to give to section 50(2) and (4) of the Magistrates Court Act any restrictive interpretation which would have the effect of excluding the court's power to order or direct evidence to establish a fact at a hearing such as the present one.

I only need to add that the conclusion I reach on the extent of the Minister's powers under section 7 of the Customs and Excise Act (Cap. 58) in this case would not have been affected by the fact that the new Schedule is in fact in existence.

For the above reasons, I exercise my revisional powers under s. 50(2) of the Magistrates Court Act^a (Cap.3) and dismiss the petition and the orders made by the learned Magistrate stand.

(G.J.B. Muria) JUDGE

Appendix 7 – Section 62 of the Interpretation and General Provision Act [Cap. 85]

PART X SUBSIDIARY LEGISLATION

Subsidiary legislation to be laid before Parliament

62.-(1) Subject to subsection (3), subsidiary legislation made under an Act after the commencement of this Act shall be laid before Parliament.

(2) If Parliament passes a resolution, within three months after any subsidiary legislation is laid before it, to the effect that the subsidiary legislation is annulled, the subsidiary legislation shall thereupon cease to have effect, but without prejudice to the validity of anything previously done under the subsidiary legislation.

(3) Subsection (1) does not apply to any subsidiary legislation a draft of which is laid before, and approved by resolution by, Parliament before the making of the subsidiary legislation.

Appendix 8 – Section 59 of the national Constitution.

Part II - Legislation and Procedure in Parliament

Power to make laws

59.-(1) Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Solomon Islands.

(2) The laws referred to in this section shall take the form of Bills passed by Parliament; and when a Bill has been passed by Parliament it shall be presented to the Governor-General who shall assent to it forthwith on behalf of the Head of State, and when such assent is given the Bill shall become law.

(3) No law shall come into operation until it has been published in the Gazette but Parliament may postpone the coming into operation of any such law and may make laws, subject to section 10(4) of this Constitution with retrospective effect.

(4) All laws made by Parliament shall be styled "Acts of Parliament" and the words of enactment shall be "Enacted by the National Parliament of Solomon Islands".