

CUSTOMS RULES 1991

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1 Name

These are the Customs Rules 1991.

Preliminary Provisions

2 Interpretation

In these Rules —

“alcoholic beverage” means any beverage that contains alcohol;

“ammunition” means ammunition for a firearm;

“carrier” includes every person engaged in carrying goods for hire or reward by any means, and whether by land, water, or air;

“customs control area”, in relation to any island of Tokelau, means any area on that island that is designated as a customs control area by the Pulenuke of the village of that island;

“explosive” does not include coloured flares, fog signals, or fireworks;

“export” means to take or cause to be taken out of Tokelau;

“export permit” means a permit granted under rule 9 authorising the person to whom it is granted to export any goods;

“firearm” includes an air gun;

“goods” means any movable property;

“historical artefact” means —

- (i) any chattel, carving, object, or thing that relates to the history, art, culture, or traditions of the Tokelauan inhabitants of Tokelau and is of historical importance;
- (ii) any chattel, carving, object, or thing that has been discovered in Tokelau through archaeological investigation;
- (iii) any chattel, carving, object, or thing that is for the time being declared by any village rule to be of special significance in Tokelauan culture;

“import” means bring or cause to be brought into Tokelau;

“import duty” means the duty imposed by rule 12;

“import permit” means a permit granted under rule 9 authorising the person to whom it is granted to import any goods;

“offensive weapon” means any article made or altered for use for causing bodily injury;

“organotin” means any substance that is characterised by at least one direct carbon-tin bond and includes tributyltin and triphenyltin;

“organotin antifouling paint” means any paint —

- (i) that is intended for use in the control of fouling organisms on boat hulls or other underwater structures; and
- (ii) that contains any organotin;

“ozone depleting substance” means any substance specified or described in the Fifth Schedule;

“package” includes every means by which goods for carriage may be cased, covered, enclosed, contained, or packed;

“prohibited plant” means —

- (i) the whole or any part of any cannabis plant, except where all the resin has been extracted;
- (ii) the whole or any part of any fruit or seed of any cannabis plant;
- (iii) the whole or any part of any opium poppy;
- (iv) the whole or any part of any coca leaf, except where all ecgonine, cocaine, and any other ecgonine alkaloids have been removed;
- (v) any extract from, or any derivative or product of, or any substance, preparation, or mixture containing, any plant, fruit,

seed, or leaf referred to in any of subparagraphs (i) to (iv) of this definition, except where the extract, derivative, product, substance, preparation, or mixture is in such a form that it has no, or a negligible, risk of abuse;

“psychotropic drug” means —

- (i) any substance (natural or synthetic) or preparation for the time being specified or referred to in Schedule I or Schedule II or Schedule III or Schedule IV of the Single Convention on Narcotic Drugs, done at New York on the 30th day of March 1961;
- (ii) any substance (natural or synthetic) or natural material for the time being specified or referred to in Schedule I or Schedule II or Schedule III or Schedule IV of the Convention on Psychotropic Substances, done at Vienna on the 21st day of February 1971;
- (iii) any substance or preparation containing any proportion of one or more of the substances or materials referred to in subparagraph (i) or subparagraph (ii) of this definition but does not include a prohibited plant;

“territorial limits of Tokelau” means the outer limits of the territorial sea of Tokelau;

“tobacco” includes cigars, cigarettes, and snuff;

“village rule” means a rule made pursuant to rule 18 of the Village Incorporation Rules 1986.

3 Definition of “importation”

- (1) For the purposes of these Rules, goods shall be deemed to be imported into Tokelau if and as soon as they are brought or come within the territorial limits of Tokelau from any country outside those limits.
- (2) Ship's or aircraft's stores, and goods whose destination is outside the territorial limits of Tokelau, shall not be deemed to have been imported unless, while they are within those limits, they are unloaded from the vessel or aircraft in which they arrived there.

4 Presumption that goods imported or exported for commercial purposes

Where any goods are imported into, or exported from, Tokelau in a quantity that is larger than would normally be required for the private purposes of the importer or exporter, as the case may be, those goods shall be presumed, for the purposes of these Rules, to be imported or, as the case may be, exported for commercial purposes unless and until the contrary is proved.

Importation of Goods

5 Prohibited imports

No person shall import any of the goods specified in the First Schedule.

6 Imports requiring import permit

- (1) Subject to these Rules, no person shall import any of the goods specified in the Second Schedule except in accordance with an import permit.
- (2) Nothing in paragraph (1) applies in respect of any explosive, firearm, or ammunition that is dealt with in accordance with rule 15 of the Police Rules 1989.

7 Prohibition or restriction for importation of drugs or poisons

- (1) The Council for the Ongoing Government may, by notice published in accordance with paragraph (2), prohibit the importation into Tokelau of any specified drug or poison, either absolutely or except in accordance with an import permit.
- (2) A copy of every notice issued under paragraph (1) —
 - (i) shall, as soon as practicable after it is issued, be publicly notified at the Office for Tokelau Affairs at Apia in Samoa, and at the Administration Office of each village in Tokelau; and
 - (ii) shall be printed in Tokelauan and in English and public notification be given of it.
- (3) Every notice under paragraph (1) shall come into force on the date specified for that purpose in the notice, but no such notice shall come into force until a copy of that notice is publicly notified in accordance with paragraph (2)(i).
- (4) Any notice under this rule may be in like manner amended or revoked at any time.

Export of Goods

8 Exports requiring export permit

Subject to these Rules, no person shall export any of the goods specified in the Third Schedule except in accordance with an export permit.

Permits to Import or Export Goods

9 Permits to import or export goods

- (1) Any person who wishes to import goods of any of the kinds specified in the Second Schedule may apply to the Council for the Ongoing Government for the issue of a permit to import those goods.
- (2) Any person who wishes to export goods of any of the kinds specified in the Third Schedule may apply to the Council for the Ongoing Government for the issue of a permit to export those goods.
- (3) Every application under paragraph (1) or paragraph (2) shall be made in such manner as the Council for the Ongoing Government may specify, either generally or in any particular case, and shall be accompanied by such information as the Council for the Ongoing Government may reasonably require, either generally or in any particular case, in order to determine whether to issue the permit.
- (4) Where any application for an import permit or an export permit is made to the Council for the Ongoing Government pursuant to paragraph (1) or paragraph (2), the Council for the Ongoing Government may, after consultation with such Taupulega as the Council for the Ongoing Government considers appropriate, issue the permit, or decline to do so.
- (5) Every permit issued under this rule may be issued subject to such conditions as the Council for the Ongoing Government thinks fit and as are specified in the permit.

10 Revocation or modification of permit

The Council for the Ongoing Government may at any time, by notice in writing to any person to whom an import permit or an export permit has been issued under these Rules —

- (i) revoke that permit;
- (ii) modify the terms, conditions, or restrictions that apply to that permit.

11 Production of permit

For the purposes of these Rules, every person to whom any import permit or export permit has been granted shall —

- (i) in the case of an export permit, before exporting the goods to which the permit relates; or
- (ii) in the case of an import permit, at the time of landing the goods to which the permit relates,

produce the permit, or cause the permit to be produced, to a constable.

Import Duty

12 Import duty

(1) There is hereby imposed a duty on —

- (i) all goods imported for commercial purposes other than for sale in a village store;
- (ii) all imported alcoholic beverages;
- (iii) all imported tobacco.

(2) Where any goods fall within more than one of the categories of goods on which import duty is imposed, those goods shall be liable to import duty in respect of each category of goods into which they fall.

(3) [Spent]

13 Rates of import duty

(1) The General Fono may from time to time prescribe the rates of import duty and public notification be given of it.

(2) The rates of import duty shall be given public notification at least 28 days before the date on which they are to come into force.

(3) Any notice under this rule may be in like manner amended or revoked at any time.

(4) Where an amendment alters the rate of import duty, the notice effecting that amendment shall be given public notification at least 28 days before the date on which the amendment comes into force.

(5) If no rates of import duty are for the time being prescribed under paragraph (1), the rates of import duty shall be as specified in the Fourth Schedule.

14 Valuation of goods

- (1) Where import duty is imposed on any goods according to their value, that value shall be taken to be the fair market value of the goods when sold for cash at retail in the country from which the goods are exported to Tokelau at the time when they are so exported.
- (2) If in the opinion of the Council for the Ongoing Government it is for any reason impossible, inequitable, or impracticable to determine the value of goods for import duty purposes in accordance with paragraph (1), the Council for the Ongoing Government shall determine the value for import duty purposes of the goods in such manner and at such sum as the Council for the Ongoing Government considers just.
- (3) The determination of the Council for the Ongoing Government as to the value of any goods for import duty purposes shall be final.

15 Recovery and collection of import duty

- (1) Import duty on all goods imported shall become due and payable, and shall be paid to the Council for the Ongoing Government, immediately on their importation.
- (2) Notwithstanding anything in paragraph (1), the Council for the Ongoing Government may from time to time agree with any person who wishes to import goods on which import duty would be payable to accept payment of that import duty in advance of the importation of the goods.
- (3) Import duty shall be owed by the importer, and, if there are several importers, then jointly and severally by all of them.
- (4) Import duty shall constitute a debt due to the Crown, and shall be recoverable on behalf of the Crown at the suit of the Council for the Ongoing Government.

16 Refund of duty

- (1) If the Council for the Ongoing Government is satisfied that any import duty has been paid in error, whether of law or fact, the Council for the Ongoing Government shall refund that duty.

- (2) Where the Council for the Ongoing Government is satisfied that any goods have been destroyed, pillaged, or lost without the wilful act or the negligence of the importer, or any employee or agent of the importer —
- (i) in the case of goods in respect of which import duty has been paid in advance of their importation, at any time before those goods are imported, or, if the goods have been imported, at any time before those goods cease to be subject to customs control; or
 - (ii) in any other case, at any time after those goods are imported and before those goods cease to be subject to customs control,
- no import duty shall be payable in respect of those goods, and, if paid, it shall be refunded.
- (3) Where the Council for the Ongoing Government is satisfied that any imported goods —
- (i) have been damaged or have deteriorated in condition before importation; or
 - (ii) are found, before they cease to be subject to customs control, to be of faulty manufacture; or
 - (iii) have been damaged or have deteriorated in condition after importation and while subject to customs control, without the wilful act or the negligence of the importer, or any employee or agent of the importer,
- the Council for the Ongoing Government may remit to the importer such amounts of the import duty paid in respect of those goods as the Council for the Ongoing Government thinks fit, or may refund that duty.

Miscellaneous Provisions

17 Landing of goods and persons

- (1) Subject to paragraph (2), no person who is for the time being in charge or command of any vessel or aircraft shall —
- (i) where that vessel or aircraft arrives in Tokelau for the first time on any journey from any country outside Tokelau, cause or permit any goods to be unloaded, or any of its crew or passengers to disembark from the vessel or aircraft; or

- (ii) where the next destination of that vessel or aircraft is any country outside Tokelau, cause or permit any goods to be loaded into, or any of its crew or passengers to board, that vessel or aircraft; or
 - (iii) cause or permit any goods that are to be exported and are subject to customs control to be loaded into that vessel or aircraft; or
 - (iv) cause or permit any imported goods that are subject to customs control to be unloaded from that vessel or aircraft,
other than at a place and in a manner that is authorised by a constable.
- (2) Nothing in paragraph (1) applies if the loading or unloading of any goods, or the disembarking or boarding of any crew or passengers, is necessary for reasons of health or safety, or for the preservation of life or property.

18 Customs control

For the purposes of these Rules, goods shall be subject to customs control as follows —

- (i) in the case of all goods imported, from the time of importation until a constable discharges them from customs control, or until they are exported to a country outside Tokelau, whichever occurs first;
- (ii) in the case of all goods for export, from the time they are brought to any customs control area for export, until they are exported to a country outside Tokelau.

19 Powers of constables in relation to customs

Any constable may, for the purpose of ensuring compliance with these Rules —

- (i) examine or cause to be examined any goods that are subject to customs control, and for that purpose may open or cause to be opened any package in which such goods are contained;
- (ii) board any vessel or aircraft that is within the territorial limits of Tokelau; and remain on board such vessel or aircraft for such period as may be necessary to enable the constable to exercise or perform, in relation to that vessel or aircraft, any of that constable's powers, duties, or functions under these Rules;

- (iii) search any vessel or aircraft that is within the territorial limits of Tokelau, and for that purpose may, by force if necessary, enter any part of the vessel or aircraft, and open any package, locker, or other place, and examine all goods found on the vessel or aircraft;
- (iv) question any person who is on board any vessel or aircraft, or who has within 48 hours disembarked from any vessel or aircraft, as to whether the person has, or within that period of 48 hours has had, in that person's possession any of the goods specified in the First Schedule or the Second Schedule or the Third Schedule or any prohibited plant or psychotropic drug;
- (v) where the constable has reasonable cause to suspect that any person who is on board any vessel or aircraft, or who has within 48 hours disembarked from any vessel or aircraft, has in that person's possession any of the goods specified in the First Schedule or the Second Schedule or the Third Schedule or any prohibited plant or psychotropic drug, detain and search that person, and open any package and examine any goods carried by that person, and may for that purpose use such force as may be reasonably necessary to effect that detention, search, or examination.

20 Restrictions on power of search

- (1) No person shall be searched pursuant to rule 19(v) by or in the presence of any person of the opposite sex.
- (2) Where any constable wishes to search any person pursuant to rule 19(v), and no constable of the same sex as that person is available to carry out the search, that search may, subject to paragraph (1), be carried out by any person authorised by the Tokelau Administration, either generally or for the particular case.
- (3) Any constable who searches a person pursuant to rule 19(v) may, subject to paragraph (1), have the assistance of such person as that constable thinks necessary.
- (4) Where —
 - (i) any constable wishes to examine any goods pursuant to rule 19;and

- (ii) the owner, consignor, or consignee of those goods is known, or can be readily ascertained, and is available,
that constable shall not examine those goods except in the presence of that owner, consignor, or consignee.

21 Forfeiture of goods

- (1) The following goods shall be forfeited —
 - (i) all goods imported in contravention of rule 5 or rule 6;
 - (ii) all goods exported or attempted to be exported in contravention of rule 8.
- (2) Any constable may seize any goods forfeited pursuant to paragraph (1), and may use such force as is reasonably necessary for the purpose of effecting the seizure.
- (3) All goods seized pursuant to paragraph (2) shall be taken to such place of security as the Tokelau Administration may from time to time direct, either generally or in any particular case.
- (4) Every constable who seizes any goods pursuant to paragraph (2) shall make and preserve a written record of the details of the seizure and the disposal of the goods.

22 Disposal of forfeited goods

- (1) All goods forfeited under paragraph (1) of rule 21 shall, on forfeiture, become the property of —
 - (i) if the goods are seized pursuant to paragraph (2) of that rule on any island of Tokelau, the village of that island; or
 - (ii) if the goods are seized pursuant to paragraph (2) of that rule within the territorial sea of Tokelau, the village of the island that is nearest to the point at which the goods are seized.
- (2) In the event of any dispute as to which village of Tokelau is entitled to any goods that are forfeited under rule 21(1), the matter shall be determined by the Council for the Ongoing Government, whose decision shall be final.
- (3) All goods forfeited under rule 21(1) to any village shall, if the Faipule of the village so directs, be sold, destroyed, or otherwise disposed of.

23 Protection of constables, etc

No proceedings, civil or criminal, shall lie against any constable, or against the Council for the Ongoing Government or any employee or agent of the Tokelau Administration, or against the Government of New Zealand or any of its employees or agents, in respect of any thing done or omitted in the exercise or performance in good faith of any function, duty, or power under these Rules.

Offences

24 Offences

Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding 3 penalty units who —

- (i) in contravention of rule 5, imports any of the goods specified in the First Schedule; or
- (ii) in contravention of rule 6, imports any of the goods specified in the Second Schedule; or
- (iii) in contravention of rule 8, exports or attempts to export any of the goods specified in the Third Schedule; or
- (iv) without lawful excuse, is knowingly concerned in the loading, unloading, landing, carriage, or concealment of any goods that the person knows have been imported in contravention of rule 5 or rule 6, or any goods that the person knows are intended to be exported in contravention of rule 8; or
- (v) for the purpose of procuring an import permit or an export permit, whether for that person's own benefit or for the benefit of any other person, makes any statement knowing that it is both incorrect and material in any information or particulars furnished to the Council for the Ongoing Government pursuant to rule 9, or knowingly makes any material omission from any information or particulars so furnished; or
- (vi) without lawful excuse, commits any breach of, or fails in any respect to comply with, any condition specified by the Council for the Ongoing Government in respect of any import permit or export permit granted to that person; or
- (vii) without lawful excuse, fails to comply with rule 11; or

- (viii) imports, ships, unships, lands, conveys, or otherwise deals with any goods with intent to evade the payment of import duty, or full import duty, on those goods; or
- (ix) without lawful excuse, contravenes rule 17; or
- (x) when required under subparagraph (iv) of rule 19 to answer any question put to that person, fails, without lawful excuse, to answer it, or gives any information in response to a question under that paragraph knowing that the information is false or misleading; or
- (xi) without the permission of a constable, and without lawful excuse, moves any goods that are subject to customs control, or makes any alteration in the condition of such goods or in the packages containing them; or
- (xii) wilfully resists, obstructs, intimidates, or endeavours to intimidate any constable acting in the exercise or performance of any power, duty, or function conferred or imposed on that constable by these Rules.

25 Offence to import prohibited plant or psychotropic drug

- (1) Subject to paragraph (2), every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding 20 penalty units who imports, or knowingly assists in the importation of —
 - (i) any prohibited plant; or
 - (ii) any psychotropic drug.
- (2) Notwithstanding anything in paragraph (1), but subject to rules 5 and 6 —
 - (i) any medical practitioner, dentist, pharmacist, or veterinary surgeon, acting as such in the course of that person's practice or employment, may import any prohibited plant or psychotropic drug;
 - (ii) any person for whom a prohibited plant or psychotropic drug is lawfully supplied, outside Tokelau, by a medical practitioner or dentist, or prescribed by a medical practitioner or dentist and lawfully supplied outside Tokelau, may import that prohibited plant or psychotropic drug;

- (iii) any person having the care of any person for whom a prohibited plant or psychotropic drug is lawfully supplied, outside Tokelau, by a medical practitioner or dentist, or prescribed by a medical practitioner or dentist and lawfully supplied outside Tokelau, may import that prohibited plant or psychotropic drug on behalf of that person;
- (iv) any person having the care of an animal for which a prohibited plant or psychotropic drug is lawfully supplied, outside Tokelau, by a veterinary surgeon, or prescribed by a veterinary surgeon and lawfully supplied outside Tokelau, may import that prohibited plant or psychotropic drug for that animal;
- (v) any carrier, and any agent or employee of a carrier, may import any prohibited plant or psychotropic drug in the course of carriage to such extent as is necessary or incidental to the business as a carrier.

Revocations

26 Revocations

[Spent]

SCHEDULE 1

rule 5

PROHIBITED IMPORTS

- 1 Counterfeit or false—
 - (i) Coins or banknotes;
 - (ii) Cheque forms or promissory notes.
 - 2 Indecent or obscene documents or articles.
 - 3 Offensive weapons.
 - 4 Any drug or poison the importation of which is absolutely prohibited by any notice issued under rule 7.
 - 5 Ozone depleting substances in a non-processed form (whether alone or in a mixture), but not including any ozone depleting substance that is in a manufactured product (other than in a container used for the transportation or storage of the substance).
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SCHEDULE 2

rule 6

IMPORTS REQUIRING IMPORT PERMIT

- 1 Any drug or poison the importation of which is prohibited by any notice issued under rule 7 except in accordance with an import permit.
 - 2 Explosives, firearms, ammunition.
 - 3 Motorised vehicles.
 - 4 Refrigeration equipment, air-conditioning equipment, and fire-fighting equipment, where the equipment contains, or is designed to use, any ozone depleting substance.
 - 5 Aerosols for commercial purposes, where the aerosol contains any ozone depleting substance.
 - 6 Organotin antifouling paint.
 - 7 Goods for commercial purposes other than sale in a village store.
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SCHEDULE 3

rule 8

EXPORTS REQUIRING EXPORT PERMIT

- 1 Goods for commercial purposes (other than copra or handicrafts, where the copra or handicrafts are produced in Tokelau and are intended to be sold by the Tokelau Administration either on its own behalf or as agent for any other person).
 - 2 Historical artefacts.
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SCHEDULE 4

rule 13(5)

RATES OF IMPORT DUTY

GOODS	RATE OF DUTY
Goods for commercial purposes other than for sale in a village store	6 percent ad valorem
Alcoholic beverages	109 percent ad valorem
Tobacco	110 percent ad valorem

SCHEDULE 5

rule 2

OZONE DEPLETING SUBSTANCES

- 1 The following substances, namely—
 - (i) Trichlorofluoromethane (CFC-11);
 - (ii) Dichlorodifluoromethane (CFC-12);
 - (iii) 1,1,2-Trichloro-1,2,2-trifluoroethane (CFC-113);
 - (iv) 1,2-Dichlorotetrafluoroethane (CFC-114);
 - (v) Chloropentafluoroethane (CFC-115);
 - (vi) Bromochlorodifluoromethane (halon-1211);
 - (vii) Bromotrifluoromethane (halon-1301);
 - (viii) Dibromotetrafluoroethane (halon-2402);
 - (ix) 1,1,1-trichloroethane (methyl chloroform);
 - (x) Carbon tetrachloride;
 - (xi) Chlorodifluoromethane (HCFC-22).

- 2 Any other substance for the time being specified or referred to in Annex A or Annex B or Annex C to the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal on the 16th day of September 1987.