CUSTOMS REGULATIONS 2015
SAMOA

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Schedule
Pursuant to section 333 of the Customs Act 2014 (the Act), I, TUI ATUA TUPUA TAMASESE EFI, Head of State, acting on the advice of Cabinet, make these Regulations—

Dated this 19 January 2015.

(Tui Atua Tupua Tamasese Efia)
HEAD OF STATE

REGULATIONS

PART 1
PRELIMINARY

1. Citation and commencement—(1) These Regulations may be cited as the Customs Regulations 2015, and commence on the date they are signed by the Head of State.

2. Interpretation—In these Regulations, unless the context otherwise requires:

"fee" or "charge" means the fee or charge set out in the Schedule;
"working hours" means the working hours of Customs specified under regulation 3.

PART 2
ADMINISTRATION

3. Working hours of Customs—The working hours, for the purposes of the Act are:

(a) from 9 am to 5 pm, from Monday to Friday (excluding public holidays), except as provided in paragraph (b);

(b) at a Customs airport, zero unless otherwise determined by the Comptroller.
4. Charges for attendance of Customs officers outside working hours of Customs—(1) For the purpose of the Act, if a Customs officer is required to attend at any time outside working hours, the person-in-charge, must pay an hourly charge (or minimum charge) for that attendance as set out in the Schedule.

(2) The Comptroller may exempt a person or class of persons from the requirement to pay a charge pursuant to this regulation.

(3) In this regulation, “person-in-charge”:
   (a) means the person-in-charge of or owner of a craft; and
   (b) includes—
      (i) the agent of the person-in-charge or of the owner of the craft; or
      (ii) any importer, exporter, or licensee of a Customs controlled area, or other person concerned, for whom or on whose business the attendance is, in the opinion of the Comptroller, necessary.

5. Expenses of officers—For any attendance for the purposes of the Act, if any reasonable expenses are incurred or will be incurred by any Customs officer, the Comptroller may require those expenses to be met by the person-in-charge, as defined in regulation 4(3).

PART 3
CUSTOMS CONTROLLED AREAS

6. Areas required to be licensed as Customs controlled areas—An area used for the following purpose is prescribed pursuant to section 11(f) of the Act to be licensed as Customs controlled areas:
   (a) the storage, by or for one of the following, of beer manufactured in Samoa, where that beer cannot be physically accommodated within the manufacturing area in which it was manufactured—
      (i) the manufacturer of the beer;
      (ii) the first owner of the beer, if that person is not also the manufacturer of the beer;
   (b) the storage of imported goods, or goods manufactured in a manufacturing area, of a kind that are subject to duty, and on which
such duty has not been paid, pending the sale of those goods to—
(i) persons departing to or arriving from a country outside Samoa; or
(ii) persons exercising an entitlement to the supply of goods free of duty under the Act, or any other Act.

7. Annual licence fees— (1) The annual licence fee payable for each type of Customs controlled area specified in Part 2 of the Schedule is the corresponding amount specified for that Customs controlled area in Part 2 of that Schedule.

(2) Subject to sub-regulation (3), the annual licence fee is payable on or before 1 January in any year.

(3) If a licence is granted within the year, the annual licence fee is to be prorated and be paid within 5 working days of the date on which notice is given of the decision to grant the licence.

(4) If a licence for a Customs controlled area is revoked or surrendered under the Act, the whole or part of the annual licence fee may be refunded, remitted, or waived by the Comptroller.

8. Storage charges— The licensee of a Customs controlled area must not charge for the reception or storage of imported goods in a Customs controlled area during the period of 24 hours (exclusive of any day that is not a working day) from the time the goods are received into that area.

PART 4
ARRIVAL AND DEPARTURE OF GOODS, PERSONS, AND CRAFT

9. Inward cargo transaction fee— (1) An inward cargo transaction fee is payable by the person who gives the Customs advance notice of the matters in section 22(1)(a)(v) and (vi) of the Act (which relate to cargo for discharge within Samoa (whether commercial or non-commercial) and commercial cargo not intended for discharge within Samoa).

(2) The purpose of inward cargo transaction fee is to meet the Customs’ costs and expenses when carrying out the following duties on importation of goods:
(a) processing the information contained in an advance notice or document described in sub-regulation (1);

(b) identifying and assessing the nature of any risk associated with, or arising from, the cargo or goods to which an advance notice or document described in sub-regulation (1) relates;

(c) inspecting consignments identified under paragraph (b) as giving rise to risk.

(3) The inward cargo transaction fee is:

(a) payable no later than the 20th day of the month following the month in which advance notice of the matter in which notice under section 22(1)(a) (v) and (vi) was given to the Customs; and

(b) not payable (or if already paid must be refunded) if the advance notice or document to which it relates is cancelled with the permission of a Customs officer.

10. Delivery time of outward report of craft— An outward report must be delivered to the Customs under section 38(1)(a) of the Act:

(a) for a ship or boat, not less than 4 hours before the intended time of departure of the craft to which it relates; and

(b) for an aircraft, not less than 30 minutes before the intended time of departure of the craft to which it relates.

PART 5
CUSTOMS ACCESS TO INFORMATION

11. Access to information on border-crossing craft and border-crossing persons - A person who is required to give the Customs access to information under section 46 or 47 of the Act must provide the Customs with electronic access to the required information in a way that:

(a) enables the Customs to access the information from within Samoa without the need to make an international connection; and

(b) allows for a physical connection—
(i) with any Customs electronic system used for the purpose of viewing the required information; and
(ii) that enables the Customs to view the information directly from a location designated by the Customs for that purpose.

12. Access to business records—A person to whom section 112 of the Act applies must give the Customs electronic access to the records that the person is required to keep under section 111 of the Act, in a way that:
(a) enables the Customs to access the information from within Samoa without the need to make an international connection; and
(b) allows for a physical connection—
(i) with any Customs electronic system used for the purpose of viewing and using the required information; and
(ii) that enables the Customs to view and use the information directly from a location designated by the Customs for that purpose.

PART 6
ENTRY AND ACCOUNTING FOR GOODS

13. Fees for provisional entries—The importer or any other person concerned must pay the provisional entry fee.

14. Export entry transaction fee—(1) A person who makes an export entry under section 74(1) of the Act must pay an export entry transaction fee on goods exported.
(2) The export entry transaction fee is payable to the Customs to assist in meeting costs and expenses incurred by the Customs in undertaking the following functions and duties relating to the exportation of goods:
(a) processing the information contained in an export entry;
(b) identifying and assessing the nature of any risk associated with, or arising from, the goods to which an export entry relates;
(c) inspecting consignments identified under paragraph (b) as giving rise to risk.
(3) The export entry transaction fee is:
(a) payable at the time the export entry is passed; and
(b) not payable (or if already paid must be refunded) if the export entry to which it relates is cancelled under section 67 of the Act, or has been exempted by the Comptroller.

15. When entry of goods for export deemed to be made—An entry of goods to which section 74(1) of the Act applies is taken to have been made for the purposes of the Act:

(a) for an entry made by means of an electronic message, on the date and at the time that the Customs computerised entry processing system generates a lodgement number in respect of the receipt of that message; and
(b) in any other case, when the entry has been received by the Customs.

PART 7
ASSESSMENT AND RECOVERY OF DUTY

16. Business records—(1) The business records required to be kept under section 111 of the Act must be those records that are generated by, or that otherwise come within the possession or control of, the licensee, importer, or exporter, or an agent thereof, as the case may be, that are necessary to verify:

(a) any entry required to be made under the Act; or
(b) the importation or exportation of any goods; or
(c) the custody or movement of any goods subject to the control of the Customs; or
(d) the manufacture of any goods subject to excise duty.

(2) Without limiting sub-regulation (1), the following records are required to be kept:

(a) shipping, importation, exportation, and transportation documentation including the following—
   (i) all entries required to be made under the Act;
(ii) entry documentation (including any declaration, certificate, permit or licence);
(iii) vouchers;
(iv) bills of lading, waybills, air waybills or consolidator waybills;
(v) shipping instructions or freight forwarders instructions;
(vi) insurance papers concerning any goods;
(vii) consignment notes;
(viii) import charges accounting details (including agent's fees, customs charges, wharf charges, and other fees and charges);
(ix) packing lists;
(x) manifests;
(xi) outturn records;
(xii) goods tally records;

(b) ordering and purchase documentation including the following—
(i) orders or confirmations of orders;
(ii) purchase agreements;
(iii) products specifications;
(iv) contracts or conditions of purchase;
(v) royalty agreements, pricing agreements, negotiations on pricing agreements or warranty agreements;
(vi) invoices or proforma invoices;
(vii) commissions and brokerage agreements and details;
(viii) correspondence and any communication between the importer or exporter and any party related to the transaction;

(c) manufacturing, stock, and resale documentation including the following—
(i) inwards goods register;
(ii) stock register;
(iii) sales records;
(iv) receipts journal;
(v) costing records;
(vi) production records;

(d) banking and accounting information including the following—
(i) letters of credit, applications for letters of credit or bank drafts;
(ii) remittance advice;
(iii) receipts or cash books;
(iv) credit card transactions;
(v) telegraphic money transfers;
(vi) offshore monetary transactions;
(vii) cheque records;
(viii) evidence of payments by any other means, including information detailing non-cash compensation transactions;
(e) chart and codes of accounts, accounting instruction manuals, and system and programme documentation that describes the accounting system used by the licensee, importer, exporter, or agent;
(f) papers, books, registers, disks, films, tapes, sound tracks, and other devices or things in or on which information contained in the records described in paragraphs (a) to (e) are recorded or stored.

(3) Despite subregulation (2), but subject to subregulation (1), the licensee of a Customs controlled area licensed for the purpose specified in regulation 6(a):
(a) must keep or cause to be kept the records specified in subregulation (2)(a), (b), (c) and (f); and
(b) is not required to keep other records specified in that subregulation.

(4) The records required to be kept by section 111 of the Act are to be kept for a period not exceeding 7 years.

17. Goods damaged or deteriorated in condition— The authority of the Comptroller under section 127(1)(a) of the Act to refund or remit duty on goods that are damaged or have deteriorated in condition while subject to the control of Customs must be subject to the following conditions:

(a) the damage or deterioration occurred while the goods were subject to the control of Customs;
(b) the Comptroller must be satisfied that the damage or deterioration was not caused by the wilful act or negligence of the importer, or licensee of any Customs controlled area where the goods had been stored, or of any of the employees, or persons acting on behalf of the importer or licensee;
(c) the amount of the refund or remission of duty on any goods must be in proportion to the extent to which the Comptroller is satisfied that the goods are damaged or deteriorated in condition;

(d) despite paragraph (b), duty must not be refunded or remitted in full unless the goods have been destroyed under the supervision of the Customs pursuant to any directions issued by the Comptroller, or have been exported.

18. Goods destroyed, pillaged, or lost— The Comptroller may not refund or remit duty on any goods under section 127(1)(a) of the Act, unless satisfied:

(a) that the goods were destroyed, pillaged, or lost before their release from the control of Customs; and

(b) that the destruction, pillage or loss of the goods was not caused by the wilful act or negligence of their importer, the licensee of the Customs controlled are where they had been stored, or any employee of or a person acting on behalf of their importer or any such licensee; and

(c) for goods destroyed, pillaged, or lost after being removed from one customs controlled area (the first area) and before being delivered to another (the second area)—

(i) that the Comptroller had, before they were removed from the first area, given their importer or the licensee of the first area (as the case may be) written permission to remove them; and

(ii) if the permission had been given subject to conditions, that—

(A) their importer or the licensee of the first area (as the case may be) has kept a written record of the steps taken to comply with the conditions; and

(B) the conditions have been fully complied with; and

(iii) that the destruction, pillage, or loss of the goods was not caused by the wilful
act or negligence of any person involved in their removal from the first area, transport from the first area to the second area, or delivery to the second area.

19. Goods diminished in value—The authority of the Comptroller under section 127(1)(a) of the Act to refund or remit any duty on goods that have diminished in value prior to their release from the control of the Customs must be subject to the following conditions:

(a) the refund or remission of duty is restricted to goods that have diminished in value while stored in a Customs controlled area licensed for the purpose described in section 11(b) of the Act;

(b) for imported goods, duty may be refunded or remitted only to the extent to which the duty that would be payable on the goods if exported from the country of exportation to Samoa at the time at which the application for the refund or remission is made is less than the duty payable under section 94 of the Act;

(c) despite paragraphs (a) and (b), duty must not in any case be refunded or remitted in full unless the goods have been destroyed under the supervision of the Customs under any directions issued by the Comptroller.

20. Goods of faulty manufacture—The authority of the Comptroller under section 127(1)(b) of the Act to refund or remit duty on any goods that are of faulty manufacture must be subject to the following conditions:

(a) the amount of the refund or remission on any goods must be in proportion to the extent to which the Comptroller is satisfied that the goods have diminished in value by reason of the fault in manufacture;

(b) despite paragraph (a), duty must not be refunded or remitted in full unless the goods have been destroyed under the supervision of the Customs in accordance with any directions issued by the Comptroller, or have been exported.
21. Goods abandoned to the State— The authority of the Comptroller under section 127(1)(c) of the Act to refund or remit duty on goods abandoned to the State must be exercised subject to the condition that the goods be disposed of or destroyed under the supervision of the Customs, in accordance with any directions issued by the Comptroller (including any direction that the disposal or destruction be undertaken at the expense of the importer or owner of the goods).

22. Samples allowed free of duty— (1) A sample of the bulk of goods that are subject to the control of the Customs may be delivered free of duty on the condition that, if required by the Comptroller, the goods are marked or put up in such a form as to render them unsuitable for sale.

(2) Samples of any goods that are a small importation of product intended for marketing purposes to indicate likely product demand, colour range, style, or similar purpose, may be delivered free of duty on the condition that, if required by the Comptroller, the goods are marked or put up in such a form as to render them unsuitable for sale.

23. Security for duty on goods temporarily imported— The condition under which a person giving security may be released from the provisions of that security for the purposes of section 130(2) of the Act is that, unless otherwise permitted by the Comptroller, written notice of an intention to export the goods must be given not less than 10 working days before the time at which the goods are due to be shipped for export.

24. Amount of drawback allowed— Subject to regulations 26, 27 and 28, the amount of duty allowed on drawback must be:

(a) the full amount of duty paid; or
(b) for goods used in Samoa (other than goods referred to in section 131(1)(c) of the Act or goods used only for trial, inspection, or demonstration), a lesser amount to be calculated pursuant to the following formula:

\[
\frac{a}{b} \cdot c
\]
where—

\[ a \] is the value that the Comptroller is satisfied fairly represents a depreciated value of the Customs value of the goods at the time drawback is claimed; and

\[ b \] is the Customs value for duty of the goods when imported into Samoa; and

\[ c \] is the duty originally paid on the goods.

25. **Conditions on which drawback allowed**—

(1) Except as provided in regulation 29 and 31, drawback of duty may be allowed subject to the following conditions:

(a) unless otherwise allowed by the Comptroller, written notice of not less than 10 working days is to be given of an intention to ship goods for export under drawback and the exporter must, when required by the Customs, make the goods available for examination;

(b) if imported or excisable goods are exported or are to be exported under drawback, the exporter must—

(i) show on the drawback entry the kind, number, and date of the entry on which duty was paid; and

(ii) if so required by the Customs, produce the invoice or invoices for that entry together with any other documents or particulars, as may be required by the Customs to verify the claim for drawback;

(c) on completion of the packing of the goods, the packages are—

(i) if so required by the Comptroller, be secured and sealed by a Customs officer, and be forthwith conveyed to the place of shipment and shipped; or

(ii) if not so forthwith conveyed and shipped, to be removed to some place of security approved by the Comptroller.

(2) The Comptroller may dispense with all or any of the requirements of subregulation (1)(b).

26. **Minimum amount of drawback allowable**—

(1) Subject to subregulation (2), the minimum amount of
drawback of duty allowable on goods for an entry is set out in the Schedule.

(2) The circumstance in which drawback below the minimum amount of drawback must not be allowed is if the goods for which the drawback of duty is claimed were exported by a person in the course of a business activity carried on by that person.

27. Minimum amount of duty collectable— (1) The amount of duty below which duty need not be collected on any goods is set out in the Schedule.

(2) The circumstances in which duty below the minimum amount need not be collected are:

(a) when goods are imported by a member of the crew of any craft that arrives in Samoa, and are declared on the crew declaration;

(b) when an entry for home consumption in respect of the importation of goods is made, or deemed to be made, or when no entry is required.

(3) Despite subregulation (2), this regulation does not apply to:

(a) any tobacco products, that is, any goods specified in headings 24.02, 24.03, of the Tariff; or

(b) any alcoholic beverages, that is any goods specified in headings 22.03, 22.04, 22.05, 22.06, 22.08, of the Tariff; or

(c) any goods in respect of which a cause of forfeiture has arisen under the Act; or

28. Minimum amount of duty refundable - (1) Subject to subregulation (2), the minimum amount of duty refundable on goods for an entry is set out in the Schedule.

(2) The circumstance in which duty below the minimum amount must not be refunded is if the duty liability was incurred by a person in the course of a business activity carried on by that person.

PART 8
CUSTOMS RULINGS

29. Time for making of Customs ruling—For section 134(2) of the Act, the prescribed time is 150 days,
for an application made under section 133(1)(c) of the Act, and 40 days, in all other cases.

PART 9
POWERS OF CUSTOMS OFFICERS

30. Disposal of samples of goods—(1) This regulation applies to samples of goods that have been taken and used by the Customs for the purposes of section 174 of the Act.

(2) Within 20 working days from the date the notice was given to the importer of the goods of the results of the examination, weighing, analysis, or testing, the importer, may apply to the Customs to have the goods released.

(3) Subject to Parts 13 and 15 of the Act and subregulation (4), if an application is made under subregulation (2), the Customs must release the goods to the importer of the goods, who made the application.

(4) The Customs may decline an application to release the goods made under this regulation if the goods have been consumed in the course of the examination, weighing, analysis, or testing of the goods.

(5) The Comptroller may sell or destroy the goods if:
   (a) an application for the release of the goods is not made within the period specified in subregulation (2); or
   (b) an application is made, but the importer of the goods who made the application fails to retrieve the goods within a period of 20 working days after the date on which the application was received by the Customs.

(6) In this regulation, “importer” includes the exporter, or owner of goods.

31. Securities for payment of duty— One or more of the following securities are prescribed for the purposes of section 179 of the Act:
   (a) a bond (with or without sureties);
   (b) a bank guarantee to the State;
   (c) a deposit of cash.

PART 10
CUSTOMS BROKERS

32. Categories of broker’s licence—The categories of brokers licences are:
(a) a Customs broker’s licence (Individual);
(b) a Customs broker’s licence (General); and
(c) a Customs broker’s licence (Restricted).

33. Customs broker’s licence (Individual)—A Customs broker’s licence (Individual):
(a) may be granted under section 318 of the Act if the Comptroller is satisfied that the individual is a fit and proper person; and
(b) if granted, authorises the holder to carry on the business of a Customs broker at any port of entry.

34. Customs broker’s licence (General)—(1) A Customs broker’s licence (General):
(a) may be granted under section 318 of the Act to a company or overseas company operating in Samoa, incorporated under the Companies Act 2001 (“company”), if the Comptroller is satisfied that it has in its employment, at a port of entry at which it carries on or intends to carry on business as a Customs broker, at least one person who is the holder of a Customs broker’s licence (Individual); and
(b) subject to subregulation (2) and (3), authorises the company to carry on the business of a Customs broker at any port of entry.

(2) It is a condition of the licence that the company must not carry on its business of a Customs broker at any port unless it has in its employment at that port at least one person who is the holder of a Customs broker’s licence (Individual).

(3) Despite subregulations (1) and (2), the Comptroller may:
(a) authorise the company to carry on the business of a Customs broker at any specified port even if it is not in the company’s employment at that port a person holding a Customs agent’s licence (Individual); and
(b) vary, suspend or revoke the authority.

35. Customs broker’s licence (Restricted)—(1) A Customs agent’s licence (Restricted):
(a) may be granted under section 318 of the Act to any individual, company or other legal entity; and
(b) authorises the holder to act as a Customs broker for any transactions, or for any purposes or in any circumstances.

36. Supply of information—The Comptroller may require an applicant for a Customs broker’s licence supply any additional information for the purpose of this Part.

37. Conditions of broker’s licence—(1) Before deciding to suspend or revoke the licence under section 319, the Comptroller must:
(a) give to the holder of the licence at least 15 working days’ notice in writing of the intention to suspend or revoke the licence, and specifying briefly the grounds of the proposed suspension or revocation;
(b) consider any representation made by or on behalf of the holder within the period of the notice or any further period allowed by the Comptroller;
(c) give the holder, on request, an opportunity of being heard within the period or further period specified in this regulation.
(2) Despite other provision of this regulation, the Comptroller may, by notice, withdraw the licence forthwith pending a decision whether to suspend or revoke the licence; and the holder is taken not to have been a licensed Customs agent from the date the licence is withdrawn.
(3) The period of suspension of any Customs agent’s licence must not exceed a period of 12 months.

38. Licence fees—Subject to section 391(1)(e), the Customs broker’s annual licence fee:
(a) is payable on the first issue of the licence; and
(b) after that, on or before the 15 day of January in each succeeding year until the licence is surrendered or cancelled.

39. Approval of employees as agents—(1) The Comptroller may approve of any full-time employee of a licensed Customs broker acting as an authorised agent under section 320 of the Act.
(2) The Customs broker may, in writing, apply for the approval under subregulation (1).

PART II
MISCELLANEOUS

40. Postal articles—Postal articles (whether addressed to the same or different persons) posted by an exporter may, if the Comptroller so directs, be treated for the purposes of the Act as a single postal article consigned to a single person.

41. Sale of goods by Comptroller—(1) If the Comptroller is empowered under the Act to sell any goods, the Comptroller may sell the goods—
   (a) by tender; or
   (b) by auction.

   (2) A bid or tender may necessarily be accepted, and the goods may be re-offered until sold at a price satisfactory to the Comptroller.

   (3) The Comptroller, or any Customs officer authorised by the Comptroller, may act as an auctioneer in the sale of the goods.

   (4) Despite subregulation (1), the Comptroller may, in the case of perishable goods, accept any offer for purchase as may be made if the Comptroller is satisfied with the amount offered.

42. Proceeds of sale—(1) The proceeds of a sale under regulation 41 are to be distributed in the following order of priority:
   (a) to pay any costs and expenses incurred by the Customs in the storage or sale of the goods;
   (b) to pay of any duty that may be owing in respect of the goods;
   (c) to pay of Customs controlled area or other charges;
   (d) in payment of any freight costs due in respect of the goods if written notice claiming such freight costs has been given to the Comptroller;
   (e) the residue of any proceeds must be paid to the person, appearing to the Comptroller, to be entitled thereto.

   (2) If an entry has not been made for goods to which this regulation applies, the Comptroller may, when assessing any
duty for the purposes of subregulation (1)(b), value the goods at the price for which they are sold and is not required to assess the goods for duty under Schedule of the Regulations.

Schedule

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