FIJI REVENUE AND CUSTOMS SERVICE

# STANDARD INTERPRETATION GUIDELINE 2024-03

## CUSTOMS ACT 1986 – ADVANCED CARGO INFORMATION

This Standard Interpretation Guideline ("SIG") sets out Fiji Revenue and Customs Services' ("FRCS") operational practice in relation to policy changes announced in 2023/2024 National Budget in respect to the Advanced Cargo Information.

It is issued with the authority of the Comptroller of Customs and Excise (the Comptroller), who is also the Chief Executive Officer ("CEO") of FRCS.

Legislative references in this SIG are to the Customs Act 1986, unless otherwise stated.

This SIG is in effect from 1st August 2023 and may need to be reviewed in the event of any relevant legislative amendments.

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## PURPOSE

1. The purpose of this SIG is to provide practical guidance on CEO's interpretation regarding the requirement for cargo reporters to submit advanced cargo information for cargos on a ship or aircraft prior to arrival in Fiji.

2. The amendment will be in effect from 1 August 2023.

## INTRODUCTION

3. All ships or aircrafts due to arrive in a port or airport in Fiji since departing from a port or airport outside of Fiji are required to provide advanced cargo information for cargos on a ship or aircraft prior to arrival.

4. This allows for the timely and accurate exchange of supply chain information which will improve the ability of Customs to detect and deal with high-risk consignments. It also increases efficiency in the administration of goods therefore expediting the clearance and release of goods.

5. The advanced cargo information requirement is one of the core elements of the SAFE Framework of Standards which is an international instrument that balances facilitation and control, while promoting the security of global trade supply chains.

6. For clarification purposes, the following terms are defined in Section 2 of the Customs Act 1986 when applying this SIG:

**Cargo** is defined as 'includes all goods imported or exported in any aircraft or ship other than such goods as are required as stores for consumption or use by or for that aircraft or ship, its crew and passengers; and also includes the bona fide personal accompanied baggage of such passengers'.

**Cargo reporter** in relation to a ship or aircraft and in relation to a particular voyage or flight means –
a) the operator of the ship or aircraft;
b) a shipping agent in respect of the ship; or
c) a freight forwarder in respect of the ship or aircraft, for the voyage or flight.

**Customs agent** means a customs agent licensed under section 144(1) but does not include an agent licensed under section 148.

**Freight forwarder** means a business engaged in forwarding cargo, licensed under section 148A.

7. The following terms have been simplified in this SIG to explain the application:

**Cargo manifest** is defined as 'a listing of the goods comprising the cargo (freight) carried in a means of transport or in a transport-unit. The cargo manifest which gives the commercial particulars of the goods, such as transport document numbers, consignors, consignees, marks and numbers, number and kind of packages, descriptions and quantities of the goods, may be used in place of the cargo declaration.'[1]

**Cargo report** shall refer to the following documents relating to cargo:

i) Cargo manifest that is available to the airline agent or shipping agent.

ii) Master bill of lading or Master airway bill that is available to the airline agent, shipping agent or freight forwarder.

iii) House bill of lading or House airway bill that is available to the airline agent, shipping agent, freight forwarder or customs agent.

iv) Boarding documents for vessels including Crew List, Passenger List, Stores List, Parcel List, Crew Declaration, Dangerous Goods Declaration, Ozone Depleting Substances Form, Tonnage Declaration and Last Port Clearance.

v) Boarding documents for aircraft including General Declaration, Passenger List, Crew Declaration, Stores List and Landing Permit (for non-commercial flights).

**Bill of lading** refers to the document that establishes an agreement between two parties (usually the shipper and the carrier) for the shipment of goods.

**Airway bill** refers to a document prepared by or on behalf of a shipper that evidences the contract between the shipper and the carrier for the carriage of goods on an aircraft.

9. The examples used throughout this SIG are merely illustrative. They do not cover the infinite number of factual scenarios that may arise. The relevant legislative provisions must be considered and applied to each case on its particular facts.

   That is, conclusions should not be drawn by determining whether the facts of a particulars case may be analogous with examples, but rather on the basis of applying the correct tests established by the law.

10. The full text of the legislative provisions is contained in the Appendix.

## LEGISLATIVE ANALYSIS

11. Section 11B (1) of the Customs Act applies to all ships and aircrafts due to arrive in Fiji from a place outside of Fiji.

12. Section 11B (2) provides that all ships and aircrafts due to arrive at its first port or airport in Fiji since it last departed from a port or airport outside of Fiji must provide particulars of all goods –
    (a) that the cargo reporter has arranged to be carried on the ship or aircraft;
    (b) that will be unloaded in the first port or airport or any subsequent port or airport on the same voyage or flight; and
    (c) except goods that are accompanied personal or household effects of a passenger or crew member or goods that are ship's stores or aircraft's stores.

[1] WCO Glossary of International Customs Terms

**Example 1**

Shipping Agent A is shipping cargo from New Zealand to Fiji. The ship will make its first stop at the Suva port then the cargo will finally be unloaded at Lautoka port. Is Shipping Agent A required to provide advanced cargo information before it reaches the Suva port or its subsequent port in Lautoka?

**CEO's Position:**

Shipping Agent A is required to provide cargo report in the first port in Suva before unloading in the subsequent port in Lautoka.

13. Section 11B (3) provides that the cargo reporter must provide particulars of all goods that the cargo reporter has arranged to be carried on the ship or aircraft and that are intended to be kept on board the ship or aircraft for shipment to a place outside Fiji, other than-
    (a) goods that are accompanied personal or household effects of a passenger or member of the crew; or
    (b) ship's stores or aircraft stores.

**Example 2**

Airplane Agent B is arranging to carry cargo from Australia to Samoa but will transit in Fiji via Nadi airport. Is the Airline Agent required to provide an advanced cargo report before arrival in Nadi airport?

**CEO's Position:**

The Airline Agent is required to report particulars of all cargo on board the aircraft before arrival at the Nadi airport.

**Timeliness for Submission**

14. A valid submission is when the cargo report is registered and validated by means of an electronic message preferably in ASYCUDA World.

15. Section 11B (4) provides for a cargo report (i.e., for manifest and master) to be provided to the Comptroller in the approved form –

    (a) 48 hours prior to arrival of vessel; or
    (b) 9 hours prior to arrival of aircraft.

**Example 3**

Ship XY is due to arrive in Suva Port, Fiji from Kobe Port, Japan within the next 14 days. The ship/vessel is expected to depart Kobe Port, Japan at 9am on 23$^{rd}$ October 2023. When is the cargo report required to be submitted in ASYCUDA World before arrival in Fiji?

**CEO's Position:**

Ship XY will depart Kobe Port, Japan on the 23$^{rd}$ of October and is expected to arrive in Fiji on the 4$^{th}$ of November. The requirement is to be registered on AW 48 hours before arrival in Fiji i.e., on 2$^{nd}$ of November 2023.

16. The registration of the cargo report by the airline or shipping agent shall be within the given timeframe of 48 hours for sea cargo and 9 hours for air cargo prior to arrival of the vessel or aircraft, however the following exception is provided:

   i) short voyages by vessels i.e., if the voyage is less than 48 hours, then submission should be one hour after departure from the last port before Fiji.

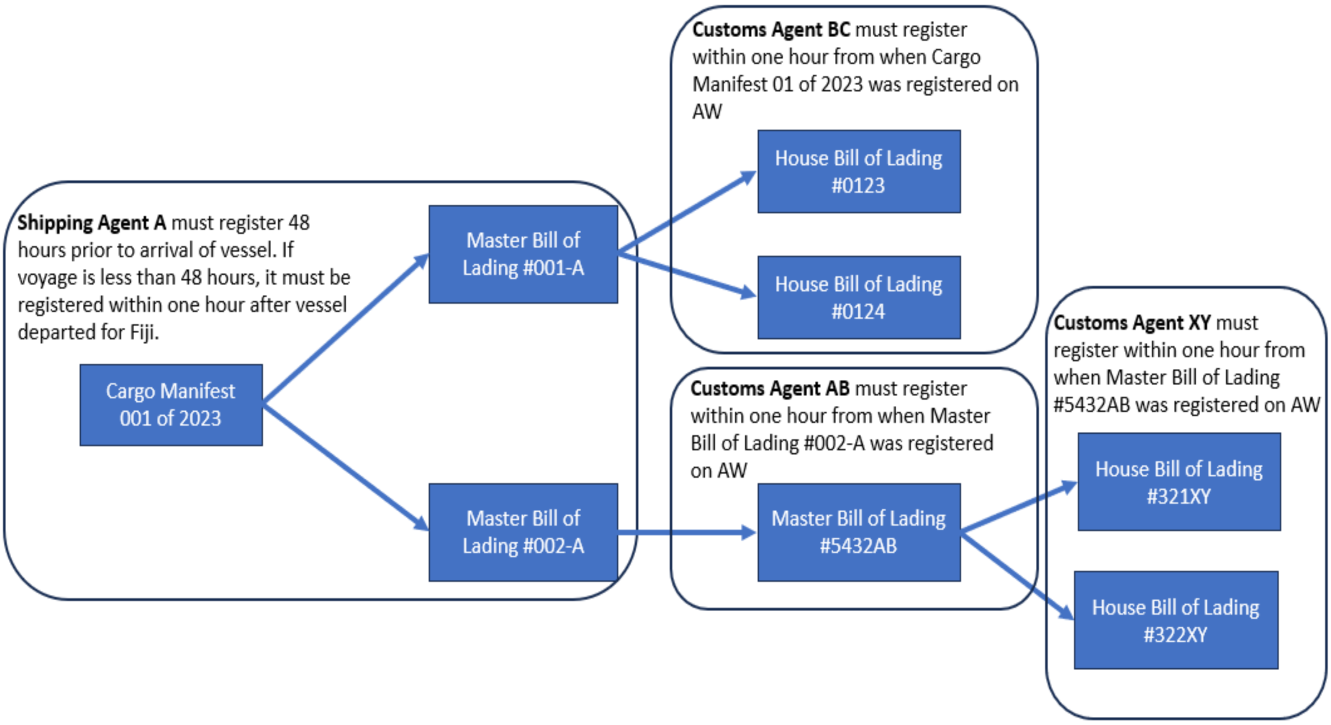
   ii) short haul flights by aircraft i.e., if the voyage is less than 9 hours, then submission should be at the time of departure from the last port before Fiji.

**Example 4**
Aircraft FJ is expected to depart from Sydney, Australia at 3pm. When is the cargo report required to be submitted in ASYCUDA World before arrival in Fiji?

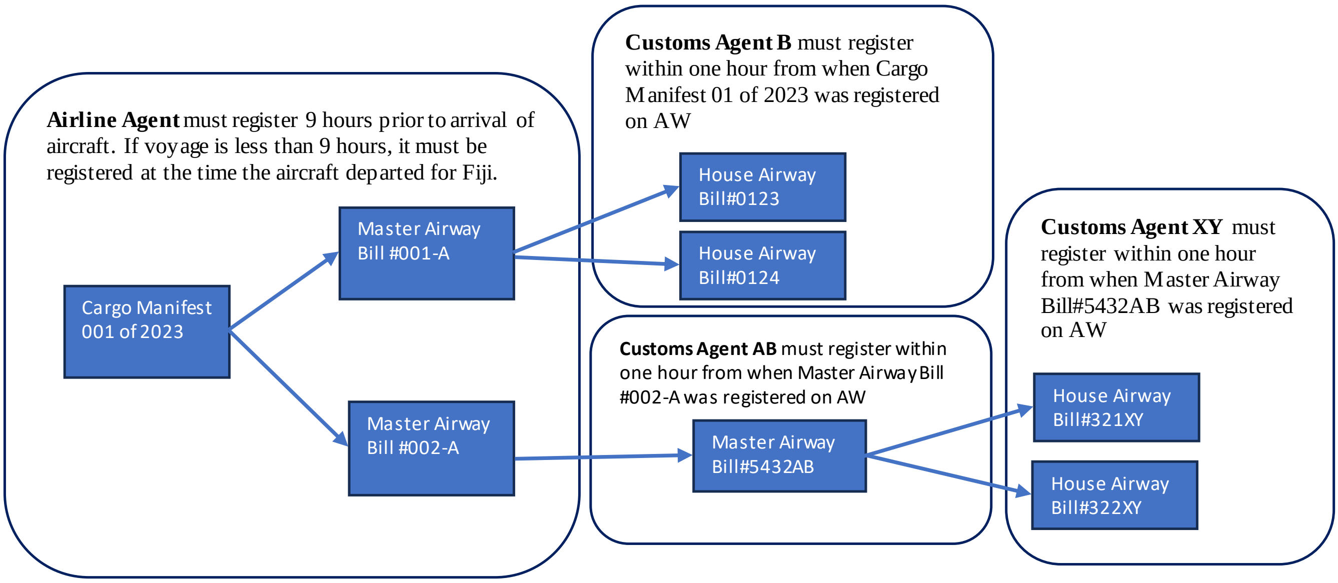
**CEO's Position:**
Since the voyage is less than 9 hours, the cargo report for Aircraft FJ is required to be submitted in AW when it departs from Sydney Airport i.e., by 3pm.

17. The registration of house bill of ladings and house airway bills cannot be registered on ASYCUDA World until the respective inward manifest and master bill of lading or master airway bill is registered on ASYCUDA World. Therefore, the cargo report by customs agents shall be registered and validated on ASYCUDA World within one hour after the manifest and master bill of lading or master airway bill is registered on ASYCUDA World.

**Graph 1: Processing of Sea Cargo**



**Graph 2: Processing of Air Cargo**




**Data Quality**

18. Customs risk management strategies are reliant on adequate and accurate quality data to enable Customs administrations in the international supply chain to make better informed cargo processing decisions.

19. Cargo reporters are reminded that one of the core competencies for agents under the Code of Conduct is to not engage in providing inaccurate or incorrect declarations in order to expedite clearance of goods.

20. Cargo reporters are encouraged to use the XML upload feature on ASYCUDA World to avoid delays in reporting and minimize errors in reporting.

21. Any non-compliance with the above requirements shall be dealt with accordingly under the relevant penalty provisions under the Customs Act and Customs Regulations.

22. For further information and clarification in regard to this SIG, please email us at tipu@frcs.org.fj

# ACT NO. 7 OF 2023

I assent.

W. KATONIVERE
President

[14 July 2023]

# AN ACT

TO AMEND THE CUSTOMS ACT 1986

ENACTED by the Parliament of the Republic of Fiji—

*Short title and commencement*

**1.**—(1) This Act may be cited as the Customs (Budget Amendment) Act 2023.

(2) This Act comes into force on 1 August 2023.

(3) In this Act, the Customs Act 1986 is referred to as the "Principal Act".

*Section 2 amended*

**2.** Section 2 of the Principal Act is amended by—

*(a)* inserting the following new definitions—

"“alternative dispute resolution” means a set of mechanisms that may be used to resolve or settle a dispute without litigation, and includes arbitration or mediation;";

"“cargo reporter” in relation to a ship or aircraft and in relation to a particular voyage or flight means—

*(a)* the operator of the ship or the aircraft;

*(b)* a shipping agent in respect of the ship; or

*(c)* a freight forwarder in respect of the ship or aircraft,

for the voyage or flight;";

"""person" means both natural and legal persons, unless the context otherwise requires;"; and

"""post office" refers to a post office as defined in section 78 of the Posts and Telecommunications Act 1989;"; and

*(b)* in the definition of "duty", after "any duty", inserting "or any other amount payable or".

*Section 6 amended*

**3.** Section 6 of the Principal Act is amended as follows—

*(a)* in the heading, after "airports,", inserting "post offices,";

*(b)* in subsection (1)—

(i) in the chapeau, after "sufferance airport,", inserting "post office,";

(ii) in paragraph *(a),* after "sufferance airport", inserting "post office";

(iii) in paragraph *(a)*, after ";", deleting "and";

(iv) in paragraph *(b)*, deleting "." and substituting ";"; and

(v) after paragraph *(b)*, inserting the following new paragraphs—

"*(c)* permanent or temporary identification cards to all the customs officers who are engaged in administering and enforcing customs laws at such premises; and

*(d)* the required infrastructure, including carparking facility to all the customs officers who are engaged in administering and enforcing customs laws."; and

*(c)* in subsection (2), after "sufferance airport,", wherever it appears inserting "post office," .

*Section 11B inserted*

**4.** The Principal Act is amended after section 11A, by inserting the following new section—

"*Advanced cargo information*

11B.—(1) This section applies to a ship or aircraft in respect of a voyage or flight to Fiji from a place outside Fiji.

(2) If the ship or aircraft is due to arrive at its first port or airport in Fiji since it last departed from a port or airport outside Fiji, each cargo reporter must, in accordance with this section, provide particulars of all goods—

*(a)* that the cargo reporter has arranged to be carried on the ship or aircraft on the voyage or flight;

*(b)* that are intended to be unloaded from the ship or aircraft at a port or airport in Fiji whether the first port or airport or any subsequent port or airport on the same voyage or flight; and

*(c)* that are not—

(i) accompanied personal or household effects of a passenger or member of the crew; or

(ii) ship's stores or aircraft's stores.

(3) If the ship or aircraft is due to arrive at its first port or airport in Fiji since it last called at a port, or departed from an airport, outside Fiji, each cargo reporter must, in accordance with this section, provide particulars of all goods that the cargo reporter has arranged to be carried on the ship or aircraft and that are intended to be kept on board the ship or aircraft for shipment on to a place outside Fiji, other than—

*(a)* goods that are accompanied personal or household effects of a passenger or member of the crew; or

*(b)* ship's stores or aircraft's stores.

(4) A cargo report must be provided to the Comptroller in the approved form—

*(a)* 48 hours prior to arrival for vessels; or

*(b)* 9 hours prior to arrival for aircrafts.".

*Section 52 amended*

**5.** Section 52 of the Principal Act is amended by deleting subsection (2) and substituting the following—

"(2) For the purposes of subsection (1), the Comptroller may allow any goods deposited in a bonded warehouse to be re-warehoused by the owner for a period not exceeding 6 months except for goods which fall within chapters 84 and 87 of Schedule 2 to the Customs Tariff Act 1986.".

*Section 92 amended*

**6.** Section 92 of the Principal Act is amended by deleting subsection (20).

*Section 111 amended*

**7.** Section 111 of the Principal Act is amended after subsection (1), by inserting the following new subsection—

"(1A) For the purposes of administering any customs law or laws that are read together with this Act, the Comptroller or a proper officer authorised by the Comptroller—

*(a)* has the right, at all times, with or without notice, to full and free access to any premises, place, property, accounts, documents, records or electronic data storage facility;

*(b)* may make an extract or copy of any accounts, documents, records or information stored on or in an electronic data storage facility to which access is obtained under paragraph *(a)*;

*(c)* may seize any accounts, documents or records that, in the opinion of the Comptroller or proper officer, afford evidence that may be material in determining the duty liability of a person;

*(d)* may retain any accounts, documents or records seized under paragraph *(c)* for as long as they may be required for determining a person's duty liability or for any proceeding under a customs law;

*(e)* may, if a hard or electronic copy of information stored on a data storage device is not provided, seize and retain the device for as long as is necessary to copy the information required; and

*(f)* may, so far as is reasonably necessary for the purposes in the preceding paragraphs, break open any door, window or container and force and remove any other impediment or obstruction, provided that entry shall not be made at night except in the company of a police officer.".

*Section 143C amended*

**8.** Section 143C of the Principal Act is amended by—

*(a)* deleting the heading and substituting "Arrival alerts and departure prohibition order";

*(b)* in subsection (1), in the proviso—

(i) deleting "a", and substituting "an arrival alerts or"; and

(ii) after "country", inserting "or place the person on arrival alert if the person is already outside Fiji"; and

*(c)* in subsection 2, after "regulating", inserting "arrival alerts or".

*Section 159 amended*

**9.** Section 159 of the Principal Act is amended by deleting ", provided that it shall be lawful for the Minister to direct that, *in lieu* of being sold, such goods shall be reserved for the civil service".

*Section 173B amended*

**10.** Section 173B of the Principal Act is amended in the chapeau, after "objection decision", inserting "or upon unsuccessful resolution under section 173C".

*Section 173C inserted*

**11.** The Principal Act is amended after section 173B, inserting the following new section—

*"Rectification of mistakes*

173C. If the Comptroller is satisfied that an order or assessment made or document issued by the Comptroller under a customs law contains a mistake which is apparent from the record and that the mistake does not involve a dispute as to the interpretation of the law or facts of the case, the Comptroller may, for the purposes of rectifying the mistake, amend the order, assessment or document any time before the expiry of 6 years from the date of making or issuing the order, assessment or document.".

*Part 22B inserted*

**12.** The Principal Act is amended by, after Part 22A, inserting the following new Part—

"PART 22B—ALTERNATIVE DISPUTE RESOLUTION

*Alternative dispute resolution*

173D. A person dissatisfied with an objection decision may request for the matter to be resolved through alternative dispute resolution.".

*Sections 180A and 180B inserted*

**13.** The Principal Act is amended after section 180 by inserting the following new sections—

*"Court of Review or High Court may remit the matter to the Comptroller*

180A.—(1) At any stage in a proceeding for review of an objection decision, the Court of Review or High Court may remit the decision to the Comptroller for reconsideration and the Comptroller may—

*(a)* affirm the decision;

*(b)* vary the decision; or

*(c)* set aside the decision and make a new decision.

(2) If the Comptroller affirms, varies, or sets aside a decision under subsection (1), the decision as affirmed, varied or set aside is a decision the applicant may either proceed with or withdraw the application.

*General provisions relating to objections and appeals*

180B.—(1) In any proceeding under Parts 22A and 23 of this Act the burden is on the person to prove that the assessment is excessive or to prove that the decision should not have been made or should have been made differently.

(2) In an application for review by the Court of Review or appeal to the High Court in relation to an objection decision, the person objecting is limited to the grounds stated in the objection to which the objection decision relates unless the Court of Review or High Court grants the person leave to add new grounds.

(3) The duty under an assessment is payable notwithstanding that an objection, application for review by the Court of Review, or notice of appeal to the High Court has been lodged by the person in respect of the assessment.

(4) All proceedings of the Court of Review or High Court under this Act must be held in camera if requested by either party to the proceeding.".

Passed by the Parliament of the Republic of Fiji this 14th day of July 2023.