

[LEGAL NOTICE NO. 87]

COMMERCE COMMISSION DECREE 2010
(DECREE NO. 49 OF 2010)

Commerce (Control of Prices for Hardware Items) Order 2016

IN exercise of the powers conferred upon it by section 44 of the Commerce Commission Decree 2010, the Commission, with the approval of the Minister, hereby makes the following Order—

Short title and commencement

1.—(1) This Order may be cited as the Commerce (Control of Prices for Hardware Items) Order 2016.

(2) This Order comes into force on 6 November 2016.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

“delivery cost” means the cost incurred in the delivery of the goods to a retailer’s or re-wholesaler’s premises;

“manufacturing” means the conversion of the unfinished products into finished products by means of manual labour or machinery;

“offer” includes exposing, displaying or keeping goods for sale by retail;

“package” means—

- (a) the outermost receptacle, container or wrapper in which any price-controlled items are encased, covered, enclosed, contained or packaged for the purpose of sale by retail; or
- (b) if for retail sale, there is provided a transparent outer cover or wrapper enclosing or covering a receptacle, container or wrapper, the receptacle, container or wrapper that is so enclosed or covered;

“price-controlled item” means an item specified in the Schedule;

“related entity” means any of the following—

- (a) a director or a member of that body or of a related body corporate;
- (b) a relative or *de-facto* spouse of such a director or member;
- (c) a relative of a spouse, or of a *de-facto* spouse, of such a director or member;
- (d) a body corporate that is related to the first mentioned body;
- (e) a beneficiary under a trust of which the first mentioned body is or has at any time been a trustee;

- (f) a relative or *de-facto* spouse of such a beneficiary;
- (g) a relative of a spouse, or of a *de-facto* spouse, of such a beneficiary;
- (h) a body corporate one of whose directors is also a director of the first mentioned body; or
- (i) a trustee of a trust under which a person is a beneficiary, where the person is a related entity of the first mentioned body because of any other application or applications of this definition;

“ownership and cognate expressions” shall widely be construed to include indirect ownership of interest whether held by family members, friends or other businesses which the person may be interested financially or in any other indirect manner;

“re-wholesaler” means any person who purchases goods from the wholesaler for re-sale other than to a consumer;

“total into-store cost for pricing” means the cost calculated in accordance with the formula and provision as determined by the Commission;

“trader” means any person who in connection with any business carried on by him or her sells, has sold, or proposes to sell any goods, or who supplies or carries on any service; and

“VAT” means Value Added Tax.

(2) A reference in this Order to the cost to a trader of any goods or services includes a delivery cost properly incurred by the trader and not otherwise included in the calculation of the cost and is a reference to the lesser of the following—

- (a) the cost to the trader, as evidenced by the invoice for the transaction; or
- (b) the cost which would probably have been incurred for the provision of the same goods or services under similar conditions in the ordinary course of business, had the goods or services been obtained from an independent person usually engaged in the business of providing those goods or services.

(3) In the case of an importer of goods into Fiji, the total into-store cost for pricing formula applies whether or not the importer takes physical possession of the goods.

(4) For the purposes of this Order, goods are deemed to be sold when possession of the goods has been taken by the purchaser and not otherwise.

Maximum wholesale prices

3.—(1) The maximum wholesale price of any price-controlled item, is fixed at the sum of the following—

- (a) the total into-store cost for pricing of the goods of the wholesaler;
- (b) the mark-up on the total into-store cost for pricing of an amount no greater than the wholesale percentage prescribed in the Schedule;

- (c) if the wholesaler has imported goods into Fiji, a mark-up on the total into-store cost for pricing of an amount no greater than the import percentage prescribed in the Schedule; and
- (d) delivery cost incurred by a wholesaler may also be charged if that charge is stated separately in the invoice provided at the time of sale.

(2) Order 4 does not apply to a wholesaler or a related entity of a wholesaler that retails goods.

(3) The above costs shall be determined by the Commission upon submission of all documentary evidence of all the costs incurred by the wholesaler and may only be charged after approval from the Commission.

Maximum re-wholesale prices

4.—(1) The maximum re-wholesale price of any price-controlled item is fixed at the sum of the following amounts—

- (a) the total into-store cost for pricing of the goods to the re-wholesaler;
- (b) a mark-up on that cost of an amount no greater than the wholesale percentage prescribed in the Schedule; and
- (c) a delivery cost incurred by a re-wholesaler may also be charged if that charge is stated separately in the invoice provided at the time of sale.

(2) Order 5 does not apply to a re-wholesaler or a related entity of a re-wholesaler that retails goods.

(3) The above costs shall be determined by the Commission upon submission of all documentary evidence of all the costs incurred by the wholesaler and may only be charged after approval from the Commission.

Maximum retail prices

5.—(1) The maximum retail price of any price-controlled item is fixed at the sum of the following amounts—

- (a) the total into-store cost for pricing of the goods to the retailer or in the case of an importer who sells by retail, the total into-store cost for pricing; and
- (b) a mark-up on that cost of an amount no greater than the retail percentage prescribed in the Schedule.

(2) A retailer that imports goods into Fiji, is prohibited from charging a mark-up on the into-store cost for importing the goods or any amount stipulated in the Schedule, other than a mark-up stipulated in paragraph (1)(b).

(3) The above costs shall be determined by the Commission upon submission of all documentary evidence of all the costs incurred by the retailer and may only be charged after approval from the Commission.

Packaging

6.—(1) The maximum retail price of any price calculated in the manner prescribed in order 5 includes the cost of the packaging described in the Schedule.

(2) If a trader in paints and other coatings re-packages goods in container supplied by him or her, he or she may make an additional charge for those containers not exceeding the higher of—

- (a) the into-store cost of the container; or
- (b) the amount which the consumer can obtain for the empty container in good condition in the open market.

(3) The weight of packaging must not be included in the weight sold to the consumer at the price calculated in the manner prescribed in order 5.

Prices to be marked or displayed

7.—(1) Subject to paragraph (2), any person having any price-controlled item for sale by retail shall cause it to be legibly and conspicuously marked with the maximum retail price for the information of the public.

(2) Where the retailer's goods may be affected where the price is displayed in a prominent position, a legible and conspicuous notice clearly indicating those goods to which the notice relates and the maximum retail price of the goods.

Marking of goods

8. No person may—

- (a) sell by retail or offer for sale by retail any price-controlled item at a price in excess of that marked on such item, such maximum retail price having been calculated in the manner prescribed in orders 5 and 6; or
- (b) sell by retail or offer for sale by retail any price-controlled item if the item—
 - (i) is not marked with its maximum retail price being calculated in the manner prescribed in orders 5 and 6; and
 - (ii) if the maximum retail price has been removed, obliterated, concealed or altered other than an alteration reducing the maximum retail price shown on the item.

Records

9.—(1) A trader dealing in a price-controlled item must keep to the satisfaction of the Commission the records and accounts, including stock and costing records, as are customary and proper in the type of business carried on by him or her, and without limiting the generality of the foregoing—

- (a) a wholesaler shall maintain records—
 - (i) sufficient to identify goods sold to any individual retailer;
 - (ii) showing the price at which those goods were sold; and
 - (iii) containing a record of the receipt of those goods into-store and the cost at which those goods were received into-store; and

- (b) any trader, whether selling by wholesale, re-wholesale or retail, shall maintain pricing records showing—
 - (i) the basis on which the selling prices are arrived at by reference to the total into-store cost for pricing calculations;
 - (ii) the basis on which all subsequent price variations are calculated by reference to the total into-store cost for pricing calculations; and
 - (iii) delivery costs.

(2) Where goods are sold by a wholesaler at a price which includes the delivery cost, the delivery cost shall be stated separately in the invoice provided at the time of sale.

VAT

10.—(1) Wholesalers and re-wholesalers must state the VAT separately in the invoice provided at the time of sale.

(2) Any person not registered under section 22 of the Value Added Tax Decree 1991 is not entitled to deduct VAT paid on purchases and is also not entitled to charge VAT on their sales.

Expiration of Order

11. This Order shall expire 3 years from the date this Order is made unless it is varied, extended or earlier revoked.

Revocation

12. The Commerce (Control of Prices for Hardware Items) Order 2013 is hereby revoked.

Approved by me this 4th day of November 2016.

F. S. KOYA
Minister for Industry and Trade

Made this 4th day of November 2016.

J. YOUNG
Chairperson
Fiji Commerce Commission

SCHEDULE

<i>Item</i>	<i>Import Percentage</i>	<i>Wholesale Percentage</i>	<i>Retail Percentage</i>	<i>Packaging</i>
1. (a) Fasteners (all types) – imported	10%	5%	20%	According to Trade Custom
(b) Fasteners (all types) – local	NIL	10%	20%	
2. (a) Paint (all types) – imported	10%	5%	18%	According to Trade Custom
(b) Paint (all types) – local	NIL	10%	18%	
3. (a) Tools (all types) – imported	8%	5%	20%	According to Trade Custom
(b) Tools (all types) – local	NIL	10%	20%	
4. (a) Electrical products (all types) – imported	8%	5%	20%	According to Trade Custom
(b) Electrical products (all types) – local	NIL	10%	20%	
5. (a) Plumbing equipment and fittings (all types) – imported	10%	5%	20%	According to Trade Custom
(b) Plumbing equipment and fittings (all types) – local	NIL	10%	20%	
6. (a) Timber (all types) – imported	8%	5%	18%	According to Trade Custom
(b) Timber (all types) – local	NIL	10%	20%	
7. (a) Roofing products (all types) – imported	8%	5%	18%	According to Trade Custom
(b) Roofing products (all types) – local	NIL	10%	20%	
8. Concrete blocks (all types) – local	NIL	10%	20%	According to Trade Custom

<i>Item</i>	<i>Import Percentage</i>	<i>Wholesale Percentage</i>	<i>Retail Percentage</i>	<i>Packaging</i>
9.(a) Louvre frames (all types) – imported	8%	5%	15%	According to Trade Custom
(b) Louvre frames (all types) – local	NIL	8%	15%	
10. Cladding and boards (all types) - Imported	10%	5%	15%	According to Trade Custom
11.(a) Plywood (all types) – imported	8%	8%	15%	According to Trade Custom
(b) Plywood (all types) - local	NIL	8%	15%	

NOTE : For wholesale price see orders 3 and 4.
For retail price see order 5.