

GOVERNMENT OF FIJI GAZETTE SUPPLEMENT

No. 42

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2012

[LEGAL NOTICE NO. 85]

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

Commerce (Price Control) (Percentage Control of Prices for Food Items) Order 2012

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. This order may be cited as Commerce (Price Control) (Percentage Control of Prices for Food Items) Order 2012 and is deemed to have come into force on 30 September, 2012.

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 the 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 1;

“related entity” means any of the following—

(a) a director or a member of that body or of the 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 beneficiary;

- (g) a relative of a spouse, or of a de-facto spouse, of such 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 be widely construed to include indirect ownership of the interest whether held by family members, friends or other businesses which the person may be interested financially or in any other indirect manner.

“re-wholesalers” means any person who purchases goods from the wholesaler for resale 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; and

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

(2) A reference in this Order to the cost to a trader of any goods or services includes a delivery costs 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 and 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.

(5) For the purpose of this Order, Fiji Diary Limited is not deemed to be a Wholesaler.

Extent of control

3. For the purposes of this Order, the prices charged by enterprises manufacturing within Fiji, in so far as they concern goods manufactured, are not regarded as wholesale or retail prices.

Maximum wholesale prices

4.—(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) 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; and

(c) the mark-up on the total into-store cost for pricing plus a delivery cost incurred up to an amount no greater than the wholesale percentage prescribed in Schedule 1.

(2) This clause does not apply to a wholesaler or a related entity of the wholesaler that retails goods.

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

Maximum re-wholesale prices

5.—(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 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; and
- (c) the mark-up on the total into-store cost for pricing plus the delivery cost incurred up to an amount no greater than the wholesale percentage prescribed in Schedule 1.

(2) This clause does not apply to a re-wholesaler or a related entity of the re-wholesaler that retails goods.

(3) The above costs and Maximum Re-Wholesale Prices shall be determined by the Commission upon submission of all documentary evidences of all the costs incurred by the wholesaler and may only be charged after approval from the Commission.

Maximum retail prices

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

- (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;
- (b) a mark-up on that cost of an amount no greater than the retail percentage prescribed in Schedule 1.

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

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

Packaging

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

(2) If a trader in edible oils repackages goods in a 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 clause 6.

Prices to be marked or displayed

8.—(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) In the case of any retailer of items 2, 3, 8, 11, 13, 14, 15 and 18 in Schedule 1, compliance with the provisions of this paragraph may be affected by the display 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

9. A person shall not—

- (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 clauses 6 and 7; 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 clauses 6 and 7; 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

10.—(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) of the receipt of those goods into-store and the cost at which those goods were received into-store;
- (b) Any trader, whether selling by wholesale or by 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.

Value Added Tax (VAT)

11.—(1) Traders must state Value Added Tax (VAT) separately (if applicable) in the invoice provided at the time of the sale.

(2) Individuals or body corporate not registered under section 22 of the Value Added Tax Decree 1991 (Decree No. 45) are not entitled to deduct Value Added Tax (VAT) paid on purchases and also are not entitled to charge Value Added Tax (VAT) on their sales.

Expiration of Order

12. This Order expires three years from the date this Order commences unless it is extended or earlier revoked.

Dated on this 21st day of November 2012.

M. REDDY
Chairman
Fiji Commerce Commission

Approved on this 20th day of November 2012.

A. SAYED-KHAIYUM
Attorney-General and Minister
for Justice, Anti-Corruption, Public
Enterprises, Communication, Civil
Aviation, Tourism, Industry and Trade

Schedule 1

ITEM		IMPORT PER- CENT- AGE	WHOLE- SALE PERCENT- AGE	RETAIL PERCENT- AGE	PACKAGING
1(a)	Baby Milk of all types (imported)	5%	4%	10%	Packaged according to trade custom
(b)	Baby Milk of all types (locally packed)	NIL	4%	10%	
(c)	Milk, powdered, evaporated or condensed (with or without other ingredients) (imported)	5%	4%	10%	
(d)	Milk, powdered, evaporated or condensed (with or without other ingredients) (locally packed)	NIL	4%	8%	
2	Butter (imported)	4%	4%	10%	Packaged according to trade custom
3	Chicken (imported)	4%	4%	10%	Packaged according to trade custom
4(a)	Corned beef and corned mutton (canned) (with or without other ingredients) (imported)	3%	4%	10%	Can be included in into-store cost
(b)	Corned beef and corned mutton (canned) (with or without other ingredients) (local)	NIL	4%	10%	
5	Dried leguminous vegetables shelled, whether or not skinned or split (imported)	5%	5%	8%	Packaged according to trade custom
6(a)	Edible oils of all types (imported)	5%	4%	7.5%	In Bulk, unless retail packaging included in total into-store cost
(b)	Edible oils of all types (local) excepting coconut oil	NIL	4%	7.5%	

7(a)	Fish, crustaceans and molluscs, canned (with or without other ingredients) (imported) excepting crabs, lobsters, mussels, oysters, prawns, shrimps, Canadian salmon, shark fins and caviar	3%	4%	10%	Can be included in into-store cost
(b)	Fish, crustaceans and molluscs, (canned) (with or without other ingredients) (local) excepting crabs, lobsters, mussels, oysters, prawns, shrimps, Canadian salmon, shark fins and caviar	NIL	4%	10%	
8	Garlic (imported)	5%	5%	10%	Packaged according to trade custom
9(a)	Margarine of all types (imported)	5%	5%	12%	Packaged according to trade custom
(b)	Margarine of all types (local)	NIL	5%	12%	
10(a)	Milk – Liquid (imported)	3%	4%	10%	Packaged according to trade custom
(b)	Milk – Liquid (local)	N/A	N/A	8%	
11	Onions (imported)	5%	4%	15%	Packaged according to trade custom
12	Potatoes (imported)	5%	4%	15%	Packaged according to trade custom
13(a)	Rice (imported) (brown and milled in Fiji)	NIL	4%	10%	Packaged according to trade custom
(b)	Rice (imported) (white or polished of all types)	4%	4%	10%	
14	Salt (imported)	5%	4%	10%	Packaged according to custom
15(a)	Sugar (imported)	3%	4%	10%	Packaged according to custom
(b)	Sugar (local)	NIL	4%	10%	
16 (a)	Tea of all types (imported) (excepting Masala tea)	5%	5%	10%	Packaged according to custom
(b)	Tea of all types (local) (excepting Masala tea)	NIL	5%	10%	

17	Pharmaceuticals (patents falling within Chapters 28-30 of the Fiji Customs Tariff)	12%	5%	20%	In Bulk, unless retail packaging included in total into-store cost
18	Premium Unleaded Petrol (PULP) (97 Oct)	3%	4%	5%	In Bulk, unless retail packaging included into total into-store cost
19	Petroleum Products:				
(a)	Kerosene	NIL	4%	7%	In Bulk, unless packaging included in total into-store cost
(b)	Solvent gasoline (known as white benzene)	5%	4%	10%	
(c)	Pre-mixed out-board fuel	NIL	4%	7%	