

CUSTOMS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Customs Act 1966 for the purpose of implementing the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, known as the Customs Valuation Code, which New Zealand has notified the GATT of its intention to adopt with effect from 1 July 1982.

These amendments replace New Zealand's present valuation system under which imported goods are assessed according to their value when sold on the domestic market in the country of export, known as current domestic value, with a valuation system based on the free on board value of the imported goods.

Clause 1 relates to the Short Title and commencement, which is to be 1 July 1982.

Clause 2 amends section 124A of the principal Act and is consequential upon the repeal of section 142 of the principal Act as contained in *clause 8* of the Bill. Section 142 previously provided for an appeal to the Minister against the Collector's valuation for the purposes of export duty. This clause now provides for an appeal against such valuation to the Administrative Division of the High Court.

Clauses 3, 4, and 9 to 14 are technical amendments and are consequential upon *clause 5*.

Clause 5 repeals section 136 of the principal Act. It abolishes the reference to current domestic value for the purposes of the valuation of imported goods and substitutes the reference to Customs value as defined in the new Ninth Schedule to the principal Act set out in the *Schedule* to the Bill.

Clause 6 repeals sections 137 and 138 of the principal Act which required a valuation declaration from the exporter and substitutes a new section 137 which provides for a valuation declaration to be made and produced by the importer to the Collector. The section also provides for the importer to supply to the Collector such additional information which evidences the particulars and price of the goods and allows the Collector to retain copies of the documents produced.

Clause 7 repeals section 140 of the principal Act and substitutes a new section 140 which provides for the Collector to determine the value of imported goods and to amend his determination in respect of those goods. The section also provides for the importer to object and for the Collector to consider the objection and inform the importer in writing of his decision.

Clause 8 inserts a new section 140A into the principal Act which provides for an appeal to the Administrative Division of the High Court against the Collector's determination in respect of the value of imported goods.

Clause 15 amends section 306 of the principal Act by inserting a new paragraph (ga) to provide for regulations to implement various provisions of the Ninth Schedule.

The Schedule to the Bill inserts a new Ninth Schedule into the principal Act which gives practical effect to the Customs Valuation Code.

Clause 1 provides for the interpretation of certain expressions used in the Schedule.

Clause 2 provides for the transaction value of the imported goods to be the primary basis of valuation. This value is defined as the price paid or payable for the goods adjusted as necessary to take into account certain elements of value which are not already included in that price. These adjustments are set out in clause 3. Acceptance of the transaction value as Customs value is also dependent on 4 conditions being met as set out in the clause. Subclause (4) provides that where, in the opinion of the Collector, the Customs value cannot be determined under this clause, it shall be determined by proceeding sequentially through clauses 4 to 8 to the first such clause under which the value can be determined. Subclause (5) provides for the order of application of clauses 6 and 7 to be reversed on the written request of the importer.

Clause 3 sets out the adjustments required to establish transaction value under clause 2, including those necessary to establish the free on board price.

Clauses 4 and 5 provide a method for finding a Customs value for the goods being valued by reference to a transaction value of goods which are identical or similar to the goods being valued. The transaction value of either the identical or similar goods so used must be a value which has previously been established by Customs in accordance with clause 2.

Clause 6 (deductive value) provides for the determination of a Customs value on the basis of a sale in the country of importation of either the imported goods or of identical or similar imported goods. The Customs value is calculated by taking the post-importation sale price as defined in the clause and deducting from it appropriate elements to arrive at a Customs value.

Clause 7 (computed value) provides for the determination of a value of the imported goods based on the sum of the producer's costs to make and sell the goods, that is, the costs of materials, fabrication, general expenses and profit and other expenses set out in the clause.

Clause 8 provides for a more flexible application of the earlier methods when initial attempts to establish the Customs value by these methods have been unsuccessful. The clause also lists a number of valuation methods which are not acceptable.

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Clause 9 (1) provides for the importer to be supplied, on written request, with an explanation as to how the Customs value of his goods was determined, subject to the provisions relating to confidentiality in subclause (2) of this clause.

Clause 9 (2) provides for all information which is confidential by nature or is provided on a confidential basis, not to be disclosed without the specific permission of the provider, unless it is required in legal proceedings.

Hon. Mr Templeton

CUSTOMS AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Customs Act 1966

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title and commencement—(1) This Act may be cited as the Customs Amendment Act 1981, and shall be read together with and deemed part of the Customs Act 1966* (hereinafter referred to as the principal Act).

*1966, No. 19

Amendments: 1967, No. 2, Part I; 1967, No. 137; 1968, No. 31; 1968, No. 142, Part I; 1970, No. 28, Part I; 1970, No. 44; 1971, No. 42; 1972, No. 7; 1973, No. 110; 1974, No. 4, Part I; 1974, No. 142, Part I; 1975, No. 3, Part I; 1975, No. 38, Part I; 1976, No. 5, Part I; 1976, No. 15; 1976, No. 2, Part I; 1977, No. 16, Part I; 1977, No. 85, Part I; 1978, No. 2, Part I; 1978, No. 60, Part I; 1979, No. 137, Part I; 1980, No. 5, Part I; 1980, No. 33, Part I; 1981, No. 2, Part I; 1981, No. 6, Part I

(2) This Act shall come into force on the 1st day of July 1982.

2. Imposition of export duty—Section 124A of the principal Act (as inserted by section 24 of the Customs Acts Amendment Act (No. 2) 1977) is hereby amended by repealing subsection (7), and substituting the following subsections: 5

“(7) Every valuation made by the Collector under subsection (6) of this section shall be taken to be correct, and duty shall be payable in accordance therewith, unless, on appeal to the Administrative Division of the High Court under subsection (8) of this section, a different amount is proved to be the correct value of the goods for the purposes of export duty. 10

“(8) Where any person liable to pay the export duty is dissatisfied with any valuation made by the Collector under subsection (6) of this section, he may appeal to the Administrative Division of the High Court against that valuation. 15

“(9) Every such appeal shall be made by giving notice of appeal within 28 days after the date on which the appellant was notified of the Collector’s valuation appealed against, or within such further time as the Court may allow on application made either before or after the expiration of those 28 days. 20

“(10) In its determination of any appeal, the Court may confirm or modify the valuation appealed against. 25

“(11) The procedure in respect of any such appeal shall be in accordance with the rules of the Court, and in default of such rules, or so far as they do not extend, then in accordance with the usual practice of the High Court in civil proceedings so far as applicable or, so far as not applicable, then in accordance with the directions of the Court or a Judge thereof. 30

“(12) The obligation to pay and the right to receive and recover any duty shall not be suspended by any appeal; but if the appellant succeeds, the amount (if any) of the duty received by the Collector in excess of the amount which, according to the decision on the hearing of the appeal, was properly payable, shall forthwith be refunded to him by the Collector.” 35

3. **Imposition of surtax**—Section 125A of the principal Act (as inserted by section 25 of the Customs Acts Amendment Act (No. 2) 1977) is hereby amended by omitting from subsection (5) (a) the words “current domestic value” in both
 5 places where they occur, and substituting in each case the words “Customs value”.

4. **Dumping duty**—(1) Section 129 of the principal Act (as substituted by section 6 of the Customs Amendment Act 1971 and amended by section 4 of the Customs Amend-
 10 ment Act 1973) is hereby further amended—

(a) By omitting from subsection (2) (a) the words “current domestic value determined in accordance with the provisions of this Act”, and substituting the words “value determined in accordance with
 15 subsection (14) of this section”:

(b) By omitting from subsection (4) (a) the words “current domestic value”, and substituting the words “value determined in accordance with
 20 subsection (14) of this section”:

(c) By omitting from subsection (5) the words “current domestic value of goods in accordance with this Act”, and substituting the words “value of goods in accordance with subsection (14) of this section”:

(d) By omitting from subsection (6) the words “current domestic value thereof”, and substituting the words “value thereof in accordance with subsection (14) of this section”.

(2) Section 129 of the principal Act (as so substituted and amended) is hereby further amended by adding the
 30 following subsection:

“(14) For the purposes of subsections (2) (a), (4) (a), (5), and (6) of this section, the value of goods shall be determined as follows:

35 “(a) Subject to paragraph (b) of this subsection, the value of goods shall be taken to be the fair market value of the goods when sold for cash in the ordinary course of business for home consumption in the principal markets of the country from which the goods are exported at the time when they were
 40 so exported:

“Provided that—

“(i) No deduction of any kind shall be allowed from the value of such goods because of any special or sample discount, or because of any special arrangement concerning the export of the goods or the exclusive right to their sale within certain territorial limits, or because of any royalty payable on patent rights but not payable when goods are so exported, or on account of any other consideration by which a special reduction in price has been or might be obtained: 5 10

“(ii) If it is proved to the satisfaction of the Collector that any drawback of import duty or excise duty has been paid or allowed on any parts, materials, or ingredients used in making any goods, or that any import duty or excise duty has been actually paid on the goods in the country from which they were exported or would have been payable on them in that country if they had been there entered for home consumption instead of being exported therefrom, the amount of that duty or drawback shall be deducted from the value of the goods as determined in accordance with the foregoing provisions of this subsection: 15 20

“(iii) When the value of any goods when sold for cash for home consumption as aforesaid depends in the ordinary course of business on the quantity sold, such value shall be determined by reference to the quantity actually imported at one and the same time by the same importer from the same seller or supplier, except that if the goods are imported under a bona fide contract of purchase made in the ordinary course of business and including a greater quantity of such goods than that which is actually imported at one and the same time the value of the goods shall be estimated by reference to the aggregate quantity so included in that contract and imported or to be imported in pursuance thereof within a period not exceeding 12 months: 25 30 35 40

“(b) Notwithstanding anything in paragraph (a) of this subsection, if in the opinion of the Minister it is difficult, inequitable, or impracticable to determine the value of the goods in accordance with this subsection because—

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“(i) The goods are not sold for use or consumption in the country of export; or

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“(ii) They are not so sold in the ordinary course of business or in quantities similar to those imported into New Zealand; or

“(iii) The exporter retains the property in them; or

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“(iv) They are not imported on their sale; or

“(v) They are not imported in pursuance of a bona fide contract of purchase made in the ordinary course of business; or

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“(vi) There is no reliable means of estimating their value owing to the imposition of a royalty on them; or

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“(vii) They are usually or exclusively sold or imported in or under any other unusual or peculiar manner, conditions, or restrictions, either by way of limitation of purchases from or sales to any person or associations of persons or for any other reason—

the Minister shall determine the value of the goods in such manner and at such sum as he thinks just:

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“Provided that the value of goods as determined in accordance with this paragraph shall not exceed the price at which the goods are, in the country of exportation and at the time when they were exported, sold in the ordinary course of business for domestic consumption to the ultimate consumer, if in the opinion of the Minister such price can be ascertained.”

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5. Valuation of goods for duty—(1) The principal Act is hereby further amended by repealing section 136, and substituting the following section:

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“136. Except as otherwise expressly provided in this Act, the value of any imported goods for the purposes of applying the Tariff shall be the Customs value of the goods.”

(2) Section 2 of the principal Act is hereby amended by inserting, after the definition of the expression "Customs Tariff" the following definition:

"'Customs value' or 'value', in relation to any goods, means the Customs value of those goods, determined in accordance with the provisions set out in the Ninth Schedule to this Act:" 5

(3) The principal Act is hereby further amended by adding the Ninth Schedule set out in the Schedule to this Act.

(4) Sections 145 and 146 of the principal Act are hereby 10
consequentially repealed.

6. Production of valuation declaration on first entry—The principal Act is hereby further amended by repealing sections 137 and 138, and substituting the following section:

"137. (1) Subject to such exceptions and conditions as may 15
be prescribed, on the first entry (other than an entry for removal) of any goods, the importer or such other persons as may be prescribed shall make and produce to the Collector or other proper officer a declaration of the value of the goods 20
imported in such form and manner as may be prescribed. 20

"(2) Every importer or such other person as may be prescribed shall provide such additional information as the Collector or other proper officer requires which evidences the particulars of the goods and the price paid or payable for those goods between the seller of the goods and the buyer 25
of the goods. 25

"(3) Unless the Comptroller otherwise directs in relation to any class or classes of goods or transactions, the Collector or other proper officer may retain the documents so produced, or a legible copy thereof made by carbon or other duplicating 30
process made by or on behalf of the seller or consignor of the goods." 30

7. Determination of Customs value by Collector—(1) The principal Act is hereby further amended by repealing section 140, and substituting the following section: 35

"140. (1) The Customs value of goods pursuant to section 136 of the Act and the Ninth Schedule thereto shall be determined by the Collector and duty shall be payable in accordance with that determination unless, pursuant to this Act, a different amount is proved to be the correct Customs value 40
of the goods. 40

“(2) If, on the basis of an objection received from the importer or for any other reason, the Collector is satisfied that any determination made under subsection (1) of this section in respect of any goods is inconsistent with section 5 136 of this Act and the Ninth Schedule thereto, or incorrect for any other reason, he may amend his determination in respect of that determination accordingly and duty shall be payable in accordance with that amended determination.

10 “(3) If any importer disagrees with any determination by the Collector of the Customs value of any goods, he may object to that value by making application to the Collector, stating the grounds of his objection and the amount that he considers should be the Customs value of the goods.

15 “(4) An objection under this section shall be given in writing to the Collector within 28 days after any determination made under subsection (1) of this section or within such further time as may be allowed by the Collector.

“(5) The Collector shall consider the objection and inform the importer in writing of his decision.

20 “(6) Where the Collector amends his determination of the Customs value of any goods pursuant to subsection (2) of this section otherwise than as a result of an objection received from the importer of these goods he shall give notice to the importer of the amended determination.”

25 (2) Section 141 of this Act is hereby consequentially repealed.

8. Review by Administrative Division of High Court of determination—(1) The principal Act is hereby further amended by inserting, after section 140 (as substituted by 30 section 8 of this Act), the following section:

35 “140A. (1) If any importer is dissatisfied with the Collector’s decision in respect of his objection under section 140 (3) of this Act against a determination, he may appeal to the Administrative Division of the High Court against that determination.

40 “(2) Every such appeal shall be made by giving notice of appeal within 28 days after the date on which the appellant was notified in writing under section 140 (5) of this Act of the decision or within such further time as the Court may allow an application made either before or after the expiration of those 28 days.

“(3) In its determination of any appeal, the Court may confirm or modify the determination appealed against.

“(4) The procedure in respect of any such appeal shall be in accordance with the rules of the Court, and in default of such rules, or so far as they do not extend, then in accordance with the usual practice of the High Court in civil proceedings so far as applicable or, so far as not applicable, then in accordance with the directions of the Court or a Judge thereof. 5

“(5) Notwithstanding anything in this Act, where in the course of determining any appeal, it becomes necessary to delay the final determination of such appeal, the appellant shall nevertheless be given delivery of his goods from Customs control subject to the Collector receiving such security as he thinks sufficient to cover the full amount of duty.” 10 15

(2) Section 142 of the principal Act is hereby repealed.

9. Foreign currency—The principal Act is hereby further amended by repealing section 143, and substituting the following section: 20

“143. Where under any provision of this Act any amount which is required to be taken into account for the purpose of assessing duty or any other purpose is not an amount in New Zealand currency, the amount to be so taken into account shall be the equivalent in New Zealand currency of that amount ascertained in accordance with a fair rate of exchange to be declared by the Minister from time to time by notice in the *Gazette*.” 25

10. Country of export—Section 144 of the principal Act is hereby amended by omitting the words “valued for duty as if they were imported”, and substituting the words “deemed to be shipped”. 30

11. Crown’s right of compulsory purchase—Section 147 (1) of the principal Act is hereby amended by omitting the words “current domestic value”, and substituting the words “Customs value”. 35

12. Conditions precedent to entry of goods at preferential rates—(1) Section 150 (2) of the principal Act is hereby amended by omitting the words “in addition to an invoice of the goods”.

5 (2) Section 150 of the principal Act is hereby further amended by repealing subsection (3).

13. Goods subject to forfeiture in case of false declaration—Section 151 of the principal Act is hereby amended by omitting the word “invoice” wherever it occurs.

10 **14. Duty payable on goods sold by Collector**—Section 224 (2) of the principal Act is hereby amended by omitting the words “current domestic value”, and substituting the words “Customs value”.

15 **15. Regulations**—Section 306 of the principal Act is hereby amended by inserting, after paragraph (g), the following paragraph:

“(ga) Prescribing, for the purposes of the Ninth Schedule to this Act,—

20 “(i) The factors and differences that shall be taken into consideration in determining whether, under clause 2 (2), the transaction value of any imported goods being valued closely approximates another value referred to in that subsection:

25 “(ii) The manner of determining the value of the goods and services referred to in clause 3 (1) (a) (iii):

30 “(iii) The manner of determining an amount equal to the amount of commission or the amount for profit and general expenses referred to in clause 6 (6) (a):

“(iv) The manner of determining the costs, charges, and expenses incurred in respect of, or the value of, the materials and processing referred to in clause 7 (2) (a):

35 “(v) The manner of determining the amount for profit and general expenses referred to in clause 7 (2) (b).”

SCHEDULE

Section 5 (3)

NEW NINTH SCHEDULE TO PRINCIPAL ACT

"NINTH SCHEDULE

VALUATION OF GOODS FOR THE PURPOSES OF THE CUSTOMS TARIFF

1. *Interpretation*—(1) In this Schedule—

'Computed value' means the value determined in accordance with clause 7 of this Schedule:

'Country of export', or 'the country from which any goods are exported', means the country from which the goods are shipped directly to New Zealand or, as the case may be, the country from which the goods are deemed to be shipped pursuant to section 144 of this Act:

'Deductive value' means the value determined in accordance with clause 6 of this Schedule:

'Goods of the same class or kind', means imported goods that—

(a) Are within a group or range of imported goods produced by a particular industry or industry sector that includes identical goods or similar goods in relation to the goods being valued; and

(b) For the purposes of—

(i) Clause 6, were exported from any country; and

(ii) Clause 7, were produced in and exported from the country in and from which the goods being valued were produced and exported:

'Identical goods', means imported goods that—

(a) Are the same in all respects, including physical characteristics, quality, and reputation, as the goods being valued, except for minor differences in appearance that do not affect the value of the goods; and

(b) Were produced in the country in which the goods being valued were produced; and

(c) Were produced by or on behalf of the person who produced the goods being valued,—

but does not include imported goods where engineering, development work, artwork, designwork, plans, or sketches undertaken in New Zealand were supplied, directly or indirectly, by the buyer of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods:

'Price paid or payable', in relation to any goods, means the aggregate of all amounts paid or payable by the buyer to or for the benefit of the seller in respect of the goods:

'To produce' includes to grow, to manufacture, and to mine:

'Similar goods' means imported goods that—

(a) Closely resemble the goods being valued in respect of component materials and parts and characteristics and are functionally and commercially interchangeable with the goods being valued having regard to the quality and reputation of the goods and the goods being valued; and

SCHEDULE—*continued*

(b) Were produced in the country in which the goods being valued were produced; and

(c) Were produced by or on behalf of the person who produced the goods being valued,—

but does not include imported goods where engineering, development work, artwork, designwork, plans, or sketches undertaken in New Zealand were supplied, directly or indirectly, by the buyer of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods:

‘Sufficient information’, in respect of the determination of any amount, difference, or adjustment, means objective and quantifiable information that clearly establishes the accuracy of the amount, difference, or adjustment:

‘Transaction value’ means the value determined in accordance with clauses 2 and 3 of this Schedule.

(2) For the purposes of this Schedule, persons shall be deemed to be related only if—

(a) They are officers or directors of one another’s businesses; or

(b) They are legally recognised partners in business; or

(c) They are employer and employee; or

(d) Any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them; or

(e) One of them directly or indirectly controls the other; or

(f) Both of them are directly or indirectly controlled by a third person; or

(g) Together they directly or indirectly control a third person; or

(h) They are members of the same family.

(3) For the purposes of this Schedule persons shall be deemed to be members of the same family if—

(a) They are connected by blood relationship within the fourth degree of relationship; or

(b) They are married to one another or if one is married to a person who is connected within the fourth degree of relationship to the other; or

(c) One has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other.

(4) For the purposes of this Schedule, where there are no goods that were produced by or on behalf of the person who produced the goods being valued and that are otherwise identical goods or similar goods, goods that were produced by or on behalf of a different person and that are otherwise identical goods or similar goods shall be deemed to be identical goods or similar goods, as the case may be.

SCHEDULE—*continued*

2. *Transaction value as primary basis of valuation*—(1) The Customs value of imported goods shall be their transaction value, that is, the price paid or payable for the goods when sold for export to New Zealand, adjusted in accordance with clause 3 of this Schedule, if—

- (a) There are no restrictions respecting the disposition or use of the goods by the buyer, other than restrictions that—
 - (i) Are imposed by law; or
 - (ii) Limit the geographical area in which the goods may be resold; or
 - (iii) Do not substantially affect the value of the goods; or
- (b) The sale of the goods or the price paid or payable for the goods is not subject to some condition or consideration in respect of which a value cannot be determined; or
- (c) Where any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer is to accrue, directly or indirectly, to the seller, the price paid or payable for the goods includes the value of that part of the proceeds or can be adjusted in accordance with clause 3 of this Schedule; or
- (d) The buyer and seller of the goods are not related at the time the goods are sold for export or, where the buyer and seller are related at that time,—
 - (i) Their relationship did not influence the price paid or payable for the goods; or
 - (ii) The importer demonstrates that the transaction value of the goods meets the requirements set out in subclause (2) of this clause.

(2) In a sale between related persons, for the purpose of showing that the relationship did not influence the transaction value, the importer may produce evidence that the transaction value of the goods being valued, taking into consideration any relevant factors including such factors and differences as may be prescribed, closely approximates the Customs value of other goods exported at the same time or substantially at the same time as the goods being valued, being—

- (a) The transaction value of identical goods or similar goods in respect of a sale of those goods for export to New Zealand between a seller and buyer who are not related at the time of the sale; or
- (b) The deductive value of identical or similar goods determined in accordance with clause 6 of this Schedule; or
- (c) The computed value of identical or similar goods determined in accordance with clause 7 of this Schedule.

(3) In any case where the Collector or proper officer is of the opinion that the relationship between the buyer and seller of any goods influenced the price paid or payable for the goods, he shall inform the importer, in writing if so requested, of the grounds on which he formed his opinion, and shall give the importer a reasonable opportunity to satisfy him that the relationship did not influence the price.

SCHEDULE—*continued*

(4) Where, in the opinion of the Collector, the Customs value cannot be determined under this clause it shall be determined by proceeding sequentially through clauses 4 to 8 of this Schedule to the first such clause of this Schedule under which the Customs value can, in the opinion of the Collector, be determined.

(5) Notwithstanding subclause (4) of this clause, on the written request of the importer to the Collector, the order of consideration of the valuation basis provided for in clauses 6 and 7 of this Schedule shall be reversed.

3. *Adjustment of price paid or payable*—(1) In determining the transaction value of goods under clause 2 of this Schedule, the price paid or payable for the goods shall be adjusted—

(a) By adding thereto amounts, to the extent that each such amount is not otherwise included in the price paid or payable for the goods and is determined on the basis of sufficient information, equal to—

(i) Commissions and brokerage in respect of the goods incurred by the buyer, other than fees paid or payable by the buyer to his agent for the service of representing him overseas in respect of the purchase of the goods; and

(ii) The packing costs and charges incurred by the buyer in respect of the goods, including the cost of cartons, cases, and other containers and coverings that are treated for customs purposes as being part of the imported goods and all expenses of packing incidental to placing the goods in the condition in which they are shipped to New Zealand; and

(iii) The value of any of the following goods and services:

(A) Materials, component parts, and other goods incorporated in the imported goods:

(B) Tools, dies, moulds, and other goods utilised in the production of the imported goods:

(C) Materials consumed in the production of the imported goods:

(D) Engineering, development work, artwork, designwork, plans, and sketches undertaken elsewhere than in New Zealand and necessary for the production of the imported goods,—

determined in the manner as may be prescribed, that are supplied, directly or indirectly, by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods, apportioned to the imported goods in a reasonable manner and in accordance with generally accepted accounting principles; and

(iv) Royalties and licence fees, including payments for patents, trademarks, and copyrights in respect of the imported goods that the buyer must pay, directly or indirectly, as a condition of the sale of the goods for export to New Zealand, exclusive of charges for the right to reproduce the imported goods in New Zealand; and

SCHEDULE—*continued*

(v) The value of any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer that accrues or is to accrue, directly or indirectly, to the seller; and

(vi) The costs of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses associated with the transportation of, the imported goods until the goods have left the country of export, if such costs, charges, and expenses are paid or payable by the buyer, directly or indirectly, to or for the benefit of the seller as a condition of the transaction:

(b) By deducting therefrom amounts, to the extent that each such amount is otherwise included in the price paid or payable for the goods, equal to—

(i) The costs of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses associated with the transportation of the imported goods from the time the goods have left the country of export, other than any cost, charge, or expense referred to in subclause (1) (b) (ii) (B) of this clause; and

(ii) Any of the following costs, charges, or expenses—

(A) Any reasonable cost, charge, or expense that is incurred for the construction, erection, assembly, or maintenance of, or technical assistance provided in respect of, the goods after the goods are imported:

(B) Any reasonable cost, charge, or expense that is incurred in respect of the transportation or insurance of the goods within New Zealand and any reasonable cost, charge, or expense associated therewith:

(C) Any Customs duties or other taxes payable in New Zealand by reason of the importation or sale of the goods,—

if the cost, charge, or expense is identified separately from the balance of the price paid or payable for the goods.

(2) Where any adjustment in terms of the foregoing subclause cannot, in the opinion of the Collector, be made because of the lack of sufficient information, the transaction value of the goods being valued cannot be determined under clause 2 of this Schedule.

4. *Transaction value of identical goods as Customs value*—(1) Subject to subclauses (2) to (4) of this clause, where the Customs value of imported goods cannot, in the opinion of the Collector, be determined under clause 2 of this Schedule, the Customs value of the goods shall be the transaction value of identical goods in respect of a sale of those goods for export to New Zealand if that transaction value is the Customs value of the identical goods and the identical goods were exported at the same or substantially the same time as the goods being valued and were sold under the following conditions:

SCHEDULE—*continued*

- (a) To a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and
 - (b) In the same or substantially the same quantities as the goods being valued.
- (2) Where the Customs value of imported goods cannot be determined under subclause (1) of this clause because identical goods were not sold under the conditions described in subclause (1) (a) and (b) of this clause, there shall be substituted therefor identical goods sold under any of the following conditions—
- (a) To a buyer at the same or substantially the same trade level as the buyer of the goods being valued but in quantities different from the quantities in which those goods were sold; or
 - (b) To a buyer at a trade level different from that of the buyer of the goods being valued but in the same or substantially the same quantities as the quantities in which those goods were sold; or
 - (c) To a buyer at a trade level different from that of the buyer of the goods being valued and in quantities different from the quantities in which those goods were sold.
- (3) For the purposes of determining the Customs value of imported goods under subclause (1) of this clause, the transaction value of identical goods shall be adjusted by adding thereto or deducting therefrom, as the case may be, amounts to account for—
- (a) Commercially significant differences between the costs, charges, and expenses referred to in clause 3 (1) (a) (vi) of this Schedule in respect of the identical goods and those costs, charges, and expenses in respect of the goods being valued that are attributable to differences in distances and modes of transport;
 - (b) Where the transaction value is in respect of identical goods sold under the conditions described in any of paragraphs (a) to (c) of subclause (2) of this clause, differences in the trade levels of the buyers of the identical goods and the goods being valued or the quantities in which the identical goods and the goods being valued were sold or both, as the case may be,—
- if each such amount can, in the opinion of the Collector, be determined on the basis of sufficient information. Where any such amount cannot be so determined, the Customs value of the goods being valued shall not be determined on the basis of the transaction value of those identical goods under this clause.
- (4) Where, in relation to imported goods being valued, there are 2 or more transaction values of identical goods that meet all the requirements set out in subclauses (1) and (3) of this clause or where there is no such transaction value but there are 2 or more transaction values of identical goods sold under the conditions described in any of paragraphs (a) to (c) of subclause (2) of this clause that meet all the requirements set out in this clause that are applicable by virtue of subclause (2) of this paragraph, the Customs value of the goods being valued shall be determined on the basis of the lowest such transaction value.

SCHEDULE—*continued*

5. *Transaction value of similar goods as Customs value*—(1) Subject to subclause (2) of this clause and subclauses (2) to (4) of clause 4 of this Schedule, where the Customs value of imported goods cannot, in the opinion of the Collector, be determined under clause 4 of this Schedule, the Customs value of the goods shall be the transaction value of similar goods in respect of a sale of those goods for export to New Zealand if that transaction value is the Customs value of the similar goods and the similar goods were exported at the same or substantially the same time as the goods being valued and were sold under the following conditions:

- (a) To a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and
- (b) In the same or substantially the same quantities as the goods being valued.

(2) Subclauses (2) to (4) of clause 4 of this Schedule shall apply to this clause in respect of similar goods as if every reference in those subclauses to 'identical goods' were a reference to 'similar goods'.

6. *Deductive value as Customs value*—(1) Subject to subclauses (4) and (5) of clause 2 of this Schedule, where the Customs value cannot, in the opinion of the Collector, be determined under clause 5 of this Schedule, the Customs value of the goods shall be the deductive value in respect of the goods.

(2) Where the goods being valued or identical goods or similar goods are sold in New Zealand in the condition in which they were imported at the same or substantially the same time as the time of importation of the goods being valued, the deductive value of the goods being valued shall be the price per unit in respect of sales described in subclause (5) of this clause, determined in accordance with that subclause and adjusted in accordance with subclause (6) of this clause, at which the greatest number of units of the goods being valued or identical goods or similar goods are so sold.

(3) Where the goods being valued or identical goods or similar goods are sold in New Zealand in the condition in which they were imported before the expiration of 90 days after the importation of the goods being valued but are not so sold at the same or substantially the same time as the time of that importation, the deductive value of the goods being valued shall be the price per unit in respect of sales described in subclause (5) of this clause, determined in accordance with that subclause and adjusted in accordance with subclause (6) of this clause, at which the greatest number of units of the goods being valued or identical goods or similar goods are so sold at the earliest date after the importation of the goods being valued.

(4) Where the goods being valued or identical goods or similar goods are not sold in New Zealand in the circumstances described in subclause (2) or subclause (3) of this clause, but the goods being valued, after being assembled, packaged or further processed in New Zealand, are sold in New Zealand before the expiration of 90 days after the importation thereof and the importer of the goods being valued requests that this

SCHEDULE—*continued*

subclause be applied in the determination of the Customs value of those goods, the deductive value of the goods being valued shall be the price per unit, in respect of sales described in subclause (5) of this clause, determined in accordance with that subclause and adjusted in accordance with subclause (6) of this clause, at which the greatest number of units of the goods being valued are so sold.

(5) For the purposes of subclauses (2) to (4) of this clause the price per unit in respect of any goods being valued or identical goods or similar goods, shall be determined by ascertaining the unit price in respect of sales of the goods at the first trade level after their importation to persons who—

- (a) Are not related to the persons from whom they buy the goods at the time the goods are sold to them; and
- (b) Have not supplied, directly or indirectly, free of charge or at a reduced cost for use in connection with the production and sale for export of the goods, any of the goods or services referred to in clause 3 (1) (a) (iii) of this Schedule,—

at which the greatest number of units of the goods is sold where, in the opinion of the Collector, a sufficient number of such sales have been made to permit a determination of the price per unit of the goods.

(6) For the purposes of subclauses (2) to (4) of this clause, the price per unit in respect of any goods being valued or identical goods or similar goods, shall be adjusted by deducting therefrom an amount equal to the aggregate of—

- (a) An amount, determined in the manner prescribed, equal to—
 - (i) The amount of commission generally earned on a unit basis; or
 - (ii) The amount for profit and general expenses, including all costs of marketing the goods, considered together as a whole, that is generally reflected on a unit basis—
in connection with sales in New Zealand of goods of the same class or kind as those goods:
- (b) Reasonable costs, charges, and expenses that are incurred in respect of the transportation and insurance of the goods within New Zealand and reasonable costs, charges, and expenses associated therewith to the extent that an amount for such costs, charges, and expenses is not deducted in respect of general expenses under paragraph (a) of this subclause:
- (c) The costs, charges, and expenses referred to in clause 3 (1) (b) (i) of this Schedule incurred in respect of the goods, to the extent that an amount for such costs, charges, and expenses is not deducted in respect of general expenses under paragraph (a) of this subclause:
- (d) Any Customs duties or other taxes payable in New Zealand by reason of the importation or sale of the goods, to the extent that an amount for such duties and taxes is not deducted in respect of general expenses under paragraph (a) of this subclause:

SCHEDULE—*continued*

- (e) Where subclause (4) of this clause applies, the amount of the value added to the goods that is attributable to the assembly, packaging, or further processing in New Zealand of the goods, if that amount is determined, in the opinion of the Collector, on the basis of sufficient information.
- (7) Where an amount referred to in subclause (6) (e) of this clause in respect of any goods being valued cannot, in the opinion of the Collector, be determined on the basis of sufficient information, the Customs value of the goods cannot be determined on the basis of the deductive value under subclause (4) of this clause.

7. Computed value as Customs value—(1) Subject to subclauses (3) and (4) of clause 2 of this Schedule, where the Customs value of imported goods cannot, in the opinion of the Collector, be determined under clause 6 of this Schedule, the Customs value of the goods shall be the computed value in respect of those goods.

(2) The computed value of the goods being valued is the aggregate of amounts equal to—

(a) The costs, charges, and expenses incurred in respect of, or the value of,—

(i) Materials employed in producing the goods being valued; and

(ii) The production or other processing of the goods being valued,—

determined in the manner prescribed, including, without limiting the generality of the foregoing,—

(iii) The costs, charges, and expenses referred to in clause 3 (1) (a) (ii) of this Schedule:

(iv) The value of any of the goods and services referred to in clause 3 (1) (a) (iii) of this Schedule, determined and apportioned to the goods being valued as referred to in that clause, whether or not such goods and services have been supplied free of charge or at a reduced cost:

(v) The costs, charges, and expenses incurred by the producer in respect of engineering, development work, artwork, designwork, plans, or sketches undertaken in New Zealand that were supplied, directly or indirectly, by the buyer of the goods being valued for use in connection with the production and sale for export of those goods to the extent that such elements are charged to the producer of the goods, apportioned to the goods being valued as referred to in clause 3 (1) (a) (iii) of this Schedule:

(b) The amount, determined in the manner prescribed, for profit and general expenses, considered together as a whole, generally reflected in sales for export to New Zealand of goods of the same class or kind as the goods being valued, made by the producers of the goods to buyers in New Zealand who are not related to the producers from whom they buy the goods at the time the goods are sold to them,

SCHEDULE—*continued*

(3) For the purposes of this clause, the expression 'general expenses' means the direct and indirect costs, charges, and expenses of producing and selling goods for export, other than the costs, charges, and expenses referred to in subclause (2) (a) of this clause.

8. *Residual basis of valuation*—(1) Where the Customs value of imported goods cannot, in the opinion of the Collector, be determined under clause 7 of this Schedule, it shall be determined on information available in New Zealand on the basis of a value derived from the methods of valuation set out in clauses 2 to 7 of this Schedule interpreted in a flexible manner and reasonably adjusted to the extent necessary to arrive at a Customs value of the goods.

(2) A Customs value shall not be determined on the basis of—

- (a) The selling price in New Zealand of goods produced in New Zealand; or
- (b) A basis which provides for the acceptance of the higher of 2 alternative values; or
- (c) The price of goods on the domestic market of the country of exportation; or
- (d) The cost of production, other than computed values that have been determined for identical or similar goods in accordance, with clause 7 of this Schedule; or
- (e) The price of goods for export to a country other than New Zealand; or
- (f) Minimum customs values; or
- (g) Arbitrary or fictitious values.

9. *Supply of information*—(1) Subject to subclause (2) of this clause, upon written request by the importer of any goods, the Collector shall give notice to him in writing of the Customs value of the goods, and the basis of the determination of that Customs value, including the provisions of this Schedule applying thereto.

(2) Any information which is by its nature confidential, or which has been provided to the Collector by any government or person on a confidential basis for the purpose of determining the Customs value of any goods, shall not be disclosed to any other government or person without the specific authority of the provider of the information, except to the extent to which it may require to be disclosed in any legal proceedings arising out of the determination.