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Vanuatu

Customs Valuation Handbook

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Vanuatu Customs Valuation Handbook

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Introduction

This handbook explains the provisions of Schedule 2 (Customs Valuation of Imported Goods) of the Vanuatu Import Duties Act. Schedule 2 is based upon the Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT), a multilateral agreement finalized in 1979 as part of the Tokyo Round of multilateral trade negotiations within GATT. Upon the creation of the World Trade Organization (WTO) in 1995, this Agreement on the Implementation of Article VII of the GATT was renamed as the WTO Customs Valuation Agreement (“the Agreement”).

Customs valuation is a major feature of modern Customs tariff systems. It is important not only for the assessment of Customs duties, whether for purposes of producing revenue or as a means of encouraging and protecting domestic industry; it is also a significant element in a variety of other aspects of international trade such as statistics, quota and licensing arrangements, taxes and other charges levied at importation as well as in the application of preference systems.

That certain valuation practices can have restrictive effects on international trade was recognized in the Tokyo Round of multilateral trade negotiations, which had as one of its major goals “to reduce or eliminate non-tariff measures or, where this is not appropriate, to reduce or eliminate their trade restricting or distorting effects, and to bring such measures under more effective international discipline”.

The position might best be described by quoting one national administration which, in presenting the Agreement to its legislature for implementation, stated "The Agreement was negotiated because of dissatisfaction in almost every country of the world with the Customs valuation system of every other country. Every Customs valuation system in use around the world has controversial and protective features that can act as non-tariff barriers to international commerce".

The WTO Customs Valuation Agreement is intended to provide a fair, uniform and neutral system to be used by all WTO Member Countries, including Vanuatu, for the valuation of goods for Customs purposes: a system that conforms to commercial realities, and which outlaws the use of arbitrary or fictitious Customs values. To this end it provides a clearly defined set of valuation rules, expanding and giving greater precision to the guiding principles of Customs valuation presented in Article VII of the GATT.

Schedule 2 of the Import Duties Act, which is based upon the Agreement, sets out five specifically-described valuation methods and one residual or fallback method, ranked in a hierarchical order, which must be followed by Customs officers. Only when no valid Customs value can be found under the first method can the second method be used, and so on.

The primary basis for the valuation of goods for Customs purposes is the transaction value of the imported goods, i.e. the price actually paid or payable for the imported goods when sold for export to Vanuatu adjusted in accordance with the provisions of Article 8 of the WTO Customs Valuation Agreement. The adjustment provisions of Article 8 of the Agreement are contained in Clause 4 of Schedule 2 of the Import Duties Act. The use of arbitrary or fictitious values or minimum Customs values is prohibited by Article 7(2) of the Agreement and by Paragraph 9(2) of Schedule 2 of the Import Duties Act. A freely negotiated price for the goods in a sale for export to Vanuatu, as long as it is free of any restriction, condition or consideration, or payment to the seller for any subsequent resale, disposal or use for which an

adjustment cannot be made under Article 8 (Clause 4 of Schedule 2 of the Import Duties Act), will be acceptable to Customs as the basis for the transaction value of the goods imported.

Valuation Control

The main purposes of Customs control in the valuation process are to confirm:

- a. whether the conditions for the use of the transaction value method are fulfilled;
- b. whether the declared value includes the total payment made or to be made by the buyer for the imported goods;
- c. whether the declared value includes all adjustments necessary under Article 8 of the WTO Customs Valuation Agreement, as set out in Clause 4 of Schedule 2 of the Import Duties Act;
- d. whether an alternative method of valuation, if used, is being used correctly.

The WTO Valuation System necessitates the active involvement of both importers and Customs in the valuation process. It presupposes that a process of consultation may take place between Customs and importers to ensure that the value determined is accurate. Importers and/or those representing them at the time of importation must be fully conversant with the valuation laws applicable, and present to Customs a complete and accurate declaration. For its part, Customs must ensure that importers have full information on the Customs laws and regulations, to enable them to fulfill their obligation. After presentation of the declaration, it is the responsibility of the Customs to verify the data presented by the importer to ensure its truth and accuracy.

In all cases, the importer is required to be fully aware of the circumstances of a transaction and, particularly, of how the declared value was determined. Evidence to support his declaration of value should be maintained on file for presentation to Customs should it be requested for purposes of verification. Pursuant to the Customs Act, importers are required to keep in their files all documents pertaining to an importation for five years after the date of presentation of the Customs declaration.

Pursuant to the Customs Act, valuation control can be exercised both at the time of the clearance of imported goods, and after clearance through the use of post-clearance audit verification.

Customs valuation control includes:

- (a) the control of the declaration of value; and
- (b) a more thorough subsequent verification of the Customs value.

The control of the declaration of value means, an initial screening and checking of a declaration of value and/or the value details in a Customs clearance entry. The purpose of this initial control is to confirm whether:

- the declaration of value has been completed fully and correctly;
- the required supporting documents are appended thereto;

- the details of the value declaration correspond to the supporting documents;
- the entry is subject to any Customs rulings;
- the declared value is realistic in the light of the commercial practices of the industry and in comparison to the value of identical or similar goods imported from the same country of export.

The verification of Customs value covers the whole enquiry to be made by Customs in checking the truth or accuracy of any statement, document or declaration presented for Customs valuation purposes. These enquiries might be undertaken at a local or central level, and either at the time of clearance or after clearance of the imported goods through the conduct of a post-clearance audit of the importer's and/or clearing agent's financial and operational records.

Methods of Valuation

1. The WTO Customs Valuation Agreement and Schedule 2 of the Import Duties Act require that the Customs value of imported goods be calculated using one of six methods of valuation. These methods, which are listed below, must be applied in sequence. Method 1 must be attempted first. Method 2 can only be considered if a value cannot be determined under the first method.

Methods 3 to 6 follow the same procedure. Consequently, Method 6 can only be applied if all the previous methods cannot be used. The only exception is that the sequence of Methods 4 and 5 may be reversed at the request of the importer. (An officer cannot decide to reverse the order of methods.) The methods are identified as follows:

- (a) Method 1: the transaction value method (Article 1 of the Agreement; Clauses 1, 3 and 4 of Schedule 2 of the Import Duties Act);
- (b) Method 2: the transaction value of identical goods (Article 2 of the Agreement; Clauses 1 and 5 of Schedule 2 of the Import Duties Act);
- (c) Method 3: the transaction value of similar goods (Article 3 of the Agreement; Clauses 1 and 6 of Schedule 2 of the Import Duties Act);
- (d) Method 4: the deductive method (Article 5 of the Agreement; Clause 7 of Schedule 2 of the Import Duties Act);
- (e) Method 5: the computed method (Article 6 of the Agreement; Clause 8 of Schedule 2 of the Import Duties Act);
- (f) Method 6: the residual or fallback method (Article 7 of the Agreement; Clause 9 of Schedule 2 of the Import Duties Act).

Method 1: the transaction value method (Article 1 of the Agreement; Clause 3 of Schedule 2 of the Import Duties Act, subject to definitions in Clause 1 and adjustments in Clause 4)

2. The transaction value is the price actually paid or payable for the goods when sold for export to Vanuatu, adjusted in accordance with the provisions of Clause 4 of Schedule 2 of the Import Duties Act. The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods, and includes all payments made as a condition of sale of the imported goods by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller. The Customs value of the

imported goods is the transaction value of the goods being valued if all of the following conditions have been fulfilled.

3. The conditions for the use of the transaction value method are as follows:
- (a) there must be evidence of a sale for export to Vanuatu, e.g.: commercial invoices, contracts, purchase orders, etc.;
 - (b) there cannot be any restrictions on the disposition or use of the goods by the buyer, other than restrictions which:
 - (i) are imposed or required by law or by the public authorities in Vanuatu, e.g. license, end-use, etc..
 - (ii) limit the geographical area in which the goods may be resold, or
 - (iii) are a usual commercial practice that does not substantially affect the value of the goods, e.g. a restriction on selling or exhibiting automobiles prior to a fixed date which represents the beginning of a model year;
 - (c) the sale or price must not be subject to conditions or considerations for which a value cannot be determined with respect to the goods being valued. Examples of types of sales or prices that cannot be used to determine a transaction value are:
 - (i) the seller establishes the price of the imported goods on the condition that the buyer will also buy other goods in specified quantities,
 - (ii) the price of the imported goods is dependent upon the price or prices at which the buyer sells other goods to the seller,
 - (iii) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on the condition that he will receive a specified quantity of the finished goods;
 - (iv) barter transactions.
 - (d) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Clause 4 of Schedule 2 of the Import Duties Act. Sufficient information must be available to permit an accurate adjustment for any such proceeds;
 - (e) the buyer and the seller are not related. However, if the buyer and seller are related, the use of the transaction value method is still acceptable if the importer can demonstrate that:
 - (i) the relationship did not influence the price actually paid or payable, or
 - (ii) the transaction value closely approximates a test value. Pursuant to Paragraph 4 of Clause 2 of Schedule 2 of the Import Duties Act, the importer has the option of determining a test value in one of four ways:

- the transaction value of identical goods as set out in Clause 5 of Schedule 2 of the Import Duties Act;
- the transaction value of similar goods as set out in Clause 6;
- the deductive value of the imported goods as set out in Clause 7;
- the computed value of the imported goods as set out in Clause 8.

A test value determined by the importer under this provision can only be used to demonstrate that the transaction value of the goods was not influenced by the relationship between the buyer and the seller. The test value cannot be used to replace the transaction value

4. Pursuant to Paragraph 2 of Clause 4 of Schedule 2 of the Import Duties Act, additions to the invoiced transaction value must be made in order to determine the Customs Value of the imported goods if any of the following additional payments or contributions have been or will be made by the importer, either to the seller or to a third party, in connection with the purchase of the goods for export to Vanuatu:
 - (i) commissions and brokerage, except buying commissions (see the headings in this handbook),
 - (ii) packing and container costs and charges,
 - (iii) assists (see the heading in this handbook),
 - (iv) royalties and license fees (see the heading in this handbook),
 - (v) subsequent proceeds (see 3(d) above),
 - (vi) the cost of transport, insurance and related charges up to the point of importation into Vanuatu.

5. The Customs value will not include the following charges or costs, as long as they are identified separately from the price actually paid or payable for the goods:
 - (a) freight after importation into the Customs territory of Vanuatu;
 - (b) cost of construction, erection, assembly, maintenance or technical assistance occurring after importation;
 - (c) duties and taxes assessed by Vanuatu.

Method 2: the transaction value of identical goods (Article 2 of the Agreement; Clause 5 of Schedule 2 of the Import Duties Act)

6. Definition of identical goods (see Clause 1 of Schedule 2 of the Import Duties Act):
 - (a) identical goods are defined as goods which are:
 - (i) the same in all respects including
 - physical characteristics,
 - quality, and
 - reputation,

- (ii) produced in the same country as the goods being valued, and
 - (iii) produced by the producer of the goods being valued;
- (b) the definition of identical goods excludes imported goods for which engineering, artwork, etc. is undertaken in Vanuatu and is provided by the buyer to the producer of the goods free of charge or at a reduced cost;
 - (c) where there are no identical goods produced by the same person in the country of production of the goods being valued, identical goods produced by a different person in the same country may be taken into account;
 - (d) minor differences in appearance would not preclude goods which otherwise conform to the definition from being regarded as identical, unless the minor difference in appearance itself has an impact upon the price of the goods.
7. The transaction value of identical goods can be adjusted upwards or downwards to account for demonstrated differences between the goods being valued and the identical goods, to take account of:
- (a) trade level differences;
 - (b) quantity differences; and
 - (c) commercially significant differences for transportation costs due to variances in the mode and/or distance of transport.
8. When this method is used, the identical goods must have been exported to Vanuatu at or about the same time as the goods being valued. Where there is more than one transaction value of identical goods which meets all requirements, the lowest such value is to be used.

Method 3: the transaction value of similar goods (Article 3 of the Agreement; Clause 6 of Schedule 2 of the Import Duties Act)

9. Definition of similar goods (see Clause 1 of Schedule 2 of the Import Duties Act):
- (a) similar goods are defined as goods which:
 - (i) closely resemble the goods being valued in terms of component materials and characteristics,
 - (ii) are capable of performing the same functions and are commercially interchangeable with the goods being valued,
 - (iii) are produced in the same country as the goods being valued,
 - (iv) are produced by the producer of the goods being valued;

- (b) the definition of similar goods excludes imported goods for which engineering, artwork, etc. is undertaken in Vanuatu and is provided by the buyer to the producer of the goods free of charge or at a reduced cost;
 - (c) where there are no similar goods produced by the same person in the country of production of the goods being valued, similar goods produced by a different person in the same country may be taken into account.
10. The same adjustments as in paragraph 7 above are to be made where appropriate.
 11. The similar goods used must have been exported to Vanuatu at the same or substantially the same time as the goods being valued. Where there is more than one transaction value of similar goods which meets all the requirements, the lowest such value is to be used.

Method 4: the deductive value method (Article 5 of the Agreement; Clause 7 of Schedule 2 of the Import Duties Act)

12. By this method, the Customs value is determined on the basis of sales in Vanuatu of the goods being valued or of identical or similar imported goods, less certain specified expenses resulting from the importation and sale of the goods. The sale price in Vanuatu used as the starting point for this method is not necessarily the highest price or the lowest price, but the price at which the greatest aggregate number of the goods have been sold. This could be calculated on the basis of one sale or cumulatively through multiple sales.
13. The sales in Vanuatu must meet the following conditions:
 - (a) the goods have been resold in Vanuatu in the same condition as imported;
 - (b) sales of the goods being valued or of identical or similar goods have taken place at the same or substantially the same time as the time of importation of the goods being valued;
 - (c) if no sales took place at or about the time of importation, it is permitted to use sales up to 90 days after importation of the goods being valued;
 - (d) if there are no sales of identical or similar imported goods in the condition as imported that meet all the above requirements, the importer may choose to use sales of the goods being valued after further processing, as long as the costs of the further processing can be quantified;
 - (e) the purchaser in Vanuatu must not have supplied assists (see the heading in this handbook for a definition) to the importer, either directly or indirectly;
 - (f) the purchaser in Vanuatu must not be related to the importer from whom he buys goods at the first commercial level after importation.
14. The unit price at which the greatest number of units is sold must be established. Commercial invoices will serve as the primary basis for establishing the price per unit.
15. A deductive value is determined by making a deduction from the established price per unit for the aggregate of the following elements:

- (a) Commissions generally earned on a unit basis in connection with sales in Vanuatu for goods of the same class or kind;

OR

Profit and general expenses generally reflected on a unit basis on sales in Vanuatu for goods of the same class or kind;

AND

- (b) The usual transport, insurance and associated costs incurred within Vanuatu;
- (c) Customs duties and taxes assessed by Vanuatu;
- (d) Value added by assembly or further processing, when applicable;

Method 5: the computed value method (Article 6 of the Agreement; Clause 8 of Schedule 2 of the Import Duties Act)

- 16. Under this method, the Customs value is determined on the basis of the cost of production of the goods being valued, plus an amount for profit and general expenses usually reflected in sales from the country of manufacture for exportation to Vanuatu of goods of the same class or kind.
- 17. The Customs value may be calculated as follows:
 - (a) First, determine the aggregate of the relevant costs, charges and expenses for or the value of:
 - (i) materials employed in producing the imported goods, including the cost of transporting the materials to the place of manufacture of the imported goods, and
 - (ii) production or other processing costs for the imported goods (direct and indirect labour, factory overheads);
 - (b) the following are to be added if not included in (i) and (ii) above:
 - (i) packing costs and charges,
 - (ii) assists (see the heading in this handbook -- apportioned in a reasonable manner in accordance with generally accepted accounting principles),
 - (iii) engineering work, artwork, etc., undertaken in Vanuatu and charged to the producer;
 - (c) add amounts for profit and general expenses, usually reflected in export sales to Vanuatu, by producers in the country of export of goods of the same class or kind;

- (d) add the cost of transport, insurance and related charges to the port or place of importation.

Method 6: the residual or fallback method (Article 7 of the Agreement; Clause 9 of Schedule 2 of the Import Duties Act)

18. When the Customs value cannot be determined under any of the previous methods of valuation, it may be determined by applying in a flexible manner whichever of the previous methods most readily enables calculation of the Customs value. In determining Customs value under this residual method, no arbitrary, fictitious or prohibited methods of valuation are to be used. The Customs value should be fair, reasonable, uniform and neutral, and should reflect commercial reality to the extent possible.
19. Under the residual or fallback method, the Customs value must not be based on:
- (a) the selling price of goods produced in the country of importation;
 - (b) the higher of two alternative values;
 - (c) the price of goods on the domestic market of the country of exportation;
 - (d) the cost of production, except under the computed value method;
 - (e) the price of goods for export to a third country;
 - (f) minimum Customs values; or
 - (g) arbitrary or fictitious values.

These prohibited methods are listed in paragraph 2 of Clause 9 of Schedule 2 of the Import Duties Act (and in paragraph 2 of Article 7 of the Agreement).

20. The following are examples of various uses which have been made of the residual or fallback method in other countries:
- A trotting horse, imported by a buyer three years after its purchase in the country of export, was valued at the time of importation at two times the purchase price on the basis of a valuation determination prepared by an expert horse evaluator;
 - Transaction value may not be used to value merchandise imported pursuant to a lease agreement with an option to buy. However, where other bases of valuation may also not be used, a value may be based on the transaction value approach using the "option-to-buy" price in the lease agreement, reasonably adjusted to arrive at a value;
 - The Customs value of used machines could be determined on the basis of an expert's estimation of the value of the machines in the condition as imported. No other methods were available in this case, as the machines were disassembled and used partly as spare parts by the importer in the country of importation;
 - Waste oil was collected by an importer from foreign petrol stations, industrial factories,

etc. and transported to the country of importation to be used for heating the importer's greenhouses. There was no charge for the waste oil, and its transportation in the country of importation was effected using the importer's own vehicles. The Customs value was determined under the residual fallback method by flexibly applying the computed value method, and was composed of the cost of collecting the waste oil plus the cost of transportation to the place of importation.

21. In applying the residual or fallback method, if more than one method can be applied flexibly, the normal sequence for using Methods 1 to 5 must be taken into account.

Commissions (except buying commissions) and Brokerage Charges

22. If they are not already included in the invoiced amount, any payments made by the importer (whether to the seller or to a third party) for any commissions (except buying commissions) or brokerage charges associated with the purchase of the goods must be declared as part of the value of the goods. This includes, for example, commissions paid by the importer to a bank for the conversion or transfer of the funds used to pay for the goods.
23. Fees paid by the importer for the services of a Customs Broker in Vanuatu are not considered to be part of the value of the goods.

Buying Commissions

24. As noted in Paragraph 2 of Clause 4 of Schedule 2 of the Import Duties Act, buying commissions are not included in the Customs value of the imported goods. A buying commission is the fee for services performed by an agent for an importer in, for example, looking for vendors in the exporting country who can supply the types of goods the importer wants to purchase, negotiating the purchase of the goods on behalf of the importer, checking to make sure the goods supplied are correct and of good quality, and preparing the necessary paperwork.
25. The key factors to determine if this is a legitimate buying commission are:
 - Is there a contract in place between the importer and the agent clearly spelling out the agent's responsibilities to the importer and the tasks the agent is to perform, and the agency commission he will receive from the importer for his services;
 - Is there evidence of instructions (E-mails, for example) given by the importer to his agent during the process of negotiating the purchase of the goods.
 - Whose money has been used to purchase the goods? If the importer pays the agent before the agent pays the vendors, this is strong evidence that the agent is indeed an agent of the importer and his charges for services rendered to the importer are in fact a buying commission.
26. If, however, the "agent" pays for the goods before he receives any money from the importer, this is an indication that the "agent" is in fact not an agent of the importer, he is an intermediate vendor: buying the goods himself, and then selling them to the importer. The "buying commission" in this case is not a buying commission at all: it is the profit made by the intermediate vendor on the sale transaction to the importer, and therefore part of the value of the goods for importation into Vanuatu.

Assists

27. Pursuant to paragraphs 2(g), 3 and 4 of Clause 4 of Schedule 2 of the Import Duties Act, the term “Assists” means the value of the following goods and services 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:
- (a) material components, parts and other goods incorporated in the imported goods;
 - (b) tools, dies, moulds and other goods used in the production of the imported goods;
 - (c) materials consumed in the production of the imported goods;
 - (d) engineering, development, art work, design work, plans and sketches undertaken outside Vanuatu and necessary for the production of the imported goods.
28. The value of any of the above goods and services 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, is to be:
- (a) determined in a reasonable manner appropriate to the circumstances; and
 - (b) apportioned to the imported goods in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.
29. Without limiting the above:
- (a) if the importer acquires the goods or services at a given cost from a seller who is not related to the importer – the value of the goods or services is that cost; or
 - (b) if the goods or services were produced by the importer or by a person related to the importer – the value of the goods or services is the cost of producing the goods or services; or
 - (c) if the goods or services had previously been used by the importer, whether or not acquired or produced by the importer, the value of the goods or services would be the original cost of acquisition or production adjusted downward to reflect the prior use.

Royalties

30. Pursuant to Paragraph 2(d) of Clause 4 of Schedule 2 of the Import Duties Act, if they are not already included in the invoice price, any royalties or licence fees relating to the goods being valued (including payments for patents, trademarks and copyright) that the buyer must pay, directly to the seller or indirectly to a third party, as a condition of the sale for export to Vanuatu of the goods being valued, must be declared as a component of the Customs value of the imported goods.
31. Pursuant to Interpretative Note 8(1)(c) to the Agreement, royalty payments made by the importer for the rights to reproduce the imported goods in Vanuatu will not be considered to be a component of the Customs value of the imported goods. (See paragraph 36 below regarding the legal authority in Vanuatu of the Interpretative Notes.)

Discounts

32. If the buyer receives a discount from the seller on the price of the imported goods, this discount can be deducted from the invoice price in determining the Customs value as long as the following conditions are met:
- The buyer actually received the discount (a discount offered but not taken cannot be deducted from the price);
 - The discount was offered before the delivery of the goods, and is clearly identified on the invoice;
 - The discount is of a nature that would be offered to any other purchaser by the seller under the same circumstances (for example, “special” discounts offered only to purchasers related to the seller would not be allowed to be deducted from the price);
 - The discount is related to the goods currently being imported. Retroactive discounts cannot be deducted from the Customs value of the current importation.
33. For example, the following would be discounts that could be deducted from the invoice price to determine the Customs value:
- An early payment discount (e.g.: 2/10 net 30);
 - A large quantity purchase discount;
 - A frequent customer discount, as long as it is the stated policy of the seller to give such a discount to any purchaser who meets specified qualifications of quantity or frequency of purchases;
 - A discount for second quality or obsolete goods.
34. There is no maximum threshold percentage for an acceptable discount. As long as the declarant can satisfy Customs that the discount was actually given to the purchaser, and that the discount would apply to any other purchaser in the same circumstances, the discount will be an acceptable deduction from the invoice price to determine the Customs value of the imported goods.

Interest charges

35. Pursuant to Paragraph 1(7) of Schedule 2 of the Import Duties Act, charges for interest under a financing arrangement entered into by a buyer and relating to the purchase of imported goods are not to be regarded as part of the customs value of the goods if:
- (a) the charges are distinguished from the price actually paid or payable for the goods; and
 - (b) such goods are actually sold at the price declared as the price actually paid or payable; and
 - (c) the buyer, if required, can demonstrate that:
 - (i) the financing arrangement was made in writing; and
 - (ii) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.

Valuation of Carrier Media

36. Pursuant to Paragraph 9(c) [Paragraph 8 proposed] of Clause 1 of Schedule 2 of the Import Duties Act, in determining the customs value of imported carrier media bearing data or instructions, only the cost or value of the carrier medium itself shall be taken into account. The

customs value shall not, therefore, include the cost or value of the data or instructions, provided that this is distinguished from the cost or the value of the carrier medium. The expression "carrier medium" shall not be taken to include integrated circuits, semiconductors and similar devices or articles incorporating such circuits or devices; the expression "data or instructions" shall not be taken to include sound, cinematic or video recordings.

Interpretative Notes

37. The Agreement contains a set of Interpretative Notes, which provide explanations of the application of the valuation methods, including illustrative examples. The Interpretative Notes also provide policy interpretations of valuation issues from the WTO.
38. These Interpretative Notes have been given official legal recognition in Vanuatu by Paragraph 1(9) of Schedule 2 of the Import Duties Act. The Interpretative Notes are published in Vanuatu in Regulation number _____ dated _____, and are included in this Handbook as Annex Two.

Customs Value Declaration Form

39. In order to determine the Customs value for ad valorem Customs duty purposes, it is necessary for Customs to have full knowledge of the facts relating to the commercial transaction involving the imported goods. Schedule 2 of the Import Duties Act requires the importer to complete and submit a Value Declaration Form, in addition to the Goods declaration (inward) and the commercial documents. A sample of the Vanuatu Customs Value Declaration Form and instructions for its completion are presented at the end of this handbook.
40. In the Customs Value Declaration Form, the declarant must state whether any payment in addition to the invoice price has been or will be made, whether the importer is related to the foreign supplier, whether any part of the proceeds of later resale will accrue directly or indirectly to the seller, etc. If the imported goods are not the subject of a sale, this also has to be stated in the Customs Value Declaration Form (e.g. goods sent on consignment to an agent or transferred to a branch).
41. The Customs Value Declaration Form also provides a number of other particulars that are of importance when valuing the goods, such as the type of the transaction, the terms of payment, the currency of settlement, freight and insurance costs, commissions, royalties, etc.

Importer's responsibilities

42. Under the provisions of the Customs Act, importers are responsible for the self-assessment of their duty and tax liabilities with respect to imported goods. For valuation purposes, this means that the importer is required to calculate and declare a value for duty on Customs entry documents that meets all of the requirements of the valuation provisions of national legislation and administrative instructions.
43. It is common practice in Vanuatu for importers to engage Customs brokers to act on their behalf in clearing goods through Customs and providing advice on valuation and other Customs matters. Nevertheless, the Customs Act specifies that the importer and the broker or authorized agent are jointly liable for the correct declaration of the Customs value.

44. All documentary evidence to support declared values may not need to accompany each entry, but should be available for Customs review when required. It is the importer's responsibility to maintain, in a manner which facilitates Customs review, all information and records used in the determination and declaration of the value for duty.
45. Schedule 2 of the Import Duties Act requires that the Customs Value Declaration Form be signed by the person with the most direct knowledge of the commercial facts relating to the Customs value and possessing the required authorization.

Instances where a Customs Value Declaration Form is not required

46. A Customs Value Declaration Form is not required to be submitted in the following circumstances:
 - (a) non-commercial importations by passengers;
 - (b) importations of a value not exceeding _____;
 - (c) where the nature of the Customs procedure to which the goods are subject does not require submission of a Customs Value Declaration Form.

Periodic value declaration

47. Where Vanuatu Customs has agreed to allow an importer to do so, a periodic consolidated Customs Value Declaration Form may be submitted covering regular transactions between the same supplier and the same importer during a prescribed period, provided that the facts do not change during that period. The system operates as follows:
 - (a) the consolidated Customs Value Declaration Form must contain a statement of value which includes all the basic information normally found on an individual declaration with the exception of actual monetary amounts;
 - (b) recording and registration of the declarations will be at the central Customs office in Port Vila, from which other Customs offices may obtain information; and
 - (c) importers will be required to make copies of the registered Customs Value Declaration available at the ports and other places of entry for their goods.

Supply of Information and Confidentiality

48. Pursuant to Clause 11 of Schedule 2 of the Import Duties Act, but subject to clause 12, upon the written request by the importer of any goods, the Director of Customs must give written notice to the importer:
 - (a) of the customs value of the goods; and

- (b) the basis of the determination of that value; and
 - (c) the provisions of Schedule 2 of the Import Duties Act that apply to the goods.
49. Clause 12 of Schedule 2 of the Import Duties Act states that any information that:
- (a) is by its nature confidential; or
 - (b) has been provided to the Director of Customs by any government or person on a confidential basis for the purpose of determining the customs value of any goods;

must not be disclosed by Customs to any other government or person without the specific authority of the government or person who provided the information, except to the extent that it may be required to be disclosed in any legal proceedings arising out of a determination made under this Schedule.

Appeal Rights

50. Pursuant to Clause 10 of Schedule 2 of the Import Duties Act, at any time after Customs has made a determination of value in relation to any imported goods, the Director of Customs may review the determination.
51. The importer of any goods may, at any time after Customs has made a determination of value in relation to the goods, request the Director of Customs to review the determination.
52. If, as a result of a review under (50) or (51) above, the Director of Customs decides that the determination is:
- (a) inconsistent with the provisions of Schedule 2 of the Import Duties Act; or
 - (b) incorrect for any other reason;
- the Director of Customs must amend the determination, and import duty is payable in accordance with that amended determination.
53. If the importer of the goods is not satisfied with a decision of the Director of Customs under (52) above in relation to a determination, the importer may apply to the Supreme Court for a review of the original determination or the amended determination, as the case requires.
54. The Supreme Court may affirm, vary or revoke the original determination or the amended determination, as the case requires.

Vanuatu Customs Value Declaration Form

DECLARATION OF PARTICULARS RELATING TO CUSTOMS VALUE

1 NAME AND ADDRESS OF SELLER (Block Letters)	FOR OFFICIAL USE	
2(a) NAME AND ADDRESS OF BUYER (Block Letters)		
2(b) NAME AND ADDRESS OF DECLARANT (Block Letters)	<p>Vanuatu Customs and Inland Revenue collects information in order to administer the assessment of duties and taxes for which it is responsible (such as Customs Duties, VAT and excise duties), and for detecting and preventing crime.</p> <p>Where the law permits we may also get information about you from third parties, or give information to them, for example in order to check its accuracy, prevent or detect crime or protect public funds in other ways. These third parties may include the police, other government departments and agencies.</p>	
IMPORTANT NOTE By signing and lodging the declaration the declarant accepts responsibility for the accuracy and completeness of the particulars given on this form and on any continuation sheet lodged with it and the authenticity of any document produced in support. The declarant also accepts responsibility to supply any additional information or document necessary to establish the customs value of the goods.	3 Terms of delivery	
	4 Number and date of invoice	
	5 Number and date of contract	
6 Number and date of any previous Customs decision concerning boxes 7, 9 and 10	Enter X where applicable	
7 (a) Are the buyer and seller RELATED in the sense of paragraph 1(2) of Schedule 2 of the Import Duties Act? (* see note below) If 'NO', go to box 8. (b) Did the relationship INFLUENCE the price of the imported goods? (c) (reply optional) Does the transaction value of the imported goods CLOSELY APPROXIMATE to a value mentioned in paragraph 3(4)(b) of Schedule 2 of the Import Duties Act? If 'YES', give details:	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO	
8 How, and to whom, was payment for the goods transferred by the buyer? (i.e. through a Bank or a local money transfer, and to the seller directly or to an agent or a family member in the exporting country?)		
9 (a) Are there any RESTRICTIONS as to the disposition or use of the goods by the buyer other than restrictions which: <ul style="list-style-type: none"> - are imposed or required by law or by the public authorities in the Community, - limit the geographical area in which the goods may be resold, or - do not substantially affect the value of the goods? <input type="checkbox"/> YES <input type="checkbox"/> NO (b) Is the sale or price subject to some CONDITION or CONSIDERATION for which a value cannot be determined with respect to the goods being valued? Specify the nature of the restrictions, conditions or considerations as appropriate: If the value of conditions or considerations can be determined, indicate the amount in box 12(b).		
10 (a) Are any ROYALTIES and LICENCE FEES related to the imported goods payable either directly or indirectly by the buyer as a condition of the sale? <input type="checkbox"/> YES <input type="checkbox"/> NO (b) Is the sale subject to an arrangement under which part of the proceeds of any subsequent RESALE, DISPOSAL or USE accrues directly or indirectly to the seller? <input type="checkbox"/> YES <input type="checkbox"/> NO If 'YES' to either of these questions, specify conditions and, if possible, indicate the amounts in boxes 16 and 17.		
(*) NOTES TO BOX 7 1. PERSONS SHALL BE DEEMED TO BE RELATED ONLY IF: (a) they are officers or directors of one another's businesses; (b) they are legally recognized partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by another person; (g) together they directly or indirectly control another person; or (h) they are members of the same family. 2. The fact that the buyer and the seller are related need not preclude the use of a transaction value (see paragraph 3(1)(d) of Schedule 2 of the Import Duties Act).	11(a) Number of continuation sheets attached 11(b) Place : Date : Signature :	

[CONTINUED OVERLEAF]

FOR OFFICIAL USE				
		Item	Item	Item
A. Basis of calculation	12 (a) Net price in CURRENCY OF INVOICE (Price actually paid or price payable for settlement at the material time for valuation for customs purposes)			
	(b) Indirect payments - see box 9(b) (rate of exchange:)			
13 TOTAL A. In NATIONAL CURRENCY				
B. ADDITIONS: Costs in NATIONAL CURRENCY NOT INCLUDED in A above (*) QUOTE BELOW previous relevant Customs decisions, if any:	14 Costs incurred by the buyer:			
	(a) commissions, except buying commissions			
	(b) brokerage			
	(c) containers and packing			
	16 Goods and services supplied 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: The values shown represent an apportionment where appropriate.			
	(a) materials, components, parts and similar items incorporated in the imported goods			
	(b) tools, dies, moulds and similar items used in the production of the imported goods			
	(c) materials consumed in the production of the imported goods			
	(d) engineering, development, artwork, design work and plans and sketches undertaken elsewhere than in the Community and necessary for the production of the imported goods			
	18 Royalties and license fees - see box 9 (a)			
17 Proceeds of any subsequent resale, disposal or use accruing to the seller - see box 9 (b)				
18 Costs of delivery to _____ (place of introduction)				
(a) transport				
(b) loading and handling charges				
(c) insurance				
19 TOTAL B				
C. DEDUCTIONS: Costs in NATIONAL CURRENCY INCLUDED in A above (*)	20 Costs of transport after arrival at place of introduction			
	21 Charges for construction, erection, assembly, maintenance or technical assistance undertaken after importation			
	22 Other charges (specify)			
	23 Customs duties and taxes payable in Vanuatu by reason of the importation or sale of the goods			
	24 TOTAL C			
25 VALUE DECLARED (A + B - C)				
(*) Where amounts are payable in a FOREIGN CURRENCY, indicate in this section the amount in the foreign currency and the rate of exchange by reference to each relevant element and item.				
Reference	Amount	Rate of exchange		

Customs Value Declaration Form completion instructions

Box 1: name and address of the seller and box 2(a): name and address of the purchaser

These cells reproduce respectively the name and address of the seller and buyer parties to the reported transaction for the purposes of customs valuation.

Box 2(b): name and address of the declarant of the value

The Customs Value Declaration form must be completed and signed by a person who has established his residence or place of work in the customs territory of Vanuatu, who knows all the facts relating to the importation in question, and who is able to present to Customs all documents relative to that importation. In general, this is the person making the customs declaration but, where appropriate, the declarant of value can be a different person authorized by the importer.

Box 3: delivery conditions

This is the international code (Incoterm) for the terms of sale (e.g.: FOB, CIF).

Box 4: Number and date of invoice

Box 5: number and date of the contract.

This should make reference to the contractual document or documents governing the sale for export to Vanuatu. It may be the commercial contract, license agreement, etc.

Box 6: number and date of any decision by Customs concerning boxes No. 7-9

These are decisions of Customs establishing a periodic adjustment or fixing a rate adjustment applicable to imports that are subject to one or more of the factors identified in boxes 7 - 9.

Box 7: relationship of the buyer and the seller

The definition of related persons is presented in note 1 at the bottom of the form.

Box 8

How the payment for the goods was transferred to the exporting country, and to or through whom.

Box 9(a): existence of restrictions

When the contract of sale imposes restrictions on the use or disposal of the goods imported other than those referred to in Clause 3(1)(a) of Schedule 2 of the Import Duties Act, the transaction value may be rejected.

Box 9(b): existence of considerations or between the seller and the buyer (Article 29-1-b CDC)

Insofar as the value of these benefits can be determined, it should be entered in box 11 b.

Box 10(a): existence of royalties

Insofar as the importer has paid royalty or license fees for imported goods and the payment of these fees is a condition of the sale for export of goods to Vanuatu, the importer is required to report their existence.

Box 10(b): value of any part of the proceeds of any subsequent resale, disposal or use of the goods that will accrue to the seller.

When a portion of the proceeds from the resale of imported goods accrues directly or indirectly to the exporter, the importer should adjust the price paid by the amount of the proceeds that will accrue to the exporter to determine the Customs value of the imported goods. When this amount is not quantifiable, the transaction value cannot be determined and an alternative method of valuation must be used.

Item 11(b): date, place and signature

Signature of the declarant identified in Box 2(b)

The back of the form shows the figures for calculating the customs value of the imported goods: consisting of the price actually paid or payable (section A, boxes 11 and 12); plus adjustment elements to be added (section B, boxes 13 to 18); minus adjustment elements to be subtracted (section C, boxes 19 to 23).

Box 12: net price

This is the price actually paid or payable for the goods as presented on the invoice for the goods. If the invoice is denominated in foreign currency, the exchange rate must be declared at box 11 b.

Box 13: Total A

This is the price actually paid or payable for the goods in Vatu, before the application of adjustments.

Boxes 14 to 18 items to add

These are the elements listed in paragraph 2 of Clause 4 of Schedule 2 of the Import Duties Act, if they are borne by the buyer and are not already included in the invoice price. If they are already included in the invoice price, they are not required to be added again here.

Note that, with respect to boxes 13a and 13b, any payments made by the importer (whether to the seller or to a third party) not already included in the invoice for any commissions (except buying commissions) or brokerage charges associated with the purchase of the goods must be declared as part of the value of the goods. This includes, for example, commissions paid by the importer to a bank for the conversion or transfer of the funds used to pay for the goods.

Fees paid by the importer for the services of a Customs Broker in Vanuatu are not considered to be part of the value of the goods.

The sum of these elements, called "**Total B**", is entered in **box 19**.

Boxes 20 to 23: items to subtract

These are the elements listed in paragraph 5 of Clause 4 of Schedule 2 of the Import Duties Act. As long as such elements are included but separately identifiable on the invoice and are quantifiable, they may be deducted from the invoice price.

The sum of these elements, called "**Total C**", is entered in **box 24**.

Box 25: Value declared

The total value declared is arrived at as (Total A + Total B – Total C)

Annex One

Vanuatu Import Duties Act - Schedule 2

CUSTOMS VALUATION OF IMPORTED GOODS

Clause 1	Interpretation
Clause 2	Application
Clause 3	Transaction value as primary basis of customs valuation
Clause 4	Adjustment of price actually paid or payable
Clause 5	Transaction value of identical goods as customs value
Clause 6	Transaction value of similar goods as customs value
Clause 7	Deductive value of customs value
Clause 8	Computed value as customs value
Clause 9	Residual value
Clause 10	Appeal rights
Clause 11	Supply of information
Clause 12	Confidential information
Clause 13	Foreign currency conversion
Clause 14	Withdrawal of goods
Clause 15	Delegation

CUSTOMS VALUATION OF IMPORTED GOODS

Clause 1: INTERPRETATION

(1) In this Schedule, unless the contrary intention appears:

“buying commissions” mean the fees paid by an importer to the importer’s agent for the service of representing the importer abroad in the purchase of goods being valued;

“computed value” means the value determined in accordance with clause 8;

“customs value of imported goods” means the value of goods for the purposes of levying *ad valorem* duties of customs on imported goods;

“country of export” or “the country from which goods are exported” means the country from which the goods are transported directly to Vanuatu or the country from which goods are taken to be transported directly under subclause (6);

“country of importation” means the country or customs territory of importation;

“deductive value” means the value determined in accordance with clause 7;

“goods of the same class or kind” means goods that are within a group or range of goods produced by a particular industry or industry sector, and includes identical goods or similar goods;

“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 same country as the goods being valued were produced; and
- (c) were produced by or on behalf of the producer of the goods being valued;

but does not include goods which incorporate or reflect engineering, development, artwork, design work, plans and sketches for which no adjustment has been made under clause 4(2)(g)(iv) because such elements were undertaken in Vanuatu;

“price actually paid or payable” is the total payment made or to be made by the buyer to, or for the benefit of, the seller of the imported goods;

"produced" includes grown, manufactured or mined;

"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
- (b) were produced in the same country as the goods being valued were produced; and
- (c) were produced by or on behalf of the producer of the goods being valued;

but does not include goods which incorporate or reflect engineering, development, artwork, design work, plans and sketches for which no adjustment has been made under clause 4(2)(g)(iv) because such elements were undertaken in Vanuatu;

“sufficient information”, in respect of a determination made under this Schedule of any amount, difference or adjustment, means objective and quantifiable information that clearly establishes the accuracy of the amount, difference or adjustment;

“to produce” includes to grow, to manufacture or to mine;

“transaction value” means the value determined in accordance with clauses 3 and 4.

(2) For the purposes of this Schedule, persons are taken to be related only if:

- (a) they are officers or directors of one another's business; or
- (b) they are legally recognised partners in business; or
- (c) they are employer and employee; or
- (d) in the case of persons that are bodies corporate – another 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 another person; or
- (g) together they direct or indirectly control another person; or
- (h) they are members of the same family.

(3) For the purposes of this Schedule, persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other are taken to be related if they fall within the criteria of subclause (2).

(4) For the purposes of this Schedule, persons are taken 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 each other, or 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.

(5) For the purposes of this Schedule, if:

- (a) there are no goods that were produced by or on behalf of the person who produced the goods being valued; and
- (b) there are no goods 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 are taken to be identical goods or similar goods, as the case may be.

(6) For the purposes of this Schedule, goods exported to Vanuatu from any country but passing through another country on their way to Vanuatu (whether transhipped in that other country or not) are taken to be transported directly from the first mentioned country.

(7) For the purposes of this Schedule, charges for interest under a financing arrangement entered into by a buyer and relating to the purchase of imported goods are not to be regarded as part of the customs value of the goods if:

- (a) the charges are distinguished from the price actually paid or payable for the goods; and
- (b) such goods are actually sold at the price declared as the price actually paid or payable; and
- (c) the buyer, if required, can demonstrate that:
 - (i) the financing arrangement was made in writing; and
 - (ii) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.

(8) For the purposes of this Schedule, information submitted by an importer, buyer or producer in relation to valuing imported goods may not be rejected by the Director of Customs because of the accounting method by which the information was prepared if it was prepared in accordance with generally accepted accounting principles.

(9) In the interpretation of this Schedule, regard must be had to:

- (a) the Interpretative Notes in Annex 1 to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994; and
- (b) the decision of 26 April 1984 on the Treatment of Interest Charges in the Customs Value of Imported Goods that was adopted by the WTO Committee on Customs Valuation on 12 May 1995; and
- (c) the decision of 24 September 1984 on the Valuation of Carrier Media Bearing Software for Data Processing Equipment that was adopted by the WTO Committee on Customs Valuation on 12 May 1995.

Clause 2: Application

(1) The provisions of this Schedule apply to any goods imported into Vanuatu on or after the date specified by Order in writing made by the Minister.

(2) The customs value of imported goods is to be determined in accordance with clauses 3 to 9.

(3) The customs value of imported goods is their transaction value if the customs value can be determined in accordance with clauses 3 and 4.

(4) If the customs value of imported goods cannot be so determined, it must be determined in the following order and on the following basis:

- (a) the transaction value of identical goods that meet the requirements set out in clause 5;
- (b) the transaction value of similar goods that meet the requirements set out in clause 6;
- (c) the deductive value of the imported goods as set out in clause 7;
- (d) the computed value of the imported goods as set out in clause 8.

(5) The Director of Customs must reverse the order of consideration of the valuation basis provided for in subclauses (4)(c) and (d) upon receipt of a written request from the importer. The reversal must be confirmed in writing by the Director of Customs.

(6) If the customs value of imported goods, cannot be determined on the basis of any of the methods referred to in subclauses (4)(a) to (d), the customs value of the goods must be determined under clause 9.

Clause 3: Transaction value as primary basis of customs valuation

(1) The customs value of imported goods is the transaction value, that is the price actually paid or payable for the goods when sold for export to Vanuatu adjusted in accordance with clause 4, if:

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:

- (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; and

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued; and

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with clause 4; and

(d) the buyer and the seller of the goods are not related to each other at the time the goods are sold for export or, if the buyer and the seller are related to each other at that time, the transaction value is acceptable for customs purposes under subclause (4).

(2) If the buyer and seller are related, the Director of Customs must examine the circumstances surrounding the sale to determine whether the transaction value is acceptable or not.

(3) If the Director of Customs is of the opinion that the relationship between the buyer and the seller of any goods influenced the price actually paid or payable for the goods, the Director must:

- (a) inform the importer of the grounds on which his or her opinion was formed; and
- (b) give the importer a reasonable opportunity to satisfy him or her that the relationship did not influence the price.

If the importer so requests, the communication of the grounds must be in writing.

(4) In a sale between related persons, the transaction value of the goods is acceptable and the goods are to be valued under subclause (1) if:

(a) the relationship between the buyer and the seller did not influence the price of the goods; or

(b) the importer of the goods demonstrates the transaction value of the goods closely approximates to one of the following occurring at or about the same time:

- (i) the transaction value in sales to unrelated buyers of identical goods or similar goods for export to Vanuatu;
- (ii) the deductive value of identical goods or similar goods;
- (iii) the computed value of identical goods or similar goods.

(5) In applying the tests in subclause (4)(b), due account must be taken of:

- (a) demonstrated differences in commercial levels and quantity levels; and
- (b) the amounts referred to in clause 4; and
- (c) costs incurred by the seller in sales in which the seller and the buyer are not related, being costs that are not incurred by the seller in sales in which the seller and the buyer are related.

(6) Without limiting subclause (4)(b), the factors that may be taken into consideration in determining whether one value closely approximates to another, include the following:

- (a) the nature of the goods being valued;
- (b) the nature of the industry that produces the goods being valued;
- (c) the season in which the goods being valued are imported;
- (d) whether a difference in values is commercially significant.

(7) The tests in subclause (4)(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under subclause (4)(b).

Clause 4: Adjustment of price actually paid or payable

(1) In determining the customs value of imported goods under clause 3, the price actually paid or payable for the goods must be adjusted in accordance with subclauses (2) and (5).

(2) There is to be added to the price actually paid or payable for the imported goods the following amounts, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:

- (a) commissions and brokerage, except buying commissions;
- (b) the cost of containers, cartons, cases and coverings that are treated for customs purposes as being part of the goods;
- (c) the cost of packing the goods whether for labour or materials;
- (d) royalties and licence fees, including payments for patents, trademarks and copyright, relating to the goods being valued that the buyer must pay, directly or indirectly, as a condition of sale of the goods being valued (exclusive of charges for the right to reproduce the goods in Vanuatu);
- (e) the value of any part of the proceeds of any subsequent resale, disposal or use of the goods that accrues or is to accrue directly or indirectly to the seller;
- (f) the following costs and charges:
 - (i) the cost of transportation of the goods to Vanuatu;
 - (ii) the loading, unloading and handling charges associated with the transportation of the goods to Vanuatu;
 - (iii) the cost of insurance of the goods to Vanuatu;
- (g) the value (determined and apportioned in accordance with subclause (3)) of the following goods and services 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:

- (i) material components, parts and other goods incorporated in the imported goods;
- (ii) tools, dies, moulds and other goods used in the production of the imported goods;
- (iii) materials consumed in the production of the imported goods;
- (iv) engineering, development, art work, design work, plans and sketches undertaken outside Vanuatu and necessary for the production of the imported goods.

(3) The value of the goods and services in subclause (2)(g)(i), (ii), (iii) and (iv) is to be:

- (a) determined in a reasonable manner appropriate to the circumstances; and
- (b) apportioned to the imported goods in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

(4) Without limiting subclause (3)(a):

- (a) if the importer acquires the goods or services at a given cost from a seller who is not related to the importer – the value of the goods or services is that cost; or
- (b) if the goods or services were produced by the importer or by a person related to the importer – the value of the goods or services is the cost of producing the goods or services; or
- (c) if the goods or services had previously been used by the importer, whether or not acquired or produced by such importer – the value of the goods or services would be the original cost of acquisition or production adjusted downward to reflect the prior use.

(5) There is to be deducted from the price actually paid or payable for the goods the following amounts, to the extent that they are included in the price actually paid or payable for the goods:

- (a) any reasonable costs, charges or expenses for the construction, erection, assembly, maintenance or technical assistance provided in respect of the goods after they are imported;
- (b) any reasonable costs, charges or expense incurred in respect of the transportation or insurance of the goods within Vanuatu;
- (c) any other customs duties or taxes payable in Vanuatu by reason of the importation or sale of the goods;

if the costs, charges, expenses, duties or taxes are distinguished from the price actually paid or payable for the goods.

(6) Additions and deductions to the price actually paid or payable for imported goods must be made on the basis of sufficient information.

(7) No additions or deductions are to be made to the price actually paid or payable for imported goods in determining their customs value except as provided for by this clause.

(8) If there is not sufficient information to determine any of the amounts required to be added to, or deducted from, the price actually paid or payable, the transaction value of the goods being valued cannot be determined under clause 3.

Clause 5: Transaction value of identical goods as customs value

(1) Subject to subclauses (2), (3) and (4), if the customs value of imported goods cannot be determined under clause 3, the customs value of the goods is the transaction value of identical goods if the identical goods were:

- (a) sold for export to Vanuatu; and
- (b) exported at the same or substantially the same time as the goods being valued; and
- (c) sold to a buyer:
 - (i) at the same or substantially the same commercial level as the buyer of the goods being valued; and
 - (ii) in the same or substantially the same quantities as the goods being valued.

(2) If the identical goods were not sold under the conditions described in subclause (1)(c), other identical goods sold to a buyer under any of the following conditions are to be substituted:

- (a) at the same or substantially the same commercial level but in different quantities;
- (b) at a different commercial level but in the same or substantially the same quantities;
- (c) at a different commercial level and in different quantities.

(3) The transaction value of identical goods must be adjusted by adding to or deducting from that value, as the case may be, amounts to account for:

- (a) if the costs and charges referred to in clause 4(2)(f) are included in the transaction value – significant differences in such costs and charges between the imported goods and the identical goods arising from differences in distances and modes of transport; and
- (b) if the transaction value is in respect of identical goods sold under the conditions described in subclause (2)(a), (b) or (c) – differences in either or both of the following:
 - (i) the commercial levels of buyers of the identical goods and the imported goods;
 - (ii) the quantities in which the identical goods and the imported goods were sold.

Each of the amounts must be determined on the basis of sufficient information. However, if any such amount cannot be so determined, the customs value of the imported goods must not be determined on the basis of the transaction value of identical goods under this clause.

(4) If, in applying this clause, more than one transaction value of identical goods is found, the lowest such transaction value must be used to determine the customs value of the imported goods.

Clause 6: Transaction value of similar goods as customs value

(1) If the customs value of imported goods cannot be determined under clause 5, the customs value of the goods is the transaction value of similar goods if the similar goods were:

- (a) sold for export to Vanuatu; and
- (b) exported at the same or at substantially the same time as the goods being valued; and
- (c) sold to a buyer:
 - (i) at the same or substantially the same commercial level as the buyer of the imported goods; and
 - (ii) in the same or substantially the same quantities as the goods being valued.

(2) Subclauses (2), (3) and (4) of clause 5 apply to this clause as if a reference in those subclauses to "identical goods" were a reference to "similar goods".

Clause 7: Deductive value as customs value

(1) If the customs value of imported goods cannot be determined under clause 6, the customs value of the goods is the deductive value of the goods as provided for by subclause (2), (3) or (4), whichever applies.

(2) The deductive value of imported goods is the unit price at which the imported goods, or identical or similar goods, are sold in the greatest aggregate quantity if:

- (a) the imported goods, or identical or similar goods, are sold in Vanuatu in the condition in which they were imported; and
- (b) the sale occurs at or about the time of the importation of the goods being valued.

(3) The deductive value of imported goods is the unit price at which the imported goods, or identical or similar goods, are sold in the greatest aggregate quantity at the earliest date after the goods being valued are imported if:

- (a) the imported goods, or identical or similar goods, are sold in Vanuatu in the condition in which they were imported; and
- (b) the sale does not occur at or about the time of the importation of the goods being valued, but does occur within 90 days after that importation.

(4) If:

- (a) neither the imported goods nor identical goods nor similar goods are sold in Vanuatu in the condition in which they were imported; and
- (b) the imported goods, after being assembled, packaged or further processed in Vanuatu, are sold in Vanuatu within 90 days after their importation; and
- (c) the importer requests that this subclause be applied;

the deductive value of the imported goods is the unit price at which those goods are sold in the greatest aggregate quantity, due allowance being made for the value added by the assembling, packaging or further processing referred to in paragraph (b).

(5) For the purposes of subclauses (2), (3) and (4), the unit price at which imported goods, or identical or similar goods, are sold must be determined by ascertaining the unit price in respect of sales of the goods:

- (a) at the first commercial level after importation of the goods; and
- (b) to persons who are not related to the persons from whom they buy the goods;

if a sufficient number of such sales have been made to permit a determination of the unit price of the goods.

(6) Any sale in Vanuatu of imported goods to a person who supplies any of the goods or services referred to in clause 4(2)(g) directly or indirectly free of charge, or at a reduced cost, for use in connection with the production and sale for export of the imported goods must not be taken into account for the purposes of this clause.

(7) For the purpose of subclauses (2), (3) and (4), the unit price in respect of any goods being valued must be adjusted by deducting from the price an amount equal to the total of the following:

- (a) an amount determined in accordance with subclause (8) for:
 - (i) the commission generally earned on a unit basis; or
 - (ii) the 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 Vanuatu of goods of the same class or kind;
- (b) the reasonable costs, charges and expenses that are incurred in respect of the transportation and insurance of the goods within Vanuatu, and reasonable associated costs, charges and expenses, to the extent that an amount for such costs, charges and expenses is not deducted in respect of general expenses under paragraph (a);
- (c) any customs duty or other taxes payable in Vanuatu in respect 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);
- (d) if subclause (4) applies – the amount of value added to the goods that is attributable to the assembly, packaging or further processing in Vanuatu of the goods.

(8) The amount for commission or profit and general expenses referred to in subclause (7)(a) must be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally accepted accounting principles.

(9) The information must be supplied:

- (a) by or on behalf of the importer of the goods being valued; or
- (b) if the information supplied by or on behalf of the importer of the goods being valued is not sufficient information – by an examination of sales in Vanuatu of the narrowest group or range of goods of the same class or kind as the goods being valued from which sufficient information can be obtained.

(10) If there is not sufficient information to determine the amount referred to in subclause (7)(d) in respect of any goods being valued, the customs value of the goods must not be determined under subclause (4).

(11) For the purposes of subclause (3), the “earliest date” refers to the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

Clause 8: Computed value as customs value

(1) If the customs value of imported goods cannot be determined under clause 7, the customs value of the goods is the computed value of the goods.

(2) The computed value of the imported goods is the sum of:

- (a) the costs, charges and expenses, or the value, of:
 - (i) materials employed in producing the imported goods; and
 - (ii) the production or other processing of the imported goods;

including the costs, charges and expenses mentioned in subclause (3), and determined in the manner specified in subclause (4); and

(b) an amount for profit and general expenses, considered together as a whole, equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Vanuatu, and determined under subclause (5).

(3) The costs, charges and expenses mentioned in subclause (2)(a) include the following:

(a) the costs referred to in clause 4(2)(b) and (c);

(b) the value of any goods and services referred to in clause 4(2)(g) which have been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods;

(c) the value of engineering, development, artwork, design work, plans and sketches that were undertaken in Vanuatu to the extent that such elements are charged to the producer of the goods.

(4) The costs, charges and expenses referred to in subclause (2)(a) are to be determined on the basis of:

(a) the commercial accounts of the producer of the goods being valued; or

(b) any other sufficient information relating to the production of the goods being valued;

supplied by or on behalf of the producer of the goods and prepared in a manner consistent with generally accepted accounting principles of the country of production of the goods being valued.

(5) The amount of profit and general expenses referred to in subclause (2)(b) must be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally acceptable accounting principles of the country of production of the goods being valued.

(6) The information must be supplied:

(a) by or on behalf of the producer of the goods being valued; or

(b) if the information supplied by or on behalf of the producer of the goods being valued is not sufficient information – by an examination of sales for export to Vanuatu of the narrowest group or range of goods of the same class or kind from which sufficient information can be obtained.

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

Clause 9: Residual value

(1) If the customs value of imported goods cannot be determined under clause 8, the customs value must be determined:

(a) on information available in Vanuatu; and

(b) on the basis of the value derived from the methods of valuation set out in clauses 3 to 8 interpreted in a flexible manner and reasonably adjusted to the extent necessary to arrive at the customs value of the goods.

(2) However, a customs value must not be determined on the basis of:

- (a) the selling price in Vanuatu of goods produced in Vanuatu; or
- (b) a system which provides for the acceptance for customs purposes 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; or
- (e) the price of goods for export to a country other than Vanuatu; or
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

Clause 10: Appeal rights

(1) At any time after the making of a determination by the Director of Customs in relation to any imported goods, the Director of Customs may review the determination.

(2) The importer of any goods may, at any time after the making of a determination by the Director of Customs in relation to the goods, request the Director of Customs to review the determination.

(3) If, as a result of a review under subclause (1) or (2), the Director of Customs is satisfied that the determination is:

- (a) inconsistent with this Schedule; or
- (b) incorrect for any other reason;

the Director of Customs must amend the determination, and import duty is payable in accordance with that amended determination.

(4) If the importer of the goods is not satisfied with a decision of the Director of Customs under subclause (3) in relation to a determination, the importer may apply to the Supreme Court for a review of the original determination or the amended determination, as the case requires.

(5) The Supreme Court may affirm, vary or revoke the original determination or the amended determination, as the case requires.

Clause 11: Supply of information

Subject to clause 12, upon the written request by the importer of any goods, the Director of Customs must give written notice to the importer:

- (a) of the customs value of the goods; and
- (b) the basis of the determination of that value; and
- (c) the provisions of this Schedule that apply to the goods.

Clause 12: Confidential information

(1) This clause applies to information that:

- (a) is by its nature confidential; or
- (b) has been provided to the Director of Customs by any government or person on a confidential basis for the purpose of determining the customs value of any goods.

(2) The information must not be disclosed to any other government or person without the specific authority of the government or person who provided the information, except to the extent that it may be required to be disclosed in any legal proceedings arising out of a determination made under this Schedule.

Clause 13: Foreign currency conversion

(1) If the conversion of foreign currency into the currency of Vanuatu is necessary to determine the customs value of imported goods, the rate of exchange to be used:

- (a) is the rate duly published by the competent authority in Vanuatu; and
- (b) must reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of Vanuatu.

(2) The rate of exchange to be used is the rate referred to in subclause (1) that is in effect at the time when the imported goods are declared for customs purposes.

(3) The Director of Customs must notify the rate of exchange in such manner as he or she determines.

Clause 14: Withdrawal of goods

(1) If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of the customs value, the importer of the goods may withdraw the goods from the control of the Director of Customs.

(2) The Director of Customs as a condition of withdrawal of any goods may require from the importer:

- (a) a sufficient guarantee for the goods in the form of a surety; or
- (b) a deposit or some other appropriate instrument covering the ultimate payment of customs duties for which the goods may be liable.

Clause 15: Delegation

The Director of Customs may delegate, by instrument in writing, all or any of his or her functions and powers under this Schedule (other than those under clause 10) to a customs officer on such terms and conditions as are specified in the instrument of delegation.

Annex Two

Interpretative Notes to the WTO Customs Valuation Agreement

Cross-references to Schedule 2 of the Import Duties Act are shown in [square brackets]

General Note

Sequential Application of Valuation Methods

1. Articles 1 to 7 [Clauses 3 to 9] inclusive, define how the customs value of imported goods is to be determined under the provisions of this Agreement. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Article 1 [Clause 3] and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.
2. Where the customs value cannot be determined under the provisions of Article 1 [Clause 3], it is to be determined by proceeding sequentially through the succeeding Articles to the first such Article under which the customs value can be determined. Except as provided in Article 4 [Clause 2], it is only when the customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article in the sequence can be used.
3. If the importer does not request that the order of Articles 5 and 6 [Clauses 7 and 8] be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the provisions of Article 6, the customs value is to be determined under the provisions of Article 5, if it can be so determined.
4. Where the customs value cannot be determined under the provisions of Articles 1 to 6 [Clauses 3 to 8] inclusive, it is to be determined under the provisions of Article 7 [Clause 9].

Use of Generally Accepted Accounting Principles

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.
2. For the purposes of this Agreement, the customs administration of each Member shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example, the determination of usual profit and general expenses under the provisions of Article 5 [Clause 7] would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of importation. On the other hand, the determination of usual profit and general expenses under the provisions of Article 6 [Clause 8] would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the

determination of an element provided for in paragraph 1(b)(ii) of Article 8 [Clause 4] undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.

Note to Article 1 [Clause 3]
Price Actually Paid or Payable

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 8 [Clause 4], are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.

The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

- (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- (b) the cost of transport after importation;
- (c) duties and taxes of the country of importation.

The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Paragraph 1(a)(iii)

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Paragraph 1(b)

If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include:

- (a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;
- (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;
- (c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi- finished goods which have been

provided by the seller on condition that he will receive a specified quantity of the finished goods.

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation shall not result in rejection of the transaction value for the purposes of Article 1. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

Paragraph 2

1. Paragraphs 2(a) and 2(b) provide different means of establishing the acceptability of a transaction value.

2. Paragraph 2(a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs administration have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs administration may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 15, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Paragraph 2(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the customs administration and is therefore acceptable under the provisions of Article 1. Where a test under paragraph 2(b) is met, it is not necessary to examine the question of influence under

paragraph 2(a). If the customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2(b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In paragraph 2(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Paragraph 2(b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in paragraph 2(b) of Article 1.

Note to Article 2 [Clause 5]

1. In applying Article 2 [Clause 5], the customs administration shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of Article 2 [Clause 5], the transaction value of identical imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2 of this Article, which has already been accepted under Article 1 [Clause 3].

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value

exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 2 is not appropriate.

Note to Article 3 [Clause 6]

1. In applying Article 3 [Clause 6], the customs administration shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purpose of Article 3 [Clause 6], the transaction value of similar imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2 of this Article, which has already been accepted under Article 1 [Clause 3].

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 3 is not appropriate.

Note to Article 5 [Clause 7]

1. The term "unit price at which ... goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related

to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1-10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

(a) Sales

Sale quantity	Unit price
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) Totals

Total quantity sold	Unit price
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in the importing country, as described in paragraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in paragraph 1(b) of Article 8 [Clause 4], should not be taken into account in establishing the unit price for the purposes of Article 5.

6. It should be noted that "profit and general expenses" referred to in paragraph 1 of Article 5 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtained in sales in the country of importation of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

- 7.** The "general expenses" include the direct and indirect costs of marketing the goods in question.
- 8.** Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of paragraph 1(a)(iv) of Article 5 shall be deducted under the provisions of paragraph 1(a)(i) of Article 5.
- 9.** In determining either the commissions or the usual profits and general expenses under the provisions of paragraph 1 of Article 5, the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 5, "goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.
- 10.** For the purposes of paragraph 1(b) of Article 5, the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.
- 11.** Where the method in paragraph 2 of Article 5 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.
- 12.** It is recognized that the method of valuation provided for in paragraph 2 of Article 5 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to Article 6 [Clause 8]

- 1.** As a general rule, customs value is determined under this Agreement on the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.
- 2.** The "cost or value" referred to in paragraph 1(a) of Article 6 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.
- 3.** The "cost or value" shall include the cost of elements specified in paragraphs 1(a)(ii) and (iii) of Article 8 [*Clause 4*]. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 8, of any element specified in paragraph 1(b) of

Article 8 which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in paragraph 1(b)(iv) of Article 8 which are undertaken in the country of importation shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The "amount for profit and general expenses" referred to in paragraph 1(b) of Article 6 is to be determined on the basis of information supplied by or on behalf of the producer unless his figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.

5. It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and his general expenses are high, his profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the country of importation and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate that he is taking a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the authorities of the importing country shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Article 10.

7. The "general expenses" referred to in paragraph 1(b) of Article 6 covers the direct and indirect costs of producing and selling the goods for export which are not included under paragraph 1(a) of Article 6.

8. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 6, sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 6, "goods of the same class or kind" must be from the same country as the goods being valued.

Note to Article 7 [Clause 9]

1. Customs values determined under the provisions of Article 7 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under Article 7 should be those laid down in Articles 1 to 6, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 7.

3. Some examples of reasonable flexibility are as follows:

(a) Identical goods - the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Articles 5 and 6 could be used.

(b) Similar goods - the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Articles 5 and 6 could be used.

(c) Deductive method - the requirement that the goods shall have been sold in the "condition as imported" in paragraph 1(a) of Article 5 could be flexibly interpreted; the "ninety days" requirement could be administered flexibly.

Note to Article 8 [*Clause 4*]

Paragraph 1(a)(i)

The term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

Paragraph 1(b)(ii)

1. There are two factors involved in the apportionment of the elements specified in paragraph 1(b)(ii) of Article 8 to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to him, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the customs administration to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Paragraph 1(b)(iv)

1. Additions for the elements specified in paragraph 1(b)(iv) of Article 8 should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 8.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

Paragraph 1(c)

1. The royalties and licence fees referred to in paragraph 1(c) of Article 8 may include, among other things, payments in respect to patents, trade marks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Paragraph 3

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 8, the transaction value cannot be determined under the provisions of Article 1. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

Note to Article 9

For the purposes of Article 9, "time of importation" may include the time of entry for customs purposes.

Note to Article 11 [Clause 10]

1. Article 11 provides the importer with the right to appeal against a valuation determination made by the customs administration for the goods being valued. Appeal may first be to a higher level in the customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.
2. "Without penalty" means that the importer shall not be subject to a fine or threat of fine merely because he chose to exercise his right of appeal. Payment of normal court costs and lawyers' fees shall not be considered to be a fine.
3. However, nothing in Article 11 shall prevent a Member from requiring full payment of assessed customs duties prior to an appeal.

Note to Article 15 [Clause 1]

Paragraph 4

For the purposes of this Article, the term "persons" includes legal person, where appropriate.

Paragraph 4(e)

For the purposes of this Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.