

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Special Distribution

Committee on Customs Valuation

INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Addendum

Legislation of New Zealand

*English only.

NEW ZEALAND LEGISLATION FOR
IMPLEMENTATION OF AGREEMENT ON
CUSTOMS VALUATION

RELEVANT EXTRACTS FROM CUSTOMS AMENDMENT ACT 1981

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

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

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

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

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

(4) Sections 145 and 146 of the principal Act are hereby consequentially repealed.

(NOTE: FOR DETAILS OF NINTH SCHEDULE - REFER
SCHEDULE ATTACHED)

SCHEDULE

Section 5 (3)

NEW NINTH SCHEDULE TO PRINCIPAL ACT

"NINTH SCHEDULE

VALUATION OF GOODS FOR THE PURPOSES OF THE CUSTOMS TARIFF

1. Interpretation—(1) In this Schedule—

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

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

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

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

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

(b) For the purposes of—

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

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

'Identical goods', means imported goods that—

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

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

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

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

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

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

'Similar goods' means imported goods that—

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

SCHEDULE—continued

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

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

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

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

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

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

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

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

(c) They are employer and employee; or

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

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

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

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

(h) They are members of the same family.

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

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

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

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

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

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

(a) There are no restrictions respecting the disposition or use of the goods by the buyer, other than restrictions that—

SCHEDULE—continued

- (i) Are imposed by law; or
- (ii) Limit the geographical area in which the goods may be resold; or
- (iii) Do not substantially affect the value of the goods; or
- (b) The sale of the goods or the price paid or payable for the goods is not subject to some condition or consideration in respect of which a value cannot be determined; or
- (c) Where any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer is to accrue, directly or indirectly, to the seller, the price paid or payable for the goods includes the value of that part of the proceeds or can be adjusted in accordance with clause 3 of this Schedule; or
- (d) The buyer and seller of the goods are not related at the time the goods are sold for export or, where the buyer and seller are related at that time,—
 - (i) Their relationship did not influence the price paid or payable for the goods; or
 - (ii) The importer demonstrates that the transaction value of the goods meets the requirements set out in subclause (2) of this clause.
- (2) In a sale between related persons, for the purpose of showing that the relationship did not influence the transaction value, the importer may produce evidence that the transaction value of the goods being valued, taking into consideration any relevant factors including such factors and differences as may be prescribed, closely approximates the Customs value of other goods exported at the same time or substantially at the same time as the goods being valued, being—
 - (a) The transaction value of identical goods or similar goods in respect of a sale of those goods for export to New Zealand between a seller and buyer who are not related at the time of the sale; or
 - (b) The deductive value of identical or similar goods determined in accordance with clause 6 of this Schedule; or
 - (c) The computed value of identical or similar goods determined in accordance with clause 7 of this Schedule.
- (3) In any case where the Collector or proper officer is of the opinion that the relationship between the buyer and seller of any goods influenced the price paid or payable for the goods, he shall inform the importer, in writing if so requested, of the grounds on which he formed his opinion, and shall give the importer a reasonable opportunity to satisfy him that the relationship did not influence the price.
- (4) Where, in the opinion of the Collector, the Customs value cannot be determined under this clause it shall be determined by proceeding sequentially through clauses 4 to 8 of this Schedule to the first such clause of this Schedule under which the Customs value can, in the opinion of the Collector, be determined.
- (5) Notwithstanding subclause (4) of this clause, on the written request of the importer to the Collector, the order of consideration of the valuation basis provided for in clauses 6 and 7 of this Schedule shall be reversed.

SCHEDULE—continued

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

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

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

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

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

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

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

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

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

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

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

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

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

SCHEDULE—*continued*

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

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

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

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

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

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

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

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

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

(a) To a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and

(b) In the same or substantially the same quantities as the goods being valued.

(2) Where the Customs value of imported goods cannot be determined under subclause (1) of this clause because identical goods were not sold under the conditions described in subclause (1) (a) and (b) of this clause, there shall be substituted therefor identical goods sold under any of the following conditions—

(a) To a buyer at the same or substantially the same trade level as the buyer of the goods being valued but in quantities different from the quantities in which those goods were sold; or

SCHEDULE—*continued*

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

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

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

SCHEDULE—*continued*

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

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

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

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

(4) Where the goods being valued or identical goods or similar goods are not sold in New Zealand in the circumstances described in subclause (2) or subclause (3) of this clause, but the goods being valued, after being assembled, packaged or further processed in New Zealand, are sold in New Zealand before the expiration of 90 days after the importation thereof and the importer of the goods being valued requests that this subclause be applied in the determination of the Customs value of those goods, the deductive value of the goods being valued shall be the price per unit, in respect of sales described in subclause (5) of this clause, determined in accordance with that subclause and adjusted in accordance with subclause (6) of this clause, at which the greatest number of units of the goods being valued are so sold.

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

(a) Are not related to the persons from whom they buy the goods at the time the goods are sold to them; and

(b) Have not supplied, directly or indirectly, free of charge or at a reduced cost for use in connection with the production and sale for export of the goods, any of the goods or services referred to in clause 3 (1) (a) (iii) of this Schedule,—

SCHEDULE—continued

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

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

- (a) An amount, determined in the manner prescribed, equal to—
 - (i) The amount of commission generally earned on a unit basis; or
 - (ii) The amount for profit and general expenses, including all costs of marketing the goods, considered together as a whole, that is generally reflected on a unit basis—
in connection with sales in New Zealand of goods of the same class or kind as those goods:
- (b) Reasonable costs, charges, and expenses that are incurred in respect of the transportation and insurance of the goods within New Zealand and reasonable costs, charges, and expenses associated therewith to the extent that an amount for such costs, charges, and expenses is not deducted in respect of general expenses under paragraph (a) of this subclause:
- (c) The costs, charges, and expenses referred to in clause 3 (1) (b)
 - (i) of this Schedule incurred in respect of the goods, to the extent that an amount for such costs, charges, and expenses is not deducted in respect of general expenses under paragraph (a) of this subclause:
- (d) Any Customs duties or other taxes payable in New Zealand by reason of the importation or sale of the goods, to the extent that an amount for such duties and taxes is not deducted in respect of general expenses under paragraph (a) of this subclause:
- (e) Where subclause (4) of this clause applies, the amount of the value added to the goods that is attributable to the assembly, packaging, or further processing in New Zealand of the goods, if that amount is determined, in the opinion of the Collector, on the basis of sufficient information.

(7) Where an amount referred to in subclause (6) (e) of this clause in respect of any goods being valued cannot, in the opinion of the Collector, be determined on the basis of sufficient information, the Customs value of the goods cannot be determined on the basis of the deductive value under subclause (4) of this clause.

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

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

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

SCHEDULE—continued

- (i) Materials employed in producing the goods being valued; and
- (ii) The production or other processing of the goods being valued,—
determined in the manner prescribed, including, without limiting the generality of the foregoing,—
- (iii) The costs, charges, and expenses referred to in clause 3 (1) (a) (ii) of this Schedule:
- (iv) The value of any of the goods and services referred to in clause 3 (1) (a) (iii) of this Schedule, determined and apportioned to the goods being valued as referred to in that clause, whether or not such goods and services have been supplied free of charge or at a reduced cost:
- (v) The costs, charges, and expenses incurred by the producer in respect of engineering, development work, artwork, designwork, plans, or sketches undertaken in New Zealand that were supplied, directly or indirectly, by the buyer of the goods being valued for use in connection with the production and sale for export of those goods to the extent that such elements are charged to the producer of the goods, apportioned to the goods being valued as referred to in clause 3 (1) (a) (iii) of this Schedule:
- (b) The amount, determined in the manner prescribed, for profit and general expenses, considered together as a whole, generally reflected in sales for export to New Zealand of goods of the same class or kind as the goods being valued, made by the producers of the goods to buyers in New Zealand who are not related to the producers from whom they buy the goods at the time the goods are sold to them.
- (3) For the purposes of this clause, the expression 'general expenses' means the direct and indirect costs, charges, and expenses of producing and selling goods for export, other than the costs, charges, and expenses referred to in subclause (2) (a) of this clause.

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

- (2) A Customs value shall not be determined on the basis of—
- (a) The selling price in New Zealand of goods produced in New Zealand; or
- (b) A basis which provides for the acceptance of the higher of 2 alternative values; or
- (c) The price of goods on the domestic market of the country of exportation; or
- (d) The cost of production, other than computed values that have been determined for identical or similar goods in accordance, with clause 7 of this Schedule; or

SCHEDULE—continued

- (e) The price of goods for export to a country other than New Zealand; or
- (f) Minimum customs values; or
- (g) Arbitrary or fictitious values.

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

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

NEW ZEALAND LEGISLATION FOR
IMPLEMENTATION OF AGREEMENT ON
CUSTOMS VALUATION

Relevant Extracts from Customs Regulations 1968
Amendment No 20 (1982/136)

"64b. Customs value of goods in sale between related persons—In addition to any evidence which an importer may produce to show that the transaction value has not been influenced in a sale between related persons, the importer shall, pursuant to clause 2 (2) of the Ninth Schedule to the Act, offer the following additional information—

"(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:

"(e) The trade levels at which the sales take place:

"(f) The quantity levels of the sales:

"(g) Any of the amounts referred to in clause 3 (1) (a) and (b) of the Ninth Schedule to the Act:

"(h) The costs, charges, or expenses incurred by a seller, when he sells to a buyer to whom he is not related that are not incurred when a seller sells to a buyer to whom he is related.

"64c. Adjustment to price paid or payable—(1) Pursuant to clause 3 (1) (a) (iii) of the Ninth Schedule to the Act, the value of the goods and services supplied directly or indirectly by the buyer of any goods being valued shall be determined in accordance with this regulation.

"(2) In the case of materials, components, parts, and other goods incorporated in the goods being valued or any materials consumed in the production of the goods being valued—

"(a) By ascertaining—

"(i) Their cost of acquisition where they were acquired by the buyer from a person who was not related to him at the time of their acquisition; or

"(ii) Their cost of acquisition incurred by the person related to the buyer, where the goods were acquired by the buyer from a person who was related to him at the time of their acquisition but who did not produce them; or

"(iii) Their cost of production where they were produced by the buyer or a person related to him at the time of their production; and

"(b) By adding thereto—

"(i) The cost of their transportation to the place of production of the goods being valued; and

"(ii) The value added to them by any repairs or modifications made to them after they were so acquired or produced.

"(3) In the case of tools, dies, moulds, and other goods, utilised in the production of the goods being valued—

"(a) By ascertaining—

"(i) Their cost of acquisition where they were acquired by the buyer from a person who was not related to him at the time they were so acquired; or

"(ii) Their cost of acquisition incurred by the person related to the buyer, where they were acquired by the buyer from a

person related to him at the time they were so acquired but who did not produce them; or

"(iii) Their cost of production where they were produced by the buyer or a person related to him at the time of their production; and

"(b) By adding thereto—

"(i) The cost of their transportation to the place of production of the goods being valued; and

"(ii) The value added to them by any repairs or modifications made to them after they were so acquired or produced; and

"(c) By deducting therefrom an amount to account for any previous use of the goods made after the goods were so acquired or produced.

"(4) In the case of engineering, development work, art work, design work, plans, and sketches, undertaken elsewhere than in New Zealand and necessary for the production of the goods being valued—

"(a) By ascertaining—

"(i) Their cost of acquisition or of the lease thereof, where they were acquired or leased by the buyer from a person who was not related to him at the time they were so acquired or leased and are not generally available to the public; or

"(ii) Their cost of acquisition or of the lease thereof incurred by the person related to the buyer, where they were acquired or leased by the buyer from a person related to him at the time they were so acquired or leased, but who did not produce them and are not generally available to the public; or

"(iii) The cost to the public of obtaining them where they are available generally to the public; or

"(iv) The cost of production thereof where they were produced by the buyer or a person related to him at the time of their production.

"64D. Deductive value—Pursuant to clause 6 (6) (a) of the Ninth Schedule to the Act, an amount equal to the amount of commission or the amount for profit and general expenses referred to in that clause shall be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally accepted accounting principles that is supplied—

"(a) By or on behalf of the importer of the goods being valued; or

"(b) Where 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 New Zealand of the narrowest group or range of goods of the same class or kind as the goods being valued from which sufficient information can, in the opinion of the Collector, be obtained.

"64E. Computed value—(1) Pursuant to clause 7 (2) (a) of the Ninth Schedule to the Act, the costs, charges, and expenses incurred in respect of, or the value of, the materials employed in producing the goods being valued and the production or other processing of the goods being valued shall 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—

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

"(2) Pursuant to clause 7 (2) (b) of the Ninth Schedule to the Act, the amount of profit and general expenses referred to in that clause shall 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 and that is supplied—

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

"(b) Where 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 New Zealand of the narrowest group or range of goods of the same class or kind referred to in clause 7 (2) (b) of the Ninth Schedule to the Act from which sufficient information can, in the opinion of the Collector, be obtained."

NEW ZEALAND LEGISLATION FOR
IMPLEMENTATION OF AGREEMENT ON
CUSTOMS VALUATION

RELEVANT EXTRACTS FROM CUSTOMS AMENDMENT ACT 1981

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) (iii):

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

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

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