

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

RESTRICTED

VAL/1/Add.14/Suppl.2\*  
7 September 1988

Special Distribution

Committee on Customs Valuation

Original: English

### INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

#### Supplement

#### Legislation of Australia

The following communication from the Permanent Mission of Australia was received in the secretariat on 31 August 1988.

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On 5 June 1987 the Customs (Valuation) Amendment Act 1987 was enacted. This Act amends the valuation provisions of the Customs Act 1901 and came into operation on 1 July 1987.

Accordingly, and in pursuance of the provisions of Article 25 of the Agreement on Implementation of Article VII of the GATT, the following documents are provided herewith for the information of interested contracting parties:

- one copy of the Customs (Valuation) Amendment Act;
- an attachment setting out an explanation of the amendments to the customs valuation legislation.

The attached legislation should be read in conjunction with previous Australian customs valuation legislation which was notified to contracting parties in VAL/1/Add.14.

It should be noted that the changes being notified are the first part of a two-stage package of proposed amendments to the Customs Act 1901. It had been intended that the second stage of amendments would have been passed by the Parliament shortly after the first stage, so that both stages could have been notified to the Committee at the same time.

The second part has been delayed, however, and is now scheduled to be considered by Parliament during its current session. If the amendments are passed in this session, it is anticipated that the amendments implemented by the second part of the legislative amendments will come into operation on 1 February 1989 and will be notified to the Committee shortly thereafter.

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\* English only/anglais seulement/inglés solamente

The major purpose of the amendments now being notified is to prevent manipulation of the price of goods through the separation of payments for freight and other services.

Measures are included to ensure "that price averaging" and "package deals" do not form the basis of customs value.

The valuation amendments have been directed at practices which aim to represent what is actually part of the valuation of goods as separate services, such as buying commissions or services provided by third parties to the transaction. The cost of such third party arrangements up to the place of exportation of the goods is now required to be included in the customs value of the goods. The amendments have been designed to ensure that all elements of the cost of obtaining the goods as envisaged by the GATT Customs Valuation Code are reflected in the Customs value of the goods. The amendments do not affect the f.o.b. basis of valuation used.

The explanatory note attached provides further details on the effects of the amendments to the Australian customs valuation system.

CUSTOMS (VALUATION) AMENDMENT ACT 1987

No. 51 of 1987

An Act to Amend the Customs Act 1901 in Relation to the Valuation of  
Imported Goods, and for Related Purposes

[Assented to 5 June 1987]

BE IT ENACTED by the Queen, and the Senate and the House of  
Representatives of the Commonwealth of Australia, as follows:

Short title etc.

1. (1) This Act may be cited as the Customs (Valuation) Amendment Act 1987.
- (2) The Customs Act 1901<sup>1</sup> is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on 1 July 1987.

Application

3. The amendment made by section 9 does not apply in relation to determinations or decisions made before the commencement of this Act.

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<sup>1</sup>No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 9, 1914; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42 and 111, 1960; No. 48, 1963; Nos. 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 134, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 92, 116, 177 and 180, 1979; Nos. 13, 15, and 110, 1980; Nos. 45, 64, 67, 152 and 157, 1981; Nos. 48, 51, 80, 108, 115 and 137, 1982; No. 81, 1982 (as amended by No. 39, 1983); Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39, 40 and 175, 1985; and No. 34, 1986.

[Minister's second reading speech made in - House of Representatives  
on 29 April 1987; Senate on 29 May 1987]

Interpretation

4. Section 154 of the Principal Act is amended:

- (a) by omitting from sub-section (1) the definitions of "price" and "relevant transaction" and substituting respectively the following definitions:

"'price', in relation to goods the subject of a contract of sale, means the aggregate of:

- (a) all payments made, or to be made, directly or indirectly, in relation to the goods by, or on behalf of, the purchaser;

(i) to the vendor;

(ii) to an associate of the vendor for the direct or indirect benefit of the vendor; or

(iii) otherwise for the direct or indirect benefit of the vendor;

in accordance with the contract of sale or with any other contract relating to the purchase of the goods; and

- (b) all payments made, or to be made, directly or indirectly, by or on behalf of, the purchaser:

(i) to the vendor;

(ii) to an associate of the vendor for the direct or indirect benefit of the vendor; or

(iii) otherwise for the direct or indirect benefit of the vendor;

under any other contract, agreement or arrangement, whether formal or informal, for the doing of anything to increase the value of the goods;

whether the payment is made in money or by letter of credit, negotiable instrument or otherwise, and includes:

- (c) the value, as determined by a Collector, of any goods or services supplied, or to be supplied, by, or on behalf of, the purchaser as part of the consideration passing from the purchaser under the contract of sale;

(d) the value, as determined by a Collector, of any goods or services supplied, or to be supplied, directly or indirectly, by, or on behalf of, the purchaser:

(i) to the vendor;

(ii) to an associate of the vendor for the direct or indirect benefit of the vendor; or

(iii) otherwise for the direct or indirect benefit of the vendor;

under any other contract, agreement or arrangement, whether formal or informal, for the doing of anything to increase the value of the goods; and

(e) the value, as determined by a Collector, of any goods or services supplied, or any obligations incurred, in accordance with a requirement of the contract of sale, or of any other contract relating to the purchase of the goods, by, or on behalf of, the purchaser in relation to:

(i) the advertising of the goods; or

(ii) any warranty or guarantee in relation to the goods;

but does not include any duties of Customs, or any other taxes, payable under a law in force in Australia because of the importation or sale of the goods;

'relevant transaction', in relation to goods, means:

(a) where there was one, and only one, contract of sale for the importation of the goods into Australia entered into before they became subject to Customs control and it was also for their exportation from a foreign country - that contract;

(b) where there was one, and only one, contract of sale for the importation of goods into Australia but not for their exportation from a foreign country, being a contract entered into before they became subject to Customs control - that contract; or

- (c) where there were two or more contracts of sale for the importation of the goods into Australia entered into before they became subject to Customs control - whichever of the contracts was made last;

and includes any other contracts, agreements or arrangements, whether formal or informal, relating to the contract of sale that is the relevant transaction;"

- (b) by inserting in sub-section (1) the following definition in its appropriate alphabetical position determined on a letter-by-letter basis:

"'associate', in relation to a vendor of goods, means:

- (a) a person who substantially influences the business operations of the vendor;
- (b) a person whose business operations are substantially influenced by the vendor;
- (c) a person who substantially influences the business operations of a person whose business operations are substantially influenced by the vendor;
- (d) a person whose business operations are substantially influenced by a person who substantially influences the business operations of the vendor; or
- (e) a person who is related to the vendor,"

- (c) by inserting in sub-paragraph (2)(a)(i) ", and the benefit of which has not been received", after "accrued";
- (d) by omitting from paragraph (2)(b) ", in accordance with generally accepted accounting principles,";
- (e) by omitting sub-paragraph (2)(b)(i) and substituting the following sub-paragraph:

"(i) any payment of interest paid or payable under a written contract, agreement or arrangement under which the purchaser is permitted to delay the payment of the price in return for the payment of that interest (whether or not also in return for an increase in the price or for the payment of an additional amount), being a contract, agreement or arrangement entered into between a purchaser and the vendor or another person in relation to the purchase of the goods, where:

- (A) the interest is distinguished to the satisfaction of the Collector from the price actually paid or payable for the goods;
- (B) if a Collector requires the purchaser to demonstrate to the satisfaction of a Collector that identical or similar goods are actually sold at the last-mentioned price - the purchaser so demonstrates; and
- (C) if a Collector requires the purchaser to demonstrate to the satisfaction of a Collector that the rate of the interest does not exceed the rate of the interest in similar contracts, agreements or arrangements entered into in the country where, and at the time when, finance under the first-mentioned contract, agreement or arrangement was provided - the purchaser so demonstrates;"; and

(f) by omitting sub-section (5).

Circumstances in which customs value of goods cannot be determined

5. Section 158 of the Principal Act is amended:

- (a) by omitting from sub-section (2) "or (6)" (wherever occurring) and substituting "(6), (9) or (11)"; and
- (b) by adding at the end the following sub-sections:
  - "(8) Where:
  - (a) different goods are sold in a relevant transaction or relevant transactions; and
  - (b) a Collector is of the opinion that the price of some of the goods (in this paragraph called 'special price goods') is different from the price that would normally be paid for goods, being goods identical or similar to the special price goods, sold in a transaction similar to the relevant transaction in which the special price goods were sold;

the Collector shall, by notice in writing served, personally or by post, on the owner of the special price goods:

- (c) advise the owner of the Collector's opinion; and
- (d) require the owner to satisfy the Collector, within a period specified in the notice (not being a period of less than twenty-eight days), that the differences were not designed to obtain a reduction of, or to avoid, duty.

"(9) On the expiration of the period specified in a notice under sub-section (8) in relation to goods, the Collector shall, unless the owner of the goods to whom the notice was given has satisfied the Collector as required by the notice, determine that the transaction value of the goods cannot be determined.

"(10) Where:

- (a) goods are sold in a relevant transaction or relevant transactions;
- (b) services in relation to the goods are provided by the vendor for the purchaser; and
- (c) a Collector is of the opinion that the price of the services is different from the price that would normally be paid for identical or similar services in relation to identical or similar goods sold in a transaction similar to the relevant transaction in which the first-mentioned goods were sold;

the Collector shall, by notice in writing served, personally or by post, on the owner of the goods:

- (d) advise the owner of the Collector's opinion; and
- (e) require the owner to satisfy the Collector, within a period specified in the notice (not being a period of less than twenty-eight days), that the differences were not designed to obtain a reduction of, or to avoid duty.

"(11) On the expiration of the period specified in a notice under sub-section (10) in relation to goods, the Collector shall, unless the owner of the goods to whom the notice was given has satisfied the Collector as required by the notice, determine that the transaction value of the goods cannot be determined.".

Transaction value of goods

6. Section 159 of the Principal Act is amended:

- (a) by omitting from sub-section (3) ", in accordance with generally accepted accounting principles,";
- (b) by omitting from paragraph (3)(a) "his" and substituting "the purchaser's";
- (c) by inserting in paragraph (3)(a) "where the agent is not the agent of the vendor, or otherwise associated with the vendor except as agent of the purchaser, in relation to the purchase" after "valued" (first occurring);



- (d) by inserting in paragraph (3)(b) "but not including costs of containers" after "1982"; and
- (e) by omitting from sub-sections (5), (6) and (7) ", in accordance with generally accepted accounting principles,".

Deductive unit price of goods

7. Section 161 of the Principal Act is amended by omitting from sub-section (7) ", in accordance with generally accepted accounting principles,".

Computed value of goods

8. Section 161(A) of the Principal Act is amended by omitting from sub-section (3) ", in accordance with generally accepted accounting principles,".

Review of determinations and other decisions

9. Section 161(D) of the Principal Act is amended by omitting from sub-section (1) "within twelve months".

ATTACHMENT

Explanation of Amendments Made to Customs Act 1901 by Customs (Valuation) Amendment Act 1987 (CVA Act) - as from 1 July 1987

1. Aspects and provisions changes

1.1 CVA Act amends the following aspects of customs valuation:

- (a) the "transaction value" method;
- (b) use of "generally accepted accounting principles"; and
- (c) reviews of valuation determinations or decisions

"Transaction value" method

1.2 Basically, the principles of the "transaction value" method (which applies to over 98 per cent of all commercial importations) remain unchanged.

1.3 However, the CVA Act does amend some important provisions within sections 154, 158 and 159 of the Customs Act which relate to this method of customs valuation. Paragraphs 2 to 10 below explain the amendments made.

Use of "Generally accepted accounting principles"

1.4 CVA Act amends the Customs Act by omitting sub-section 154(5) and altering sub-section 154(2) and sections 159, 161 and 161(A). See paragraph 11 below for explanation.

Reviews of valuation determinations/decisions

1.5 CVA Act also amends sub-section 161(D)(1) of the Customs Act. See explanation in paragraph 12 below.

2. Definition of "price" - sub-section 154(1)

2.1 The CVA Act now amends and expands the definition of "price" to include not only all payments under the relevant contract of sale but also any other payment (in money or in money and goods and/or services) made or to be made in relation to the imported goods by the purchaser to or for the direct or indirect benefit of the vendor under other contracts, etc. as follows:

- (a) "any other contract relating to the purchase of the (imported) goods"; and/or
- (b) "any other contract, agreement or arrangement, whether formal or informal, for the doing of anything to increase the value of the (imported) goods".

Reason for amendment

2.2 "Price has been amended as outlined above in order to:

- (a) overcome avoidance practices known as "transaction or contract splitting" or "payment separation"; and
- (b) ensure that all payments relating to imported goods are included in the price used for customs valuation purposes.

New definition (as from 1 July 1987)

2.3 In general terms, the amended definition means that the "price" of imported goods for the purposes of the "transaction value" method, is the total of all payments made or to be made directly or indirectly by or on behalf of the purchaser in relation to imported goods, to the vendor or to an "associate" of the vendor or any other person for the direct or indirect benefit of the vendor under:

- (a) the actual "contract of sale" of such goods between the vendor and purchaser;
- (b) any "other contract relating to the purchase of" such goods (e.g., an option to buy or purchase them); and/or
- (c) any other formal or informal "contract, agreement or arrangement" for anything done "to increase the value of" such goods before their importation into Australia (e.g., activities such as refurbishment of the goods or modification of the goods to meet Australian standards, etc.).

Notes on new definition

2.4 It is important to note the following points about "price":

- (a) Payments included in "price" can be by the way of either:
  - transfers of money (or letters of credit, negotiable instruments, etc.); or
  - transfers of money (etc.) and -
    - . the supply of goods and/or services by or on behalf of the purchaser; and/or
    - . the meeting or carrying out of obligations of the vendor by the purchaser.
- (b) The term "associate" appearing in the new definition of "price" is also defined in sub-section 154(1) and highlights that "price" captures all payments to or for the direct or indirect benefit of the vendor even though such payments may not be made directly to the vendor.

- (c) The payments referred to above will only be captured in the defined "price" if the benefit of such payments accrues directly or indirectly to the actual vendor of the imported goods being valued.

Example of defined "price"

2.5 By way of example only, a "price" as now defined could include:

- (a) total consideration (i.e., money and value of goods and/services) passing from the purchaser under the actual contract of sale and under an option to purchase the goods covered by that contract;
- (b) separate payments relating to the imported goods passing from the purchaser under other contracts, agreements or arrangements, such as payments for:
- design engineering and/or tooling costs or charges;
  - costs of modifying such goods to meet Australian standards (e.g., homologation costs or charges); or
  - costs of refurbishing such goods, etc.; and
- (c) value of goods supplied and services or obligations carried out by the purchaser as required under the contract of sale or any other contract relating to the purchase of the imported goods, such as:
- settlement of debts owed to other persons by the vendor; and
  - advertising and/or warranty or guarantee activities relating to the imported goods, but not those activities referred to in sub-section 154(2)(a)(ii).

Important note

2.6 Subject to section 158, the "price" in the defined "relevant transaction" only forms the basis on which customs value is assessed by the "transaction value" method. Under this method, "price" becomes the customs value of the goods only after it has been adjusted (where necessary) to exclude those items or amounts specified in sub-section 154(2) and/or include those prescribed in section 159 of the Customs Act. All of the provisions mentioned above have been amended by the CVA Act as explained below.

3. Definition of "relevant transaction" - sub-section 154(1)

The amendment of this definition complements that made to the definition of "price" by:

- (a) identifying which "contract of sale" is the relevant one for valuation purposes, i.e.:
  - where there is only one contract of sale for the importation of goods into Australia entered into before the goods become subject to Customs control - that contract; or
  - where there are two or more such contracts, whichever of the contracts was made last (which in effect reinforces the previous situation); and
- (b) relating "other contracts, agreements or arrangements, whether formal or informal", to the contract of sale of the goods to be valued.

4. Definition of "associate" - sub-section 154(1)

This amendment provides a definition of "associate" for use in relation to "price" and buying commissions. Please note that "associate" includes any person who is "related" to the vendor in terms of sub-section 154(4).

5. Exclusion of rebates/decreases in "price" - sub-section 154(2)(a)(i)

- 5.1 This provision has been amended to exclude from the "price" of goods only those rebates or decreases in respect of which both the right and the benefit have accrued to and been received by the purchaser at the time of entry.
- 5.2 The amendment made is directed at disallowing apparent rebates, discounts, etc. shown on the face of documentation relating to the imported goods, which never in fact eventuate as a benefit to the importer.
- 5.3 However, if subsequent to entry the importer can demonstrate that a genuine rebate or discount, etc. has been received, refund action may be appropriate.

6. Exclusion of interest charges - sub-section 154(2)(b)(i)

- 6.1 This amendment has been designed to prevent contrived interest arrangements and artificially excessive interest and other costs and charges paid or payable under financing arrangements. The amendment is based on the decision by the GATT Committee on Customs Valuation dated 26 April 1984.

6.2 The sub-section 154(2)(b)(i) allows only interest (and not any other related costs, charges expenses or commissions) to be excluded from customs value where all of the following circumstances can be demonstrated to the satisfaction of a Collector:

- (a) there is a written contract, agreement or arrangement under which the purchaser is permitted to delay payment for the goods in return for the payment of that interest;
- (b) the interest is distinguished from the price of the goods;
- (c) identical or similar goods are actually sold at the above-mentioned price; and
- (d) the rate of interest does not exceed the rate in similar contracts etc., (involving the same currency) entered into where and at the time the finance was provided.

7. Exclusion of buying commissions - sub-section 159(3)(a)

This sub-section now provides for the exclusion from the customs value of only that commission paid or payable to the purchaser's buying agent, who acts solely for the purchaser and is not "related" to or "associated" with the vendor in any way, except through the incidental association brought about by the agent acting for the purchaser in the relevant transaction.

8. Inclusion of packing costs or charges - sub-section 159(3)(b)

8.1 This provision has been amended to make it clear that the cost of any "container" as defined in sub-section 154(1) of the Customs Act is excluded from customs value.

8.2 However, all other costs or charges for preparing and/or packing goods for export (whether for materials or labour or both) including the costs of packing or stuffing goods into "containers", that are incurred by the purchaser, are included in customs value as part of "price" as defined in sub-section 154(1) or additions to that price under sub-section 159(3)(b).

8.3 This always applies regardless of who receives payment for such costs or charges from the purchaser and of where the goods were packed into "containers" or other packages, boxes, etc. (i.e., at the overseas factory, at the container depot/freight station or elsewhere).

9. Inclusion of other costs/charges incurred before export

9.1 It should be noted that the definitions of "inland freight", "inland insurance" and "place of export" in sub-section 154(1) have not been altered in any way by the CVA Act. However, attention is drawn to the following matters.

Position prior to 1 July 1987

- 9.2 In the past, certain costs and charges for or associated with the inland transport, storage, and/or handling etc., of goods before export from their defined "place of export" were allowed to be excluded from customs value in terms of ACNs Nos. 84/300 and 85/197. The costs and charges so excluded were container depot or freight station (CFS) costs and charges, and port and dock charges.

Position on and after 1 July 1987

- 9.3 All of the above-mentioned types of costs, charges or expenses that are incurred before export of the goods from their "place of export", are to be included in customs value if payments of such costs, charges or expenses are made or to be made by the purchaser directly or indirectly to or for the benefit of the vendor.
- 9.4 In other words, any such costs, charges or expenses incurred before the goods are exported or depart from their "place of export", constitute "inland freight" or "inland insurance" and are therefore to be included in customs value if they form:
- (a) part of the "price" of the imported goods (such as in f.o.b., c.&f., c.i.f. or f.i.s. contracts of sale); or
  - (b) an addition to that "price" in terms of sub-section 159(3)(g).
- 9.5 However, please note that any costs, charges or expenses of the types of referred to above:
- (a) which are incurred after export of the goods from their defined "place of export" (e.g. port and dock charges incurred after the goods leave the factory or container depot/freight station where they were packed into "containers"); or
  - (b) for which payments by the purchaser are not made or to be made directly or indirectly to or for the benefit of the vendor,

are to continue to be excluded from customs value. The costs etc. covered by (a) above fall within the sub-section 154(1) definitions of "overseas freight/insurance" or "Australian freight/insurance" and are therefore excluded from customs value by sub-section 154(2)(b). Those covered by (b) above are excluded from customs value as they are not part of "price" as defined in sub-section 154(1) and cannot be added to that price under sub-section 159(3)(g).

10. "Price-averaging" and "package deals" - sub-sections 158(8) to (11)

- 10.1 Section 158 of the Customs Act has been amended to incorporate new provisions which are designed to combat "price-averaging", "package deals", and similar arrangements aimed at minimizing or avoiding duty. Such arrangements usually involve purchases of different goods or services in the same or separate transactions at artificially lower prices constructed by the parties for some of those goods or services.

10.2 It is important to note that a difference in price, per se, between goods or between services in the same transaction or different transactions (which can occur for various sound commercial reasons) will not automatically trigger action under sub-section 158(8) or (10) by a Collector. If a Collector does initiate action under these provisions, the owner has an opportunity to satisfy the Collector before the transaction value method is discarded under sub-section 158(9) or (11), and another valuation method is applied.

11. "Generally accepted accounting principles" - sub-section 154(5)

11.1 The Customs Act has now been amended to omit sub-section 154(5) and to delete the phrase "in accordance with generally accepted accounting principles" (GAAP) from:

- (a) sub-section 154(2)(b) and sub-sections 159(3), (5), (6) and (7) which relate to the "transaction value" method;
- (b) sub-section 161(7) which pertains to the "deductive value" method; and
- (c) Sub-section 161(A)(3) which relates to the "computed value" method.

11.2 The term GAAP was originally incorporated in such legislation as a criterion for quantifying exclusions and inclusions made in arriving at the customs value of goods. The legislation has now been amended to omit all references to GAAP in order to eliminate uncertainties that have arisen as to the appropriate course of action where no GAAP exists.

11.3 However, appropriate GAAP are to continue being used, wherever possible, in the calculation of the amounts of any items to be taken into account in assessing the customs value of imported goods under the provisions of the Customs Act.

12. Review of valuation determinations/decisions - sub-section 161(D)(1)

12.1 Sub-section 161(D)(1) of the Customs Act has been amended to remove the twelve-month time limit within which the Comptroller may review valuation determinations or decisions. In future, the Comptroller will have an unrestricted right to review any such determination or decision made after 1 July 1987.

12.2 The purpose of this amendment is to provide the Comptroller, upon discovery of an abuse, with the necessary power to protect the revenue unrestricted by time restraints.

12.3 The amendment does not in any way extend the twelve-month time limit currently specified in section 165 of the Customs Act within which duty shortpaid through error can be recovered or in Customs Regulations under which refunds of duty may be made.