

No. 3—2001

I assent,

[L.S.]

H. F. COOKE,
Governor-General.

1st day of March, 2001.

AN ACT to Amend the Customs Act.

[The date notified by the Minister
 bringing the Act into operation]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Customs (Amendment) Act, 2001 and shall be read and construed as one with the Customs Act (hereinafter referred to as the principal Act) and all amendments thereto and shall come into operation

Short title,
construction
and com-
mencement.

on a day to be appointed by the Minister by notice published in the *Gazette*.

Amendment
of section
2 of prin-
cipal Act.

2. Section 2 of the principal Act is amended by inserting next after the definition of “customs laws” the following—

“document” means—

- (a) any written information relating, directly or indirectly, to goods which are imported or exported;
- (b) any written declaration required by the Commissioner; and
- (c) any record generated in any manner whatsoever, including any record generated by an automated recording device or programme required to retrieve information in usable form;

“Taxpayer Appeals Department” means the Taxpayer Appeals Department established under section 11A of the Revenue Administration Act;”.

Amendment
of section
18 of prin-
cipal Act.

3. Section 18 of the principal Act is amended—

- (a) in subsection (1), by deleting all the words appearing after the words “Commissioner therein may” and substituting therefor the words “appeal to the Taxpayer Appeals Department within thirty days of the date of receiving the Commissioner’s decision.”; and

- (b) by inserting next after subsection (2) the following—

“(3) An objector who is dissatisfied with the decision of the Taxpayer Appeals Department may appeal to the Revenue Court within thirty days of the date of receiving that decision or within such longer period of time as may be permitted by or pursuant to rules of court.”.

4. Section 19 of the principal Act is repealed and the following substituted therefor—

Repeal and
replacement
of section
19 of prin-
cipal Act.

"Value. 19.—(1) Where, pursuant to the provisions of any enactment for the time being in force, imported goods are required to be entered, the value of those goods shall be determined in accordance with the provisions of the

Schedule. Schedule.

(2) Nothing in the Schedule shall be construed as restricting or calling into question the right of the Commissioner to satisfy himself as to the truth or accuracy of any document or information presented to him for customs valuation purposes.

(3) The Commissioner shall, on a written request by the importer, give reasons in writing as to how the customs value of the importer's goods was determined.

(4) On receipt of the reasons referred to in subsection (3), an importer may—

(a) request a review of the valuation;
and

(b) if dissatisfied with the review, appeal to the Taxpayer Appeals Department within thirty days of the date of receiving the Commissioner's decision.

(5) An importer who is dissatisfied with the decision of the Taxpayer Appeals Department may appeal to the Revenue Court within thirty days of the date of receiving that decision or within such longer

period of time as may be permitted by or pursuant to rules of court.

(6) Where, in determining the value of goods under subsection (1), it is necessary to establish the equivalent in Jamaican currency of any other currency—

- (a) the rate of exchange shall, subject to paragraph (b), be the last spot market weighted average selling rate as determined by the Bank of Jamaica prior to the date of report of the aircraft or ship;
- (b) if the Commissioner gives permission for goods to be entered before the date of report as aforesaid, the rate of exchange shall be the spot market weighted average selling rate as determined by the Bank of Jamaica on the day the relevant entry is first accepted by the proper officer.

(7) The Commissioner may, in respect of goods conveyed into the Island by air, reduce the amount of the freight charges to be added to the value of the goods for purposes of assessment of duty to such amount, not being less than one-fourth of the freight charges actually payable on such goods, as he may think fit.

(8) The Commissioner may, within two years from the date of entry of imported goods, adjust the value accepted by an Officer at the date of entry of such goods, where he

discovers that the value accepted by the Officer was incorrect—

- (a) based on new information concerning the goods; or
- (b) for any other reason.

(9) Where the value has been adjusted pursuant to subsection (8), the Commissioner shall demand the additional duty payable or shall refund the duty overpaid based upon the new value.

Schedule.

(10) The Minister may, by order, subject to negative resolution of the House of Representatives, amend the Schedule.

(11) The Minister may, by order, subject to negative resolution of the House of Representatives—

- (a) suspend the operation of any provision of the Schedule or the operation of the Schedule in relation to any category of goods, for such period as may be specified in the order; and
- (b) specify how the value of any goods or category of goods to which the suspension relates shall be determined during that period.

Obligation to secrecy.

19A.—(1) Every person having an official duty or being employed in the administration of this Act shall—

- (a) regard and deal with as secret and confidential all documents and information relating to the valuation

or assessment of customs duties in respect of imported goods; and

- (b) make and subscribe a declaration to that effect before a Justice of the Peace.

(2) Notwithstanding any provision contained in any enactment, every person referred to in subsection (1) having possession of or control over any document or information who communicates or attempts to communicate any such information or anything contained in such document to any person—

- (a) other than the Commissioner or an officer of the Customs Department;
- (b) without the consent in writing of the person, government or body which provided the document or information; or
- (c) otherwise than for the purposes of this Act,

commits an offence under this Act and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding nine months or to both such fine and imprisonment.”.

Repeal and replacement of sections 80, 81 and 82 of principal Act.

5. Sections 80, 81 and 82 of the principal Act are repealed and the following substituted therefor—

“Declara-
tion in
absence of
documents.

80.—(1) If the importer of any goods is unable to furnish full particulars of the goods for want of any document or information concerning them he shall make and subscribe a declaration in the prescribed form to that

effect before the Commissioner who shall act in accordance with subsection (2).

(2) The Commissioner—

- (a) shall permit the importer to examine and enter the goods; and
- (b) may allow delivery of the goods if he is satisfied that—
 - (i) the description of the goods for tariff and statistical purposes is correct;
 - (ii) in the case of goods liable to duty *ad valorem*, the value declared on the entry is acceptable; and
 - (iii) in the case of goods liable to duty according to the weight or measurement thereof, the weight or measurement declared on the entry is correct.

Entry of goods where Commissioner is unable to assess value.

81.—(1) Where goods examined under section 80 (1) are liable to duty *ad valorem* and the Commissioner considers that he is unable to make a proper assessment of the value thereof, he may direct that—

- (a) the goods be further examined and, on that basis, a provisional assessment be made of the duty payable on the goods;
- (b) the goods be entered provisionally based on the payment by the importer of the amount of duty calculated by him; and
- (c) such amount be brought to account as revenue.

(2) Pending entry of the goods, an importer shall, in addition to the amount referred to in subsection (1) (b), deposit with the Commissioner, an amount equal to the difference between the duty assessed provisionally by the Commissioner under subsection (1) (a) and the duty calculated by the importer under subsection (1) (b).

(3) The importer may, with the approval of the Commissioner, give security in the form of a bond for the amount payable under subsection (2).

(4) Where goods are entered provisionally pursuant to this section, the Commissioner shall, in writing, require the importer of such goods to produce, within three months of the provisional entry, such document or information relating to the value of the goods as the Commissioner may specify.

(5) Where—

- (a) the documents or information required under subsection (4) have not been produced within the time specified in that subsection; or
- (b) the importer informs the Commissioner in writing before the expiration of the time specified in subsection (4) that he is unable to produce any further documents or information,

the amount of duty which was assessed provisionally under subsection (1) shall be treated as the final assessment.

(6) Unless the importer commences proceedings under section 18 within four

months of the date of the final assessment under subsection (5), the deposit paid shall be brought to account as revenue.

(7) Where an importer fails to produce the required documents or information pursuant to subsection (4)—

- (a) the Commissioner shall notify the importer in writing of the final assessment within two weeks of the date of such assessment;
- (b) no dispute shall be considered to have arisen until such time as the final assessment is made under subsection (6).

(8) Where—

- (a) the additional documents or information required under subsection (4) have been provided to the satisfaction of the Commissioner; and
- (b) the amount of duty as assessed by the Commissioner is greater or less than the amount of the provisional assessment made under subsection (1),

the amount representing the difference shall either be refunded to or paid by the importer, as the case may be.

Entry where
importer
provides
false
document.

82.—(1) Where—

- (a) pursuant to section 81 (4), an importer submits documents or information to the Commissioner

relating to the value of goods imported by him; and

- (b) the Commissioner knows or has reasonable grounds for believing that such documents or information are false in any material particular in relation to the value of the goods,

the Commissioner shall act in accordance with subsection (2).

(2) The Commissioner—

- (a) shall inform the importer in writing that he is not satisfied with the documents or information; and
- (b) may, in writing, request the importer to submit such further documents or information within such period, as the Commissioner may specify.

(3) Where the imported goods required to be entered are not prohibited or restricted, the Commissioner may allow provisional entry of such goods on the payment of a deposit equal to the amount of the duty assessed by the Commissioner together with an additional amount, not being more than one-half of the amount assessed.

(4) The amount of duty based on the calculation by the importer shall be accepted by the Commissioner unless the Commissioner commences proceedings in court within four months of the date of provisional entry of the goods.

(5) The deposit, together with the additional amount paid pursuant to subsection (3), shall, in addition to any penalty

which the court may impose, be forfeited where the court finds that the importer has committed an offence.

(6) Where the Commissioner has commenced proceedings in court, no dispute shall be considered to have arisen for the purposes of section 17 until the court proceedings have been concluded.

(7) Where he considers it necessary, the Commissioner may cause goods which are entered provisionally to be photographed before delivery in such manner as to show—

- (a) the method of packaging;
- (b) a sample of the goods; or
- (c) any identifying marks that indicate the nature and type of the goods.”.

6. Section 83 of the principal Act is amended by inserting next after the words “inventory of such goods” the words “and shall cause a certified copy of the inventory to be forwarded to the importer”.

Amendment
of section
83 of prin-
cipal Act.

7. Section 85 of the principal Act is amended by deleting all the words appearing after the word “entered” and substituting therefor the words “according to the estimated value”.

Amendment
of section
85 of prin-
cipal Act.

8. Section 209 of the principal Act is repealed and the following substituted therefor—

Repeal and
replacement
of section
209 of prin-
cipal Act.

“Penalty
for false
declara-
tions, etc.

209.—(1) A person commits an offence if—

- (a) in any matter relating to the customs, or under the control or

management of the Commissioner,
he—

- (i) makes or subscribes or causes to be made or subscribed, any false declaration; or
 - (ii) makes or signs or causes to be made or signed, any declaration, certificate or other instrument, required to be verified by signature, which is false in a material particular;
- (b) he makes or signs any declaration made for the consideration of the Commissioner, on any application presented to him, which is false in a material particular;
- (c) where required by the customs laws to answer questions put to him by an officer acting in the execution of his duty—
- (i) he refuses to answer such questions; or
 - (ii) he gives any answer which is false;
- (d) he counterfeits or falsifies—
- (i) any document required by the customs laws or by or under the directions of the Commissioner; and
 - (ii) any instrument used in the transaction of any business or matter relating to the customs;

- (e) he wilfully uses any such document which is counterfeited or falsified;
- (f) he alters any document or instrument after it has been officially issued;
- (g) he counterfeits the seal, signature, initials or other mark of or used by, any officer for any purpose in the conduct of business relating to the customs or under the control or management of the Commissioner; or
- (h) on any document or instrument required for the purposes of the customs laws, he counterfeits or imitates the seal, signature, initials or other mark of or used by any other person, whether with or without the consent of that other person.

(2) A person who commits an offence under subsection (1) shall be liable to a penalty not exceeding five hundred thousand dollars or treble the value of the goods to which the offence relates, whichever is the greater.”.

9. Section 212 of the principal Act is amended—

Amendment
of section
212 of prin-
cipal Act.

- (a) by deleting subsection (1) and substituting therefor the following—

“ (1) Notwithstanding the provisions of section 211, if, upon the examination of any imported goods which are chargeable with duty upon the value thereof, it appears to the Commissioner that the value of such goods

as declared by the importer and according to which duty is sought to be paid is not the true value thereof, the Commissioner shall act in accordance with subsection (1A).

(1A) The Commissioner may give notice in writing to the importer that—

- (a) the goods may be released upon payment by the importer of the amount of the estimated duty on the goods together with a deposit of not less than one half of that amount within the time specified in the notice; and
- (b) failing receipt of the amounts as aforesaid, the goods shall be detained.

(1B) The amount of estimated duty referred to in subsection (1A) shall be brought to account as revenue.

(1C) Notice may be given under subsection (1A) by—

- (a) delivering the notice personally; or
- (b) transmitting the notice by post to the importer's place of abode or business, as stated in the entry.

(1D) The sum deposited as aforesaid shall be brought to account as revenue unless the importer, within three months or such further period as the Commissioner may in any special circumstances allow—

- (a) produces to the Commissioner satisfactory evidence of the value; and
- (b) makes final entry of such goods,

in which case so much of the sum deposited as shall be necessary shall be brought to

account as revenue and the balance returned to the person who deposited the same.”; and

- (b) in subsection (2) by deleting the words “, together with an addition of ten *per centum*,”.

10. Section 223 of the principal Act is amended—

Amendment
of section
223 of prin-
cipal Act.

- (a) in subsection (1) by deleting the words “of two thousand dollars, and” and substituting therefor the words “not exceeding five hundred thousand dollars, and subject to section 212,”; and
- (b) by inserting next after subsection (2) the following—

“ (3) In this section a reference to “any person concerned” or “other person concerned” includes a reference to—

- (a) an insurance company which has issued a policy of insurance covering the goods in question; and
- (b) any person referred to in section 17G (3) of the Revenue Administration Act.”.

11. Subsection (1) of section 252 of the principal Act is amended by deleting all the words appearing after the words “according to” where they first appear and substituting therefor the words “the price for which goods that are of the same class or kind as the goods in respect of which the penalty is being sued for were sold in the Island in the open market at or about the time of the commission of the offence giving rise to those proceedings”.

Amendment
of section
252 of prin-
cipal Act.

12. The principal Act is amended by inserting next after section 260 the following Schedule—

Insertion of
Schedule in
principal
Act.

“

SCHEDULE

(Section 19)

Interpreta-
tion

1.—(1) In this Schedule—

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

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

“identical goods” means, subject to sub-paragraph (2), goods that the proper officer is satisfied—

(a) are produced in the same country at or about the same time as the goods being valued; and

(b) are the same in all respects as the goods being valued, notwithstanding minor differences in appearance;

“members of the same family”, as respects any person, means—

(a) the person’s—

(i) husband or wife;

(ii) child, adopted child, step-child, grand-child or any other child wholly or mainly maintained by that person;

(iii) brother or sister;

(iv) uncle or aunt;

(v) nephew or niece;

(vi) mother, father or adoptive parents;

(vii) stepmother or stepfather; and

(viii) lineal ancestor or descendant; and

(b) any person who is related by marriage to a person referred to in paragraph (a);

“produced” includes grown, manufactured and mined;

“seller” means a person who has the legal or beneficial interest in the goods at the time that the contract of sale is concluded and to whom the proceeds of sale will ultimately be paid, exclusive of any commission or fee.

“similar goods” means, subject to sub-paragraph (3), goods that the proper officer is satisfied—

- (a) are produced at or about the same time in the same country as the goods being valued; and
- (b) although not alike in all respects to the goods being valued, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable.

(2) References in sub-paragraph (1) to “identical goods” and “similar goods” respectively, do not include references to goods which incorporate or reflect engineering, development, artwork, design work and plans and sketches for which no adjustment has been made under paragraph 8 (1) (b) (iv) on the ground that such engineering, development, artwork, design work and plans and sketches were undertaken in the Island.

(3) In determining whether or not goods are similar, the quality of the goods, their reputation and any registered trade mark in respect of those goods or a class of goods to which they belong are among the factors that may be taken into account.

(4) For the purpose of this Schedule—

- (a) a buyer and a seller of imported goods shall be deemed to be related only if—
 - (i) they are officers or directors of one another's business;
 - (ii) they are legally recognized partners in business;
 - (iii) they are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds five per cent or more of the voting shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they control, directly or indirectly, a third person; or
 - (viii) they are members of the same family;
- (b) 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;
- (c) persons who are associated with one another in that one is the sole agent, sole distributor

or sole concessionaire, however described, of the other shall be deemed to be related only if they fall within the criteria specified in sub-paragraph (a);

- (d) an event shall be deemed to occur about the same time as another event if the first event occurs on the same day as the other event or within the 45 days immediately preceding or immediately following the day on which the other event occurs.

Customs
value,
sequential
application
and the
fallback
method.

2.—(1) Where the conditions specified in paragraph 3 are fulfilled, the customs value of imported goods shall be determined under that paragraph.

(2) A declaration of customs value of imported goods shall be made by the importer and shall be supported by documentary evidence consisting of objective and quantifiable data that establishes the accuracy of that declaration.

(3) Subject to sub-paragraph (4), where the customs value of imported goods cannot be determined under paragraph 3, it shall be determined by proceeding sequentially through paragraphs 4 to 7, to the first such paragraph under which the customs value can be determined; but the order of application of paragraphs 6 and 7 shall be reversed if the importer so requests and the Commissioner agrees.

(4) Except as provided in sub-paragraph (3), the provisions of the next paragraph in the sequence established by that sub-paragraph shall be applied only where the customs value of imported goods cannot be determined under a particular paragraph.

(5) Where the customs value of imported goods cannot be determined under paragraphs 3 to 7, then, it shall—

- (a) be determined using such means as are reasonable having regard to the principles and general provisions of this Schedule; and
- (b) be based, as far as practicable, on previously determined customs values.

(6) No customs value of imported goods shall be determined under sub-paragraph (5) on the basis of—

- (a) the selling price in the Island of goods produced therein;
- (b) a system which provides for the acceptance for customs purposes of 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, other than computed values which have been determined for identical or similar goods in accordance with paragraph 7;
- (e) the price of the goods for export to a country other than Jamaica;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

Transaction value.

3.—(1) Subject to paragraphs 2 and 8, the customs value of imported goods determined under this paragraph shall be the transaction value, that is to say, the price actually paid or payable for the goods when sold for export to the Island, in the circumstances referred to in sub-paragraph (2) and adjusted in accordance with paragraph 8 or, where appropriate, paragraph 9.

(2) The circumstances referred to in sub-paragraph (1) are that—

- (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which—
 - (i) are imposed or required under any law;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
- (b) the sale or price of the goods is not subject to any condition or consideration for which a value cannot be determined with respect to the goods being valued;
- (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 paragraph 8; and
- (d) the buyer and the seller are not related or, where they are related, the transaction value is acceptable for customs purposes under sub-paragraph (3).

(3) In determining whether the transaction value is acceptable for the purposes of sub-paragraph (1),

in circumstances where the buyer and seller are related, the Commissioner shall—

- (a) take account of the circumstances of the sale; and
- (b) accept the transaction value stated, unless, on the basis of information provided by the importer or otherwise, he considers that there are grounds for believing that the relationship influenced the price.

(4) The Commissioner shall inform the importer in writing of the grounds referred to in sub-paragraph (3) and give him a reasonable opportunity to be heard.

(5) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with sub-paragraph (1) if, subject to sub-paragraph (6), the importer demonstrates that such value closely approximates to one of the following values occurring at or about the same time—

- (a) the transaction value in sales of identical or similar goods for export to the Island between buyers and sellers who are not related in any particular case;
- (b) the customs value of identical or similar goods, as determined under paragraph 6;
- (c) the customs value of identical or similar goods, as determined under paragraph 7.

(6) In applying any of the provisions of sub-paragraph (5) account shall be taken of—

- (a) demonstrated differences in commercial levels and quantity levels;
- (b) the matters specified in paragraph 8; and
- (c) costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

(7) For the purpose of sub-paragraph (1), the price actually paid or payable is, subject to sub-paragraphs (8) and (9), the total payment made, or to be made, for the imported goods by the buyer to, or for the benefit of, the seller.

(8) The payment referred to in sub-paragraph (7) may be made either directly or indirectly without necessarily taking the form of a transfer of money and shall include—

- (a) all payments that, as a condition of sale of the imported goods, are made or to be made

by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller; and

- (b) any settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

(9) Except to the extent allowed under paragraph 8—

- (a) any activities (including the marketing of imported goods) undertaken by a buyer on his own account shall not be regarded for the purpose of this paragraph as an indirect payment to the seller, whether or not such activities are of benefit to the seller or were undertaken by the buyer pursuant to an agreement with the seller; and
- (b) the cost of any such activity shall not be added to the price actually paid or payable in determining the customs value of the imported goods.

(10) The following charges or costs shall not be taken into account in determining the customs value of imported goods if such charges or costs may be distinguished from the price actually paid or payable for those goods—

- (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation of goods such as industrial plant, machinery or equipment;
- (b) the cost of transportation after importation;
- (c) customs duties and other taxes payable in the Island by reason of the importation or sale of the goods.

Determina-
tion of
customs
value on
basis of
transaction
value of
identical
goods sold
for export.

4.—(1) Subject to paragraph 2 and sub-paragraph (2), the customs value of imported goods determined under this paragraph shall be the transaction value of identical goods sold for export to the Island at or about the same time as the goods being valued.

(2) The transaction value to be applied under sub-paragraph (1) is the transaction value of—

- (a) identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued; or
- (b) in the absence of such a sale, identical goods sold at a different commercial level or in different quantities, or both, with such adjustments as are reasonable and necessary

(whether resulting in an increase or a decrease in value) having regard to the differences attributable to commercial level or quantity, or to both.

(3) Where the costs and charges referred to in paragraph 8 (1) (c) are included in the transaction value, an adjustment shall be made to take account of differences in those costs and charges between the imported goods and the identical goods in question where those differences are attributable to differences in distances and modes of transportation.

(4) The following principles shall apply under this paragraph—

- (a) if more than one transaction value of identical goods are found, the lowest such value shall be used to determine the customs value of the imported goods;
- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under sub-paragraph (1) for identical goods produced by the same person as the goods being valued;
- (c) a condition for adjustment because of different commercial levels or different quantities shall be that the adjustment shall be made only on the basis of evidence clearly establishing the reasonableness and accuracy of the adjustment.

(5) In this paragraph “the transaction value of identical imported goods” means a customs value previously determined under paragraph 3, adjusted as provided in sub-paragraphs (2) and (3) of this paragraph.

Determina-
tion of
customs
value on
basis of
transaction
value of
similar
goods
sold for
export.

5.—(1) Subject to paragraph 2 and sub-paragraph (2), the customs value of imported goods determined under this paragraph shall be the transaction value of similar goods sold for export to the Island and exported at or about the same time as the goods being valued.

(2) The transaction value to be applied under sub-paragraph (1) is the transaction value of—

- (a) similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued; or
- (b) in the absence of such a sale, similar goods sold at a different commercial level or in differ-

ent quantities, or both, with such adjustments as are reasonable and necessary (whether resulting in an increase or a decrease in value) having regard to the difference attributable to commercial level or quantity, or to both.

(3) Where the costs and charges referred to in paragraph 8 (1) (e) are included in the transaction value, an adjustment shall be made to take account of differences in those costs and charges between the imported goods and the identical goods in question where those differences are attributable to differences in distances and modes of transportation.

(4) The following principles shall apply under this paragraph—

- (a) if more than one transaction value of similar goods are found, the lowest such value shall be used to determine the customs value of the imported goods;
- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under sub-paragraph (1) for similar goods produced by the same person as the goods being valued;
- (c) a condition for adjustment because of different commercial levels or different quantities shall be that the adjustment shall be made only on the basis of evidence clearly establishing the reasonableness and accuracy of the adjustment.

(5) In this paragraph “the transaction value of similar imported goods” means a customs value previously determined under paragraph 3, adjusted as provided in sub-paragraphs (2) and (3) of this paragraph.

Value based on unit price of greatest aggregate quantity: (the deductive method).

6.—(1) Subject to paragraph 2, where the imported goods or identical or similar imported goods are sold in the Island in the same condition in which they are imported, the customs value of those goods shall be determined in accordance with sub-paragraph (2).

(2) The customs value shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity, to persons who are not related to the seller, at or about the time of the importation of the

goods being valued, subject to deductions for the following—

- (a) subject to sub-paragraph (10), the commission usually paid or agreed to be paid or the additions usually made for profit and general expenses (including the direct and indirect costs of marketing the goods in question) in connection with sales in the Island of imported goods of the same class or kind;
- (b) the usual costs of transportation and insurance and other associated costs normally incurred within the Island; and
- (c) the customs duties and other duties or taxes payable in the Island by reason of the importation or sale of the goods.

(3) If neither the imported goods nor identical or similar imported goods are sold at or about the time of importation of the goods being valued, then, if the importer so requests, the customs value of the imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the Island in the same condition in which they were imported and at the earliest date after their importation, being a date not later than ninety days after the date of such importation, subject to the deductions specified in sub-paragraph (1).

(4) Subject to sub-paragraph (5), if neither the imported goods nor identical or similar imported goods are sold in the Island in the condition in which they were imported, then the Commissioner may determine that the value of the goods shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the Island who are not related to the seller.

(5) In determining value under sub-paragraph (4), deductions shall be made in respect of—

- (a) the value added by such further processing, based on quantifiable data and calculated on the bases of usual formulae and methods and practices of the industry concerned; and
- (b) the matters specified in sub-paragraph (2) (a), (b) and (c).

(6) Subject to sub-paragraph (7), the unit price at which imported goods or identical or similar imported goods are sold in the greatest aggregate quantity is the price at which the greatest number of units of the goods is sold in sales made to persons who are not

related to the seller, being sales occurring at the first commercial level after the importation at which the sales take place.

(7) In determining the unit price for the purposes of this paragraph, no account shall be taken of any sale in the Island to a person who supplies any goods or services specified in paragraph 8 (1) (b), 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.

(8) Subject to sub-paragraph (9), the amount allowable under sub-paragraph (2) (a) as a deduction for profit and general expenses shall be taken as a whole and shall be determined on the basis of figures and other information supplied by or on behalf of the importer.

(9) Where it appears to the proper officer that the figures or other information so supplied are not consistent with verifiable figures and information pertaining to sales of imported goods of the same class or kind, the proper officer may determine the amount allowable on the basis of figures and information other than those supplied.

(10) In determining for the purposes of sub-paragraph (2) (a) the commissions or the additions usually made for profit and general expenses, the question whether imported goods are of the same class or kind shall be decided on the facts of each particular case, having regard to all the circumstances, and taking into account, where possible, information pertaining to the sale of the narrowest group or range of imported goods of the same class or kind.

(11) A reference to goods of the same class or kind includes a reference to goods imported from the same country as the goods being valued and to goods imported from other countries.

(12) For the purposes of sub-paragraph (3), "the earliest date" means the date by which sales of the goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

Determina-
tion of
value based
on com-
puted
value.

7.—(1) Subject to paragraph 2 and this paragraph, the customs value of imported goods shall be determined under this paragraph on a computed value consisting of the sum of—

(a) the cost or value of the materials and processing used to produce the imported goods;

- (b) an amount for profit and general expenses equivalent to the amount usually reflected in sales of goods that are of the same class or kind as the goods being valued and that are made by producers in the country of exportation for export to the Island; and
- (c) the total of all costs and charges referred to in paragraph 8 (1) (e).

(2) The cost referred to in sub-paragraph (1) (a) shall include—

- (a) the costs referred to in paragraph 8 (1) (a) (ii) and (iii);
- (b) the value, duly apportioned, of such goods or services referred to in paragraph 8 (1) (b) as have been supplied, directly or indirectly, by the buyer for use in connection with the production of the imported goods;
- (c) the value of such goods and services referred to in paragraph 8 (1) (b) (iv) as are undertaken in the Island, to the extent only that they are charged to the producer,

and no cost or value as aforesaid shall be counted more than once in determining the computed value of imported goods.

(3) The cost or value referred to in sub-paragraph (1) (a) shall be determined on the basis of such commercial accounts supplied by or on behalf of the producer as relate to the production of the goods being valued and as are consistent with the generally accepted accounting principles applied in the country in which the goods are produced.

(4) For the purposes of sub-paragraph (1) (b)—

- (a) the amount for profit and general expenses shall, subject to sub-paragraph (b), be taken as a whole and shall be determined on the basis of figures or other information supplied by or on behalf of the producer;
- (b) where it appears to the proper officer that the figures or other information so supplied are not consistent with the figures or other information usually attributable to sales of goods that—
 - (i) are of the same class or kind as the goods being valued; and

- (ii) are made by producers in the country of exportation for export to the Island, the proper officer may determine the amount for profit and general expenses on the basis of figures and information other than those supplied by or on behalf of the producer of the goods;
- (c) the question whether goods are of the same class or kind as other goods shall be decided on the facts of each particular case, having regard to all the circumstances and taking into account, where possible, information pertaining to the sales for export to the Island of the narrowest group or range of goods of the same class or kind as the goods being valued;
- (d) a reference to—
 - (i) “general expenses” is a reference to the direct and indirect costs of producing and selling the goods for export, being costs not included under subparagraph (1) (a); and
 - (ii) “goods of the same class or kind” means goods imported from the same country as the goods being valued.

Certain charges to be included in customs value.

8.—(1) In determining the customs value under paragraph 3, there shall be added to the price actually paid or payable for the imported goods—

- (a) the following costs, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods—
 - (i) commission and brokerage, except buying commission;
 - (ii) the costs of containers which, for customs purposes, are treated as one with the goods in question;
 - (iii) the cost of packing, whether for labour or materials;
- (b) the value, apportioned as appropriate, of the following goods and services where they 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, to the extent

that such value has not been included in the price actually paid or payable that is to say—

- (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, artwork and design work, as well as such plans or sketches as are done outside of the Island and are necessary for the production of the imported goods;
- (c) royalties and licence fees, including payments in respect of patents, trademarks and copyright, related to the goods being valued payable by the buyer, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
- (e) subject to any reduction of freight charges by the Commissioner in accordance with section 19 (7), the following costs and charges—
- (i) the cost of transportation of the imported goods to the port or place of importation;
 - (ii) the loading, unloading and handling charges associated with the transportation of the imported goods to the port or place of importation; and
 - (iii) the cost of insurance.
- (2) In determining the customs value of imported goods—
- (a) no additions shall be made to the price actually paid or payable for those goods, except as provided in this paragraph; and
 - (b) additions to the price actually paid or payable shall be made under this paragraph only

on the basis of objective and quantifiable data; and

- (c) the transaction value of the goods shall not be determined under paragraph 3 in the absence of such data.

(3) Notwithstanding sub-paragraph (1) (c)—

- (a) in determining the customs value of imported goods, charges for the right to reproduce the goods in the Island shall not be added to the price actually paid or payable for those goods;
- (b) payments made by the buyer for the right to distribute or resell those goods shall not be added to the price actually paid or payable for the goods if such payments are not a condition of the sale for export of those goods to the Island.

(4) In this paragraph—

“buying commission” means fees paid by an importer to his buying agent for the service of representing him abroad in the purchase of the goods being valued;

“buying agent” means a person who acts for a buyer of goods for reward or hire;

Interest
charges
to be
excluded.

9.—(1) Charges for interest under a financing arrangement entered into by the buyer and related to the purchase of imported goods shall not be included in the customs value determined under paragraph 3, if the requirements in sub-paragraph (2) are satisfied.

(2) The requirements referred to in sub-paragraph (1) are as follows—

- (a) the charges are distinguished from the price actually paid or payable for the goods;
- (b) the financing arrangement is in writing;
- (c) where required by the Commissioner, the buyer can demonstrate that—
 - (i) such goods are actually sold at the price declared as the price actually paid or payable; 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.

(3) The provisions of sub-paragraphs (1) and (2) shall apply—

- (a) whether the finance is provided by the seller, a bank or another person; and
- (b) with such modifications as may be necessary in relation to any case where value is determined under a method other than the transaction value.

Software
for data
processing
equipment.

10.—(1) Where the value of the data or instructions recorded on any carrier medium for data processing equipment is distinguished or distinguishable from the cost or value of the medium itself, then, in determining the transaction value of the carrier medium, no account shall be taken of the value of the recorded data or instructions.

(2) For the purposes of this paragraph—

“carrier medium” shall not include integrated circuits, semi-conductors and similar devices or articles incorporating such circuits or devices;

“data or instructions” shall not include sound, cinematic or video recordings.”.