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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) (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 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
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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 deduc-
tive
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