

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 copy-right, 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.

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(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.”.

Passed in the House of Representatives this 23rd day of January, 2001, with two (2) amendments.

VIOLET NEILSON, C.D.
Speaker.

Passed in the Senate this 2nd day of February, 2001.

SYRINGA MARSHALL-BURNETT, C.D.
President.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.


Clerk to the Houses of Parliament