

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

CUSTOMS (VALUATIONS) AMENDMENT BILL 1981

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1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 27 August 1981

(Minister for Business and Consumer Affairs)

A BILL

FOR

An Act to amend the *Customs Act 1901*

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

Short title, &c.

1. (1) This Act may be cited as the *Customs (Valuations) Amendment Act 1981*.

(2) The *Customs Act 1901*¹ is in this Act referred to as the Principal Act.

Commencement

2. (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Section 4 shall be deemed to have come into operation on 14 May 1981.

(3) Sections 5, 8, 11 and 12 shall come into operation on a date to be fixed by Proclamation.

(4) Section 9 shall be deemed to have come into operation on 10 July 1981.

Customs flag

3. Section 14 of the Principal Act is amended by omitting “vessels boats” (wherever occurring) and substituting “ships”.

Right to require security

4. Section 42 of the Principal Act is amended by omitting from sub-section (2) “the last preceding sub-section” (wherever occurring) and substituting “sub-section (1)”.

Revaluation

5. Section 95 of the Principal Act is amended by omitting “section 154” (wherever occurring) and substituting “Division 2 of Part VIII”.

When goods deemed to be the produce or manufacture of a country

6. Section 151 of the Principal Act is amended by omitting sub-section (8).

Direct shipment to Australia for certain preferences

7. Section 151A of the Principal Act is amended—

- (a) by omitting from sub-section (1) “United Kingdom,”; and
- (b) by omitting from sub-section (1) “Ireland”.

8. Division 2 of Part VIII of the Principal Act is repealed and the following Division substituted:

“Division 2—Valuation of Imported Goods**Interpretation**

“154. (1) In this Division, unless the contrary intention appears—

‘acquisition’, in relation to goods, includes acquisition by way of purchase or exchange or by way of taking on lease, on hire or on hire-purchase or under licence;

‘Australian freight’, in relation to goods, means any costs, charges and expenses of, or associated with, the transportation of the goods within Australia;

‘Australian insurance’, in relation to goods, means any costs, charges and expenses of, or associated with, the insurance of the goods in respect of the transportation of the goods within Australia;

‘computed unit price’, in relation to goods means the computed value of the goods divided by the number of the units of the goods;

‘computed value’, in relation to goods, means the computed value of the goods as determined by a Collector under section 161A;

‘deductive unit price’, in relation to goods, means the deductive unit price of the goods as determined by a Collector under section 161;

‘deductive value’, in relation to goods, means the value of the goods calculated by reference to the deductive unit price of the goods;

- ‘inland freight’, in relation to goods in a country other than Australia, means any costs, charges or expenses of, or associated with, the transportation of the goods within that country before export from the place of export;
- ‘inland insurance’, in relation to goods in a country other than Australia, means any costs, charges and expenses of, or associated with, the insurance of the goods in respect of the transportation of the goods within that country before export from the place of export;
- ‘overseas freight’, in relation to goods, means any costs, charges and expenses of, or associated with, the transportation of the goods from the place of export to Australia;
- ‘overseas insurance’, in relation to goods, means any costs, charges and expenses of, or associated with, the insurance of the goods in respect of the transportation of the goods from the place of export to Australia;
- ‘place of export’, in relation to goods exported from a country, means—
- (a) where the goods were exported by sea or by air—the place at which the goods were placed on board the ship or aircraft concerned for export from the country; or
 - (b) in any other case—the place at which the goods crossed the border of the country;
- ‘price’, in relation to goods the subject of a contract of sale, means the aggregate of all payments made, or to be made, directly or indirectly, in connection with the goods by the purchaser to or for the benefit of the vendor (including any payment by the purchaser to a person other than the vendor to satisfy an obligation of the vendor) in accordance with the contract, whether the payment is made in money or by letter of credit, negotiable instrument or otherwise, and includes the value, as determined by a Collector, of any goods or services that are to be supplied by, or on behalf of, the purchaser as part of the consideration passing from the purchaser under the contract of sale, but does not include any duties of customs, or any other taxes, payable under a law in force in Australia by reason of the importation or sale of the goods;
- ‘produce’ includes grow, manufacture, mine, process or treat;
- ‘purchaser’, in relation to goods, means the purchaser in relation to the relevant transaction;
- ‘relevant transaction’, in relation to goods, means—
- (a) a contract of sale of the goods (not being a contract of sale that, in the opinion of a Collector, is a contract of sale on the domestic market of a country other than Australia) entered into before the goods became subject to Customs control; or
 - (b) if there were 2 or more such contracts—the later or latest of those contracts;
- ‘transaction unit price’, in relation to goods, means the transaction value of the goods divided by the number of the units of the goods;

'transaction value', in relation to goods, means the transaction value of the goods as determined by a Collector under section 159;

'vendor', in relation to goods, means the vendor in relation to the relevant transaction.

“(2) In ascertaining the price of goods for the purposes of this Division—

- (a) a Collector shall not have regard to any rebate of, or other decrease in, that price the right to which has not accrued when the ascertainment is made; and
- (b) a Collector shall deduct from the amount that, but for this paragraph, would be the amount of that price such amounts as the Collector considers necessary, in accordance with generally accepted accounting principles, to take account of the following matters:
 - (i) any costs, charges or expenses in respect of activities undertaken by the purchaser on his own account in connection with the goods (including any activities of the purchaser relating to advertising or promoting the sale of the goods or relating to warranties or guarantees in respect of the goods);
 - (ii) any payment of interest, or any other cost or charge, paid or payable under a financing arrangement entered into by the purchaser with respect to the purchase of the goods;
 - (iii) any overseas freight or overseas insurance in respect of the goods;
 - (iv) any of the following costs, charges or expenses in respect of the goods that are, in the opinion of the Collector, capable of being quantified by reference to the contract of sale of the goods:
 - (A) any costs, charges or expenses that are incurred for the construction, erection, assembly or maintenance of, or any technical assistance in respect of, the goods, being costs, charges or expenses incurred after the importation of the goods;
 - (B) any Australian freight or Australian insurance in respect of the goods.

“(3) For the purposes of this Division, where the amount of inland freight in respect of goods the produce or manufacture of Canada that were exported from Canada would, but for this sub-section, be greater than the amount (in this sub-section referred to as 'the maximum amount') that it would have been if the goods had been forwarded from the place of origin of the goods to the nearest point of exit in Canada, then, by force of this sub-section, the inland freight in respect of those goods shall be deemed to be an amount equal to the maximum amount.

“(4) For the purposes of this Division, two persons shall be deemed to be related to each other if, and only if—

- (a) both being natural persons—
 - (i) they are connected by a blood relationship or by marriage or by adoption; or
 - (ii) each is an officer or director of a body corporate controlled, directly or indirectly, by the other;
- (b) both being bodies corporate—
 - (i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate);
 - (ii) both of them together control, directly or indirectly, a third body corporate;
 - (iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them;
- (c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate);
- (d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or
- (e) they are members of the same partnership.

“(5) A reference in this Division to generally accepted accounting principles shall be read as a reference to generally accepted accounting principles in the country that is the relevant country with respect to the matter under consideration.

Identical goods and similar goods

“155. (1) For the purposes of the operation of this Division in relation to goods to be valued, a Collector may, and shall if so requested by the owner of the goods to be valued, treat other goods as identical goods in relation to the goods to be valued if he is satisfied that the other goods—

- (a) are the same in all material respects, including physical characteristics, quality and reputation, as the goods to be valued;
- (b) were produced in the same country as the goods to be valued; and
- (c) were produced by or on behalf of the producer of the goods to be valued.

“(2) Where a Collector, after reasonable inquiry, is not aware of any goods that may be treated under sub-section (1) as identical goods in relation to the goods to be valued, the Collector shall disregard the requirement in paragraph (1) (c) for the purpose of treating goods as identical goods in relation to the goods to be valued.

“(3) For the purposes of the operation of this Division in relation to goods to be valued, a Collector may, and shall if so requested by the owner of the

goods to be valued, treat other goods as similar goods in relation to the goods to be valued if he is satisfied that the other goods—

- (a) closely resemble the goods to be valued in respect of component materials and parts and in respect of physical characteristics;
- (b) are functionally and commercially interchangeable with the goods to be valued having regard to the quality and reputation (including any relevant trade marks) of each lot of goods;
- (c) were produced in the same country as the goods to be valued; and
- (d) were produced by or on behalf of the producer of the goods to be valued.

“(4) Where a Collector, after reasonable inquiry, is not aware of any goods that may be treated under sub-section (3) as similar goods in relation to the goods to be valued, the Collector shall disregard the requirement in paragraph (3) (d) for the purpose of treating goods as similar goods in relation to the goods to be valued.

“(5) A reference in sub-section (1) or (3) to other goods shall be read as not including a reference to goods in relation to which engineering work, development work, art work or design work that was, or plans or sketches that were, undertaken in Australia was, or were, supplied, directly or indirectly, by the purchaser, free of charge or at a reduced cost, for use in connection with the production of those goods.

Value of imported goods

“156. Subject to any contrary intention that may appear from the provisions of the *Customs Tariff Act* 1966 or of this Act with respect to a particular case, the value of any imported goods for the purposes of the *Customs Tariff Act* 1966 shall be the customs value of the goods as determined in accordance with this Division.

Customs value of goods

“157. (1) Subject to sub-section (2), the customs value of goods to be valued is the transaction value of the goods.

“(2) Subject to sub-section (3), where the Comptroller considers that the customs value of goods to be valued cannot be determined in accordance with sub-section (1), the customs value of the goods is the value of the goods calculated by reference to—

- (a) the transaction unit price of identical goods; or
- (b) if, by reason that two or more lots of goods have been treated as identical goods for the purposes of the operation of this sub-section, there are two or more such unit prices—that one of those unit prices that is the lower or lowest.

“(3) Subject to sub-section (6), where the Comptroller considers that the customs value of goods to be valued cannot be determined in accordance with

sub-section (1) or (2), the customs value of the goods is the value of the goods calculated by reference to—

- (a) the transaction unit price of similar goods; or
- (b) if, by reason that two or more lots of goods have been treated as similar goods for the purposes of the operation of this sub-section, there are two or more such unit prices—that one of those unit prices that is the lower or lowest.

“(4) Subject to sub-section (5), a Collector shall not treat goods as identical goods or similar goods for the purposes of sub-section (2) or (3) unless he is satisfied that—

- (a) the requirements of section 155 are satisfied with respect to the goods;
- (b) the goods were exported to Australia at or about the same time as the goods to be valued; and
- (c) the goods were sold in a relevant transaction at the same trade level as the goods to be valued and in the same, or substantially the same, quantities as the goods to be valued.

“(5) Where a Collector, after reasonable inquiry, is not aware of any goods that may be treated as identical goods or similar goods for the purposes of sub-section (2) or (3), the Collector shall disregard the requirement in paragraph (4) (c) for the purpose of treating goods as identical goods or similar goods, as the case may be, for the purposes of sub-section (2) or (3), as the case may be.

“(6) Subject to sub-sections (7) and (8), where the Comptroller considers that the customs value of goods to be valued cannot be determined in accordance with sub-section (1), (2) or (3), the customs value of the goods is the deductive value of the goods.

“(7) Subject to sub-section (8), where—

- (a) the Comptroller considers that the customs value of goods to be valued cannot be determined in accordance with sub-section (1), (2), (3) or (6); and

(b) the exporter was the producer of the goods to be valued,
the customs value of the goods is the computed value of the goods.

“(8) Subject to sub-section (9), where the Comptroller considers that the customs value of goods to be valued cannot be determined in accordance with sub-section (1), (2), (3), (6) or (7), the customs value of the goods is such value as the Comptroller determines.

“(9) In determining the customs value of goods under sub-section (8), the Comptroller shall not have regard to any of the following matters:

- (a) the selling price in Australia of goods produced in Australia;
- (b) any system that provides for the acceptance for customs purposes of the higher of 2 alternative values;
- (c) the price of goods on the domestic market of the country of export;

- (d) the cost of production of goods, other than the computed value of identical goods or similar goods;
- (e) the price of goods sold for export to a country other than Australia (other than goods that, having been so exported, are imported into Australia);
- (f) any system that provides for minimum customs values;
- (g) arbitrary or fictitious values.

“(10) Where the exporter was the producer of the goods to be valued, the owner of the goods to be valued may, at any time before duty is paid, request a Collector to apply sub-sections (6) and (7) in determining the customs value of the goods as if—

- (a) the reference in sub-section (6) to the deductive value of the goods were a reference to the computed value of the goods; and
- (b) the reference in sub-section (7) to the computed value of the goods were a reference to the deductive value of the goods,

and the Collector shall give effect to that request accordingly.

“(11) Where a request under sub-section (10) is made after the customs value of the goods concerned has been determined, any new customs value determined by a Collector in accordance with the request shall be substituted for that first-mentioned customs value.

Circumstances in which customs value of goods cannot be determined

“158. (1) The determination of the customs value of goods by a Collector in accordance with a particular provision of section 157 is dependent upon there being available to the Collector sufficient and reliable information for the purpose, and, if the Comptroller is not satisfied that such information is available to a Collector, the Comptroller shall determine that the customs value of the goods cannot be determined in accordance with that provision.

“(2) Without affecting the generality of sub-section (1)—

- (a) where the Comptroller, in accordance with sub-section (3), (4) or (6), determines that the transaction value of the goods to be valued cannot be determined; the Comptroller shall determine that the customs value of the goods cannot be determined in accordance with sub-section 157 (1);
- (b) where the Comptroller, in accordance with sub-section (3), (4) or (6), determines, with respect to identical goods in relation to the goods to be valued, or, if there are two or more lots of such goods, with respect to the goods in each of those lots, that the transaction value of the goods cannot be determined, the Comptroller shall determine that the customs value of the goods to be valued cannot be determined in accordance with sub-section 157 (2); and
- (c) where the Comptroller, in accordance with sub-section (3), (4) or (6), determines, with respect to similar goods in relation to the goods to be valued, or, if there are two or more lots of such goods, with respect to the goods in each of those lots, that the transaction value of the goods

cannot be determined; the Comptroller shall determine that the customs value of the goods to be valued cannot be determined in accordance with sub-section 157 (3).

“(3) If the Comptroller, after reasonable inquiry, is not aware of any relevant transaction in relation to goods, he shall determine that the transaction value of the goods cannot be determined.

“(4) Where the Comptroller is satisfied that the disposition or use of goods by the purchaser is subject to restrictions, other than restrictions that—

- (a) are imposed or required by, or by any public officer or authority acting in accordance with, any law in force in Australia;
- (b) limit the geographical area in which the goods may be sold; or
- (c) do not substantially affect the commercial value of the goods,

the Comptroller shall determine that the transaction value of the goods cannot be determined.

“(5) Where the Comptroller—

- (a) is satisfied that the purchaser and the vendor of goods were, at the time of the relevant transaction, related persons; and
- (b) considers that that relationship may have influenced the price of the goods,

the Comptroller shall, by notice in writing served, personally or by post, on the owner of the goods—

- (c) advise the owner of the view that he has formed of the possible effect on the price of the goods of the relationship between the purchaser and the vendor and of the fact that, because of that view, the Comptroller may be required to determine under sub-section (6), that the transaction value of the goods cannot be determined; and
- (d) invite the owner to put before the Comptroller, within a period specified in the notice (not being a period of less than 28 days), such further information as the owner considers might serve to satisfy the Comptroller as to any of the matters set out in sub-section (6).

“(6) On the expiration of the period specified in a notice under sub-section (5), the Comptroller shall, unless the owner of the goods has satisfied him that—

- (a) the relationship between the purchaser and the vendor of the goods did not influence the price of the goods; or
- (b) the transaction unit price of the goods closely approximates, having regard to all relevant factors—
 - (i) the transaction unit price of identical goods or similar goods that were exported to Australia at or about the same time as the goods to be valued;
 - (ii) the deductive unit price of identical goods or similar goods that were sold in Australia at or about the same time as the importation of the goods to be valued; or

- (iii) the computed unit price of identical goods or similar goods that were imported into Australia at or about the same time as the goods to be valued,

determine that the transaction value of the goods cannot be determined.

“(7) In sub-section (6), ‘transaction unit price’, in relation to the goods to be valued, means the amount of the transaction value that would be determined in respect of the goods if the purchaser and the vendor had not been related at the time of the relevant transaction divided by the number of the units of the goods.

Transaction value of goods

“159. (1) A Collector shall determine the transaction value of goods in accordance with this section.

“(2) The transaction value of goods is an amount equal to the amount of the price, as determined by the Collector, in accordance with the relevant transaction, being that price as adjusted to the extent required by sub-section (3).

“(3) There shall be added to the price referred to in sub-section (2) such amounts as the Collector considers necessary, in accordance with generally accepted accounting principles, to take account of the following matters:

- (a) commission or brokerage (not being a fee paid or payable by the purchaser to his agent for the service of representing the purchaser in the purchase of the goods to be valued) paid, or payable, by the purchaser in respect of the goods to be valued;
- (b) packing costs or charges, whether for materials or labour or for materials and labour, (including costs of packages and coverings that fall within item 12 in Schedule 2 to the *Customs Tariff Act 1966*) incurred by the purchaser in respect of the goods to be valued;
- (c) any of the following goods or services that have been supplied, directly or indirectly, by the purchaser free of charge or at a reduced cost in connection with the production of the goods to be valued:
 - (i) materials, components or other goods that form part of the goods to be valued;
 - (ii) tools, dies, moulds or other goods used in the production of the goods to be valued;
 - (iii) any materials consumed in the production of the goods to be valued;
 - (iv) engineering work, development work, art work or design work that was, or plans or sketches that were, required for the production of the goods to be valued, to the extent that the work was, or the plans or sketches were, undertaken outside Australia;
- (d) royalties or licence fees (including any payments for patents, trade marks or copyrights, whether granted under a law in force in Australia or in a country other than Australia, but not including any payments

for the right to reproduce the goods to be valued) paid, or payable, directly or indirectly, in accordance with the terms of the relevant transaction or with any arrangement entered into in connection with the relevant transaction, by the purchaser in respect of the goods to be valued;

- (e) the accrual, directly or indirectly, to the vendor of the whole, or any part, of the proceeds of any resale, disposal or use of the goods to be valued by the purchaser; or
- (f) any inland freight or inland insurance in respect of the goods to be valued paid, or payable, directly or indirectly, in accordance with the terms of the relevant transaction or with any arrangement entered into in connection with the relevant transaction, by the purchaser to or for the benefit of the vendor.

“(4) In determining amounts under sub-section (3) in respect of goods specified in sub-paragraph (3) (c) (i) or (iii), the Collector shall take as the value of those goods an amount equal to the aggregate of the following amounts:

- (a) an amount equal to—
 - (i) where the goods were acquired by the purchaser from a person who was not related to him at the time of the acquisition—the cost of that acquisition;
 - (ii) where the goods were acquired by the purchaser from a person who was related to him at the time of the acquisition and who did not produce the goods—the cost of the acquisition of the goods by the person related to the purchaser; or
 - (iii) where the goods were produced by the purchaser or by a person who was related to him at the time of the production of the goods—the costs of that production;
- (b) the amount of the cost of transporting the goods after their acquisition or production by the purchaser to the place of production of the goods to be valued;
- (c) the amount of the value added to the goods by any repairs or modifications made to the goods after the goods were so acquired or produced by the purchaser.

“(5) In determining an amount under sub-section (3) in respect of goods specified in sub-paragraph (3) (c) (ii), the Collector shall take as the value of those goods such part of the aggregate of the following amounts as he considers should be apportioned, in accordance with generally accepted accounting principles, to the production of the goods to be valued:

- (a) an amount equal to—
 - (i) where the goods were acquired by the purchaser from a person who was not related to him at the time of the acquisition—the cost of that acquisition;
 - (ii) where the goods were acquired by the purchaser from a person who was related to him at the time of the acquisition and who

did not produce the goods—the cost of the acquisition of the goods by the person related to the purchaser; or

- (iii) where the goods were produced by the purchaser or by a person who was related to him at the time of the production of the goods—the cost of that production;
- (b) the amount of the cost of transporting the goods after their acquisition or production by the purchaser to the place of production of the goods to be valued;
- (c) the amount of the value added to the goods by any repairs or modifications made to the goods after the goods were so acquired or produced by the purchaser.

“(6) In determining an amount under sub-section (3) in respect of goods specified in sub-paragraph (3) (c) (iv), the Collector shall take as the value of those goods such part of the aggregate of the following amounts as he considers should be apportioned, in accordance with generally accepted accounting principles, to the production of the goods to be valued:

- (a) an amount equal to—
 - (i) where the goods (other than goods to which sub-paragraph (iv) applies) were acquired by the purchaser from a person who was not related to him at the time of the acquisition—the cost of that acquisition;
 - (ii) where the goods (other than goods to which sub-paragraph (iv) applies) were acquired by the purchaser from a person who was related to him at the time of the acquisition and who did not produce the goods—the cost of the acquisition of the goods by the person related to the purchaser;
 - (iii) where the goods (other than goods to which sub-paragraph (iv) applies) were produced by the purchaser or by a person who was related to him at the time of the production of the goods—the cost of that production; or
 - (iv) where the goods were available generally to the public in Australia or elsewhere at the time of the acquisition by the purchaser—the cost to the public of acquiring those goods;
- (b) the amount of the value added to the goods by any repairs or modifications made to the goods after the goods were so acquired or produced by the purchaser (other than the amount of any such value added to the goods in Australia).

“(7) In determining an amount under sub-section (3) in respect of services specified in sub-paragraph (3) (c) (iv), the Collector shall take as the value of those services such part of the aggregate of the following amounts as he

considers should be apportioned, in accordance with generally accepted accounting principles, to the production of the goods to be valued:

- (a) an amount equal to—
 - (i) where the services were supplied by a person who was not related to the purchaser at the time of the supply—the cost of that supply; or
 - (ii) in any other case—such amount as the Collector determines to be the value of the services so supplied;
- (b) the amount of the value added to the services by the supply of any further services in connection with the services originally supplied (other than the amount of any such value added to the services in Australia).

Adjustment of transaction value of identical goods or similar goods

“160. In determining the customs value of goods in accordance with sub-section 157 (2) or (3), a Collector shall make such adjustment to the transaction value of identical goods or of similar goods, as the case may be, as he considers necessary to take account of—

- (a) any commercially significant differences between the inland freight and inland insurance referred to in paragraph 159 (3) (f) with respect to the goods to be valued and the corresponding inland freight and inland insurance with respect to the identical goods or the similar goods, as the case may be, being differences attributable to differences in the distances over which the goods have been transported or differences in the modes of transport of the goods;
- (b) any difference between the trade level of the relevant transaction in relation to the goods to be valued and the trade level of the relevant transaction in relation to the identical goods or the similar goods, as the case may be; and
- (c) any difference between the quantities in which the goods to be valued were sold in the relevant transaction and the quantities in which the identical goods or the similar goods, as the case may be, were sold in the relevant transaction.

Deductive unit price of goods

“161. (1) A Collector shall determine the deductive unit price of goods in accordance with this section.

“(2) Where, at or about the same time as the time of importation of the goods to be valued, the goods to be valued or identical goods or similar goods were, to the knowledge of the Collector, sold in Australia in the condition in which they were imported, the deductive unit price of the goods to be valued is—

- (a) where there was only one such sale—the unit price of the goods for the purposes of that sale;

(b) where there were 2 or more such sales and one of them related to a greater number of units of goods than the other or than any of the others—the unit price of the goods for the purposes of that sale;

(c) where—

(i) there were 2 or more such sales that related to an equal number of units of goods and that number was greater than the number of units of goods to which the other sale, or any of the other sales, related; and

(ii) the date of one of the sales to which sub-paragraph (i) relates was nearer to the date of importation of the goods to be valued than the date of the other sale, or of any of the other sales, to which sub-paragraph (i) relates,

the unit price of the goods for the purposes of the sale to which sub-paragraph (ii) relates;

(d) where—

(i) there were 2 or more such sales that related to an equal number of units of goods and that number was greater than the number of units of goods to which the other sale, or any of the other sales, related; and

(ii) two or more of the sales to which sub-paragraph (i) relates were on a common date or on 2 dates one of which was before and the other of which was after, and each of which was equidistant from, the date of importation of the goods to be valued and that common date or each of those 2 dates, as the case may be, was nearer to the date of importation of the goods to be valued than the date of the other sale, or any of the other sales, to which sub-paragraph (i) relates,

the unit price that is the lower, or lowest, of the unit prices of the goods for the purposes of the sales on that common date or the sales on those 2 dates, as the case may be.

“(3) Where the Collector, after reasonable inquiry, is not aware of any sales to which sub-section (2) relates but, during the period of 90 days that commenced on the date of importation of the goods to be valued, the goods to be valued or identical goods or similar goods were, to the knowledge of the Collector, sold in Australia in the condition in which they were imported, the deductive unit price of the goods to be valued is—

(a) where there was only one such sale—the unit price of the goods for the purposes of that sale;

(b) where there were 2 or more such sales and one of them was on an earlier date than the other or than any of the others—the unit price of the goods for the purposes of that sale;

(c) where—

(i) there were 2 or more such sales on a common date and that date was earlier than the date of the other sale or of any of the sales; and

- (ii) one of the sales on that common date related to a greater number of units of goods than the other sale, or than any of the other sales, on that common date,

the unit price of the goods for the purposes of the sale to which sub-paragraph (ii) relates;

(d) where—

- (i) there were 2 or more such sales on a common date and that date was earlier than the date of the other sale or of any of the other sales; and
- (ii) two or more of those sales on that common date related to the same number of units of goods and that number was greater than the number of the units of goods to which the other sale, or any of the other sales, on that common date related,

the unit price that is the lower, or lowest, of the unit prices of the goods for the purposes of the sales to which sub-paragraph (ii) relates.

“(4) Subject to sub-section (5), where the Collector, after reasonable inquiry, is not aware of any sales to which sub-section (2) or (3) relates but, during the period of 90 days that commenced on the date of importation of the goods to be valued, the goods to be valued, after being assembled, packaged or further processed in Australia, were, to the knowledge of the Collector, sold (whether all or some of the goods were so sold on one occasion only or some of the goods were so sold on different occasions) in Australia, the deductive unit price of the goods to be valued is—

- (a) where there was only one such sale—the unit price for the purposes of that sale;
- (b) where there were 2 or more such sales and one of them related to a greater number of units of goods than the other or than any of the others—the unit price of the goods for the purposes of that sale;
- (c) where—
 - (i) there were 2 or more such sales that related to an equal number of units of goods and that number was greater than the number of units of goods to which the other sale, or any of the other sales, related; and
 - (ii) the date of one of the sales to which sub-paragraph (i) relates is earlier than the date of the other sale, or of any of the other sales, to which sub-paragraph (i) relates,

the unit price of the goods for the purposes of the sale to which sub-paragraph (ii) relates;

(d) where—

- (i) there were 2 or more such sales that related to an equal number of units of goods and that number was greater than the number of units of goods to which the other sale, or any of the other sales, related; and
- (ii) two or more of the sales to which sub-paragraph (i) relates were on common date and that date was earlier than the date of

the other sale, or of any of the other sales, to which sub-paragraph (i) relates,

the unit price that is the lower, or lowest, of the unit prices of the goods for the purposes of the sales on that common date.

“(5) Sub-section (4) does not apply in relation to goods to be valued unless the application of that sub-section in relation to the goods is requested by the owner of the goods.

“(6) For the purposes of sub-sections (2), (3) and (4) a reference in any of those sub-sections to a sale of goods shall be read as a reference to a sale of goods that complies with the following requirements:

- (a) the sale was at the first trade level at which the goods were sold after the importation of the goods;
- (b) the sale was to a purchaser who, in the opinion of the Collector—
 - (i) was not related to the vendor of the goods at the time of the sale; and
 - (ii) did not supply, directly or indirectly, free of charge or at a reduced cost, any goods or services of a kind referred to in paragraph 159 (3) (c) for use in connection with the production of the goods;
- (c) the sale was, in the opinion of the Collector, a sale of a sufficient number of units of goods as to permit a proper determination of the price per unit of the goods.

“(7) In determining the unit price of goods (in this sub-section referred to as ‘the goods concerned’) in accordance with this section, the Collector shall make such deductions as he considers necessary, in accordance with generally accepted accounting principles, to take account of the following matters:

- (a) overseas freight and overseas insurance, and Australian freight and Australian insurance, paid or payable in connection with the goods concerned;
- (b) where the sale of the goods concerned is a sale on commission—commission usually earned in connection with the sale in Australia of imported goods of the same class or kind, and sold at the same trade level, as the goods concerned;
- (c) where the sale of the goods concerned is not a sale on commission—the amount usually added for profit and general expenses (including all costs, direct and indirect, of marketing the goods), taken as a whole, in connection with the sale in Australia of imported goods of the same class or kind, and sold at the same trade level, as the goods concerned;
- (d) where the goods concerned are goods to which sub-section (4) applies—the amount of the value added to the goods that is attributable to the assembly, packaging or further processing in Australia of the goods; and

- (e) any duties of customs and any other taxes paid or payable by reason of the importation of the goods concerned into Australia or the sale of the goods concerned in Australia.

“(8) In this section—

‘purchaser’, in relation to goods the subject of a contract of sale, means the purchaser in relation to the contract of sale;

‘unit price’, in relation to goods the subject of a contract of sale, means the price, as determined by the Collector, of the goods in accordance with the contract of sale, divided by the number of the units of the goods;

‘vendor’, in relation to goods the subject of a contract of sale, means the vendor in relation to the contract of sale.

“(9) Paragraph 154 (2) (b) does not apply in relation to the determination by the Collector of the price of goods for the purposes of the definition of ‘unit price’ in sub-section (8).

Computed value of goods

“161A. (1) This section applies in relation to goods if, and only if, the exporter is the producer of the goods.

“(2) A Collector shall determine the computed value of goods in accordance with this section.

“(3) The computed value of goods is an amount determined by the Collector, in accordance with generally accepted accounting principles, to take account of the following matters:

- (a) the value of the materials used in producing the goods to be valued;
- (b) the costs, charges and expenses incurred by the producer in, or in connection with, the production of the goods to be valued;
- (c) packing costs or charges for materials or labour (including costs of packages and coverings that fall within item 12 in Schedule 2 to the *Customs Tariff Act 1966*) incurred in connection with the goods to be valued to the extent that those costs or charges are not taken account of under (a) or (b);
- (d) the value of any of the following goods or services that have been supplied, directly or indirectly, by a person in Australia free of charge or at a reduced cost in connection with the production of the goods to be valued to the extent that that value is not taken account of under (a), (b) or (c):
 - (i) materials, components or other goods that form part of the goods to be valued;
 - (ii) tools, dies, moulds or other goods used in the production of the goods to be valued;
 - (iii) any materials consumed in the production of the goods to be valued;
 - (iv) engineering work, development work, art work or design work that was, or plans or sketches that were, required for the

production of the goods to be valued, to the extent that the work was, or the plans or sketches were, undertaken outside Australia;

- (e) inland freight and inland insurance usually payable in connection with the sale for export to Australia from the country of export of the goods to be valued of goods of the same class or kind as the goods to be valued sold by the producers to purchasers who are not related to those producers at the time of the sale;
- (f) profit and general expenses (including all costs, direct and indirect, of marketing the goods) taken as a whole usually added in a sale for export to Australia from the country of export of the goods to be valued of goods of the same class or kind as the goods to be valued sold by the producers to purchasers who are not related to those producers at the time of the sale.

“(4) Sub-sections 159 (4), (5), (6) and (7) apply in relation to the determination by a Collector of an amount under sub-section (3) of this section as if—

- (a) a reference in any of those sub-sections to sub-section 159 (3) were a reference to sub-section (3) of this section;
- (b) a reference in sub-section 159 (4) to sub-paragraph 159 (3) (c) (i) or (iii) were a reference to sub-paragraph (3) (d) (i) or (iii) of this section;
- (c) a reference in sub-section 159 (5) to sub-paragraph 159 (3) (c) (ii) were a reference to sub-paragraph (3) (d) (ii) of this section;
- (d) a reference in sub-section 159 (6) or (7) to sub-paragraph 159 (3) (c) (iv) were a reference to sub-paragraph (3) (d) (iv) of this section.

Value of goods to be in Australian currency

“161B. (1) Where an amount that is, in accordance with this Division, required to be taken into account for the purpose of ascertaining the value of any imported goods is not an amount in Australian currency, the amount to be so taken into account shall be the equivalent in Australian currency of that amount, ascertained according to a fair rate of exchange at the date of exportation of the goods.

“(2) For the purposes of this section, the Minister may, where he considers it desirable so to do for the avoidance of doubt, specify, by notice published in the *Gazette*—

- (a) a rate that is to be deemed to be, or to have been, a fair rate of exchange in relation to any currency upon a date, or during a period, preceding the date of publication of the notice; or
- (b) a rate that is to be deemed to be, or to have been, a fair rate of exchange in relation to any currency from the date of publication of the notice, or an earlier date specified in the notice, until the revocation of the notice.

“(3) The rate of exchange specified in relation to any currency under sub-section (2) shall, in relation to the value of any goods exported on the day or during the period to which the rate so specified applies, be the rate of exchange to be applied for the purposes of sub-section (1) in respect of the currency specified in the notice.

“(4) In any case in which the rate of exchange to be applied is not ascertainable by virtue of sub-section (3) and in which doubt exists as to the rate to be so applied, the Minister may specify a fair rate of exchange to be applied for the purposes of that case.

Owner to be advised of value of goods

“161C. (1) Where the Comptroller or a Collector has determined the amount of the value of goods in accordance with this Division, the Comptroller or the Collector shall advise the owner of the goods of the amount so determined.

“(2) If the owner of goods so requests, in writing, within 28 days after being advised under sub-section (1) of the amount of the value of the goods determined in accordance with this Division, a Collector shall, within 28 days after the making of the request, furnish the owner with a notice in writing setting out—

- (a) the method by which the value of the goods was determined;
- (b) the findings of material questions of fact relating to that determination, the evidence or other material on which those findings were based and the reasons for that determination; and
- (c) the calculations by which the determination of the value of the goods was made and the information on which those calculations were based.

“(3) Nothing in this section requires, or permits, the furnishing of information that—

- (a) relates to the personal affairs or business affairs of a person, other than the person making the request; and
- (b) is information—
 - (i) that was supplied in confidence;
 - (ii) the publication of which would reveal a trade secret;
 - (iii) that was furnished in compliance with a duty imposed by an enactment; or
 - (iv) the furnishing of which in accordance with the request would be in contravention of an enactment, being an enactment that expressly imposes on the person to whom the request is made a duty not to divulge or communicate to any person, or to any person other than a person included in a prescribed class of persons, or except in prescribed circumstances, information of that kind.

“(4) In this section, ‘enactment’ has the same meaning as in the *Administrative Decisions (Judicial Review) Act 1977*.

Review of determinations and other decisions

“161D. (1) At any time within 12 months after the making of a determination or other decision by an officer under this Division, the Comptroller may review the determination or other decision and may—

- (a) affirm the determination or other decision;
- (b) vary the determination or other decision; or
- (c) revoke the determination or other decision and make any other determination or decision that is required to be made for the purpose of determining the customs value of the goods concerned in accordance with this Division.

“(2) Where, by reason that the Comptroller, under sub-section (1), has varied or revoked a determination or other decision of an officer or has made a determination or other decision that is required to be made by reason of the revocation of a determination or other decision of an officer—

- (a) an amount of duty that was levied is less than the amount that should have been levied; or
- (b) an amount of duty that was refunded is greater than the amount that should have been refunded,

section 165 applies in relation to any demand by a Collector for the payment of the amount of duty so short levied or so erroneously refunded, as the case may be.

“(3) In this section, ‘officer’, means a Collector or a delegate of the Comptroller.”.

Collector may retain goods and require owner to proceed for restoration

9. Section 208A of the Principal Act is amended by omitting from paragraph (1) (b) “section 206” and substituting “section 208”.

Tender schemes

10. (1) Section 266 of the Principal Act is amended by inserting in sub-section (1) “, by instrument in writing,” after “may”.

(2) The amendment made by sub-section (1) does not affect a scheme in force under section 266 of the Principal Act immediately before the commencement of this section, but the Minister may, at any time after the commencement of this section, vary or revoke such a scheme.

Repeal of Schedule VII

11. Schedule VII to the Principal Act is repealed.

Application of certain amendments

12. (1) Notwithstanding the amendments made by sections 5, 8 and 11, the Principal Act continues to apply in relation to the valuation of all goods that came under Customs control before the date fixed by Proclamation for the purposes of sub-section 2 (3).

(2) The repeal of section 157 of the Principal Act by section 8 of this Act does not affect any notice published under section 157 of the *Customs Act* 1901 at any time before the commencement of this section, but the Minister may, at any time after the commencement of this section, vary or revoke such a notice.

NOTE

1. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 19, 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, 110 and 171, 1980; and Nos. 45, 64 and 67, 1981.

