

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

RESTRICTED

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6 November 1990

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Committee on Customs Valuation

Original: English

### INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

#### Supplement

#### Legislation of Australia

A copy of the Customs and Excise Legislation Amendment Act 1989  
(No. 23 of 1989) is attached hereto.

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\* English only/anglais seulement/inglés solamente



# Customs and Excise Legislation Amendment Act 1989

No. 23 of 1989

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# Customs and Excise Legislation Amendment Act 1989

No. 23 of 1989

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**An Act to amend legislation relating to Customs and Excise,  
and for related purposes**

*[Assented to 5 May 1989]*

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

## PART I—PRELIMINARY

### Short title

- 5      1. This Act may be referred to as the *Customs and Excise Legislation  
Amendment Act 1989*.

### Commencement

2. This Act commences on 1 July 1989.

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**PART II—AMENDMENTS OF THE CUSTOMS ACT 1901 AND  
RELATED TRANSITIONAL PROVISIONS**

**Principal Act**

3. In this Part, "Principal Act" means the *Customs Act 1901*.

**Interpretation**

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4. Section 4 of the Principal Act is amended:

(a) by omitting from subsection (1) the definition of "Officer" or "Officer of Customs" and substituting the following definitions:

"'Officer' means an officer of Customs;

'Officer of Customs' means a person:

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(a) employed in the Customs; or

(b) authorised in writing by the Comptroller to perform all of the functions of an officer of Customs;

and includes:

(c) in relation to a provision of a Customs Act, a person authorised in writing by the Comptroller to perform the functions of an officer of Customs under that provision; or

15

(d) in relation to a power conferred by a provision of a Customs Act, a person authorised in writing by the Comptroller to perform the functions of an officer of Customs in relation to the exercise of that power;";

20

(b) by inserting in subsection (1) the following definitions:

"'Commercial document', in relation to goods, means a document prepared in the ordinary course of business for the purposes of a commercial transaction involving the goods or the carriage of goods;

25

'Container' means a container within the meaning of the Customs Convention on Containers, 1972 signed in Geneva on 2 December 1972, as affected by any amendment of the Convention that has come into force;

30

'Pallet' means a pallet within the meaning of the European Convention on Customs Treatment of Pallets used in International Transport signed in Geneva on 9 December 1960, as affected by any amendment of the Convention that has come into force;"; and

35

(c) by inserting in subsection (1) the following definition:

"'Records offence' means:

(a) an offence against subsection 240 (1) or (4) of this Act;

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(b) an offence against:

(i) section 6, 7 or 7A of the *Crimes Act 1914*;

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- (ii) paragraph 86 (1) (a) of that Act; or  
(iii) section 237 of this Act;  
being an offence that relates to an offence of the kind referred to in paragraph (a) of this definition; or  
5 (c) an offence against section 29D or 86A of the *Crimes Act 1914*, being an offence that relates to a tax liability;”.

**Information and documents relating to entries etc.**

- 10 5. Section 38B of the Principal Act is amended by omitting subsection (7).

**Authority to deal with goods**

6. Section 39 of the Principal Act is amended by inserting after subsection (1) the following subsections:

15 “(1A) Authority under this section to deal with goods shall, unless a Collector has determined under subsection (1B) that this subsection does not apply in relation to the goods, be expressed to be subject to the condition that an officer of Customs may, at any time within 5 years after the goods are entered for a particular purpose, require verification of information that was supplied to the Collector for the purposes of their entry for that  
20 purpose, and may, for the purpose of that verification, exercise such of the powers conferred under section 214AA as the officer considers necessary.

25 “(1B) Where a Collector is satisfied that the information given to him or her for the purposes of an entry of goods will not require verification of that information after the goods are entered, he or she may determine, in writing, that subsection (1A) does not apply in relation to the goods.”.

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

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

**Interpretation**

- 30 “154. (1) In this Division, unless the contrary intention appears:  
‘about the same time’ has the meaning given by subsection (2);  
‘acquire’, in relation to goods, includes purchase, receive in exchange for other goods, take on lease, take on hire, take on hire-purchase and take under licence;  
35 ‘Australian inland freight’, in relation to imported goods, means:  
(a) if any amount (other than an amount of an Australian inland insurance) was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of:

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- (i) the transportation of the goods on or after their importation into Australia; or
  - (ii) the obtaining of any commercial or other documentation required in respect of the transportation referred to in subparagraph (i) or in respect of the importation of the goods; 5
- and a Collector is satisfied of the correctness of that amount—that amount;
- (b) if any amount (other than an amount of Australian inland insurance) was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of the provision of a service referred to in subparagraph (a) (i) or (ii) and a Collector: 10
    - (i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and 15
    - (ii) is satisfied of the correctness of that amount: that amount; or
  - (c) if any amount (other than an amount of Australian inland insurance) was paid or is payable by a trader in respect of the provision of a service referred to in subparagraph (a) (i) or (ii) but a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount as a Collector determines, having regard to the ordinary costs payable in respect of the provision of the same service to a trader in respect of the same class of goods as the imported goods, under the same conditions, by a person who is not related to a trader of goods of that class, on or after their importation into Australia; 20 25
- or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs: 30
- 'Australian inland insurance', in relation to imported goods, means:
- (a) if any amount was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of insurance in relation to the transportation of the goods on or after importation into Australia and a Collector is satisfied of the correctness of that amount—that amount; 35
  - (b) if any amount was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of insurance of the kind referred to in paragraph (a) and a Collector: 40

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(i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and

(ii) is satisfied of the correctness of that amount;

5 that amount; or

(c) if any amount was paid or is payable by a trader in respect of insurance of a kind referred to in paragraph (a) but a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount as a Collector determines, having regard to the ordinary cost of the same kind of insurance to a trader in respect of the same class of goods as the imported goods, under the same conditions, where the insurer is not related to a trader of goods of that class:

15 or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs;

'buying commission' has the meaning given by section 155;

'comparable goods', in relation to imported goods, means:

- 20 (a) the imported goods;  
(b) identical goods; or  
(c) similar goods;

'computed value', in relation to imported goods, has the meaning given by section 161F

25 'computed valued goods' means exporter's goods:

(a) whose owner has, before the payment of duty in respect of the goods (whether before or after any determination of a value of the goods) requested a Collector to take their customs value to be their computed value in preference to their deductive value; and

30 (b) whose computed value can be determined by the Collector;

'customs value', in relation to imported goods, has the meaning given by section 159;

35 'deductible administrative costs', in relation to goods in a sale, means any costs that are payable on or after the importation of the goods into Australia in relation to the activities of, or services performed by, any local, State or Commonwealth public authorities or officers, any licensed Customs agent, or any other person in Australia, in connection with the importation and subsequent delivery of the goods;

40 'deductible financing costs', in relation to goods in a sale, means any interest payable under a written contract, agreement or arrangement under which the purchaser is permitted to delay the payment of the price in return for the payment of that interest (whether or not also

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in return for an increase in the price or for the payment of an additional amount), being a contract, agreement or arrangement entered into between the purchaser and the vendor or another person in relation to the purchase of the goods, where:

- (a) the interest is distinguished to the satisfaction of a Collector from the price actually paid or payable for the goods; 5
- (b) if a Collector requires the purchaser to demonstrate to the satisfaction of a Collector that identical or similar goods are actually sold at the last-mentioned price—the purchaser so demonstrates; and 10
- (c) if a Collector requires the purchaser to demonstrate to the satisfaction of a Collector that the rate of the interest does not exceed the rate of interest in similar contracts, agreements or arrangements entered into in the country where, and at the time when, finance under the first-mentioned contract, agreement or arrangement was provided—the purchaser so demonstrates; 15

'deductive (contemporary sales) value', in relation to imported goods, has the meaning given by section 161C:

'deductive (derived goods sales) value', in relation to imported goods, has the meaning given by section 161E: 20

'deductive (later sales) value', in relation to imported goods, has the meaning given by section 161D:

'deductive value', in relation to imported goods, means their:

- (a) deductive (contemporary sales) value; 25
- (b) deductive (later sales) value; or
- (c) deductive (derived goods sales) value;

'exempted container' means a container that:

- (a) is not a pallet; and
- (b) is or has been permitted to be temporarily imported into Australia free of Customs duty under section 162A; 30

'exempted pallet' means a pallet that is or has been permitted to be temporarily imported into Australia free of Customs duty under either section 162A or 162B:

'exporter's goods' means imported goods exported to Australia by their producer: 35

'fall-back value', in relation to imported goods, has the meaning given by section 161G:

'foreign inland freight', in relation to imported goods, means:

- (a) if any amount (other than an amount of foreign inland insurance) was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of: 40

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- 5
- (i) the transportation of the goods within a foreign country before they left their place of export; or
  - (ii) the obtaining of any commercial or other documentation (other than documentation required in respect of overseas freight or overseas insurance) required in respect of the transportation referred to in subparagraph (i) or in respect of the transportation of the goods from the foreign country concerned;

10 and a Collector is satisfied of the correctness of that amount—that amount;

- 15
- (b) if any amount (other than an amount of foreign inland insurance) was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of the provision of service referred to in subparagraph (a) (i) or (ii) and a Collector:

20

- (i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and

(ii) is satisfied of the correctness of that amount; that amount; or

- 25
- (c) if any amount (other than an amount of foreign inland insurance) was paid or is payable by a trader in respect of the provision of a service referred to in subparagraph (a) (i) or (ii) but a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount as a Collector determines, having regard to the ordinary costs payable in respect of the provision of the same service to a trader, in respect of the same class of goods as the imported goods, under the same conditions, by a person who is not
- 30 related to a trader of goods of that class, before leaving the same place of export;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs:

35 'foreign inland insurance', in relation to imported goods, means:

- 40
- (a) if any amount was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of insurance in relation to the transportation of the goods within a foreign country before they left their place of export and a Collector is satisfied of the correctness of that amount—that amount;

45

- (b) if any amount was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of insurance of the kind referred to in paragraph (a) and a Collector:

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- (i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and
- (ii) is satisfied of the correctness of that amount;  
that amount; or 5
- (c) if any amount was paid or is payable by a trader in respect of insurance of a kind referred to in paragraph (a) but a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount as a Collector determines, having regard to the ordinary cost of the same kind of insurance to a trader in respect of the same class of goods as the imported goods, under the same conditions, where the insurer is not related to a trader of goods of that class; 10
- or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs; 15
- 'identical goods', in relation to imported goods, has the meaning given by section 156;
- 'identical goods value', in relation to imported goods, has the meaning given by section 161A; 20
- 'import sales transaction', in relation to imported goods, means:
  - (a) where there was one, and only one, contract of sale for the importation of the goods into Australia entered into before they became subject to Customs control and it was also a contract for their exportation from a foreign country—that contract; 25
  - (b) where there was one, and only one, contract of sale for the importation of the goods into Australia entered into before they became subject to Customs control and it was not also a contract for their exportation from a foreign country—that contract; or 30
  - (c) where there were 2 or more contracts of sale for the importation of the goods into Australia entered into before they became subject to Customs control—whichever of the contracts was made last; 35
- and includes:
  - (d) any contract, agreement or arrangement, whether formal or informal, to which the vendor, the purchaser or an agent of, or a person related to, the vendor or purchaser is a party that provides for an increase in the value of the goods the subject of the contract of sale referred to in paragraph (a), (b) or (c) prior to their importation; and 40
  - (e) any other contract, agreement or arrangement relating to the contract of sale referred to in paragraph (a), (b) or (c) that 45

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a Collector determines is so closely connected with that contract and to the goods the subject of that contract that together they form a single transaction;

'overseas freight', in relation to imported goods, means:

- 5 (a) if any amount (other than an amount of overseas insurance) was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of the transportation of the goods from their place of export to Australia, the goods are not self transported goods and a Collector is satisfied of the correctness of that amount—  
10 that amount;
- (b) if any amount (other than an amount of overseas insurance) was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of the transportation referred to in paragraph (a), the goods concerned are not  
15 self transported goods and a Collector:
- (i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and  
20 (ii) is satisfied of the correctness of that amount:
- that amount: or
- (c) if any amount (other than an amount of overseas insurance) was paid or is payable by a trader in respect of the transportation referred to in paragraph (a) but the goods  
25 concerned are self transported goods or a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount, as a Collector determines, having regard to the ordinary costs of the transportation of goods of the same class as the imported goods:
- (i) if the imported goods are self transported goods—  
30 under the most commercially viable conditions: or
- (ii) if the imported goods are not self transported goods—  
under the same conditions as the imported goods:
- 35 by a person who is not related to a trader of goods of that class, between the same foreign country and Australia;
- or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs:

'overseas insurance', in relation to imported goods, means:

- 40 (a) if any amount was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of insurance in relation to the transportation of the goods from their place of export to Australia, the goods are not self transported goods and a

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Collector is satisfied of the correctness of that amount—that amount;

(b) if any amount was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of insurance of the kind referred to in paragraph (a), the goods concerned are not self transported goods, and a Collector: 5

(i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and 10

(ii) is satisfied of the correctness of that amount;

that amount; or

(c) if any amount was paid or is payable in respect of insurance of a kind referred to in paragraph (a) but the goods concerned are self transported goods or a Collector is not satisfied as required by paragraph (a) or (b) whichever is applicable—such an amount as a Collector determines, having regard to the ordinary cost of insurance in relation to the transportation of goods of the same class as the imported goods: 15

(i) if the imported goods are self transported goods—under the most commercially viable conditions; or 20

(ii) if the imported goods are not self transported goods—under the same conditions as the imported goods:

where the insurer is not related to a trader of the transported goods: 25

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs:

'place of export', in relation to imported goods, means:

(a) where, while in the country from which they were exported, the goods were posted to Australia—the place where they were so posted: 30

(b) where, while in the country from which they were exported, the goods, not being goods referred to in paragraph (a), were packed in a container—the place where they were so packed: 35

(c) where the goods, being self transported goods, were exported from a country by sea or air—the place, or last place, in that country from which the goods departed for Australia:

(d) where the goods, not being goods referred to in paragraph (a), (b) or (c), were exported from a country by sea or air—the place, or first place, in that country where the goods were placed on board a ship or aircraft for export from that country: 40

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5 (e) where the goods, not being goods referred to in paragraph (a), (b), (c) or (d), were exported from a country by land, or by river, canal or other inland waterway—the place at which the goods finally crossed the border from that country into another country in the course of their transportation to Australia; or

(f) in any other case—a place determined by a Collector;  
10 'price', in relation to goods the subject of a contract of sale, means an amount determined by a Collector, after disregarding value unrelated matters in relation to those goods, to be the sum of:

(a) all payments that have been made, or are to be made, directly or indirectly, in relation to such goods, by or on behalf of the purchaser:

15 (i) to the vendor;  
(ii) to any person related to the vendor unless a Collector is satisfied that the vendor has not derived and will not derive any direct or indirect benefit from the payment; or

20 (iii) to any other person for the direct or indirect benefit of the vendor;

in accordance with the contract of sale; and

(b) all payments that have been made, or are to be made, directly or indirectly, in relation to such goods, by or on behalf of the purchaser:

25 (i) to the vendor;  
(ii) to any person related to the vendor unless a Collector is satisfied that the vendor has not derived and will not derive any direct or indirect benefit from the payment; or

30 (iii) to any other person for the direct or indirect benefit of the vendor;

35 under any other contract, agreement or arrangement, whether formal or informal, being a contract, agreement or arrangement for the doing of anything to increase the value of the goods or that a Collector is satisfied is so closely connected with the contract of sale referred to in paragraph (a) and to the goods the subject of that contract that together they form a single transaction;

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

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

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purchaser under the contract of sale referred to in paragraph (a); and

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

5

(i) to the vendor;

(ii) to any person related to the vendor unless the Collector is satisfied that the vendor has not derived and will not derive any direct or indirect benefit from the payment; or

10

(iii) to any other person for the direct or indirect benefit of the vendor;

under a contract, agreement or arrangement of the kind referred to in paragraph (b);

but does not include the amount of any duty of Customs (including any dumping or countervailing duty imposed under the *Customs Tariff (Anti-Dumping) Act 1975*), any sales tax, or any other duty or tax, that is payable by law because of the importation into, or subsequent use, sale or disposition in, Australia of the goods:

15

'price related costs', in relation to imported goods, means:

20

(a) production assist costs in respect of the goods;

(b) packing costs for materials and labour paid or payable, directly or indirectly, by or on behalf of the purchaser in respect of the goods (including, but without limiting the generality of the foregoing, costs of fumigating, cleaning, coating, wrapping or otherwise preparing the goods for their exportation from a foreign country or otherwise placing them in the condition in which they are imported into Australia, but not including the cost of any exempted pallet or exempted container concerned in their exportation);

25

30

(c) foreign inland freight and foreign inland insurance in relation to the goods paid or payable, directly or indirectly, by or on behalf of the purchaser;

(d) commission, other than a buying commission, or brokerage, paid or payable, directly or indirectly, by or on behalf of the purchaser in respect of the goods; or

35

(e) all royalties or licence fees paid or payable, directly or indirectly, by or on behalf of the purchaser to the vendor or to another person under the import sales transaction, not being royalties or licence fees:

40

(i) that do not relate to the imported goods in the condition, or substantially in the condition, in which they are imported into Australia;

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- (ii) whose only relationship to the imported goods in the condition in which they are imported into Australia is insubstantial or incidental;
- 5 (iii) that are merely for the right to reproduce the imported goods within Australia; or
- (iv) that are payable for the assembly, erection, construction or maintenance of imported goods after their importation into Australia or for any technical assistance in respect of the goods after their importation: and
- 10 (f) the whole or any part of the proceeds of any subsequent use, resale or disposal of the goods, by or on behalf of the purchaser, that have accrued, or will accrue, to the vendor;
- 'produce' includes grow, manufacture, mine, process and treat;
- 15 'production assist costs', in relation to imported goods (including imported goods that are comparable goods or derived goods in relation to other imported goods), means the sum of:
- (a) the purchaser's material costs;
- (b) the purchaser's tooling costs;
- 20 (c) the purchaser's work costs: and
- (d) the purchaser's subsidiary costs:
- in relation to those first-mentioned imported goods:
- 'production materials', in relation to the imported goods, means:
- 25 (a) materials, components or other goods that form part of the imported goods; and
- (b) materials consumed in the production of the imported goods;
- 'production tooling', in relation to imported goods, means tools, dies, moulds or other machinery or equipment used in the production of the imported goods:
- 30 'production work' means art work, design work, development work and engineering work and includes models, plans and sketches:
- 'purchaser', in relation to imported goods, means the purchaser under the import sales transaction for the goods:
- 'purchaser's material costs', in relation to imported goods, means the sum of the following amounts relating to production materials supplied, directly or indirectly, by the purchaser free of charge or at a reduced cost:
- 35 (a) an amount equal to:
- (i) where the materials were acquired by the purchaser from a person who was not related to the purchaser at the time of acquisition—the cost of acquisition:
- 40 (ii) where the materials were acquired by the purchaser from a person who was related to the purchaser at

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- the time of acquisition and who did not produce the materials—the cost of acquisition of the materials by the person; or
- (iii) where the materials were produced by the purchaser or by a person who was related to the purchaser at the time of production of the goods—the cost of production; 5
- (b) the cost of transporting the materials after their acquisition or production by the purchaser to the place of production of the imported goods; 10
- (c) the cost of repairs and modifications of the materials after their acquisition or production by the purchaser;
- 'purchaser's subsidiary costs', in relation to imported goods, means such part of the sum of the following amounts relating to subsidiary goods, or subsidiary services, supplied, directly or indirectly, by the purchaser free of charge or at a reduced price as a Collector considers should be apportioned to the production of the imported goods: 15
- (a) an amount equal to:
- (i) where the subsidiary goods relate to work goods and were available generally to the public in Australia or elsewhere at the time of acquisition by the purchaser (in this definition called 'available goods')—the cost to the public of acquiring the available goods; 20
- (ii) where the subsidiary goods (other than available goods) were acquired by the purchaser from a person who was not related to the purchaser at the time of acquisition—the cost of acquisition; 25
- (iii) where the subsidiary goods (other than available goods) were acquired by the purchaser from a person who was related to the purchaser at the time of acquisition and who did not produce the goods—the cost of acquisition by the person; or 30
- (iv) where the subsidiary goods (other than available goods) were produced by the purchaser or by a person who was related to the purchaser at the time of the production of the goods—the cost of that production; 35
- (b) the cost of transporting the subsidiary goods (other than goods that relate to work goods) after their acquisition or production by the purchaser to the place of production of the production materials or production tooling, as the case requires; 40
- (c) the cost of repairs and modifications of subsidiary goods (other than goods that relate to work goods), after their acquisition or production by the purchaser;

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(d) the cost of repairs and modifications outside Australia of subsidiary goods that relate to work goods after the acquisition or production of the subsidiary goods by the purchaser;

(e) an amount equal to:

5 (i) where the subsidiary 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 subsidiary services;

10 (f) the cost of the supply of any further services in relation to the subsidiary services (other than services that relate to work services);

(g) the cost of the supply outside Australia of any further services in relation to the subsidiary services that relate to work services;

15 'purchaser's tooling costs', in relation to imported goods, means such part of the sum of the following amounts relating to production tooling supplied, directly or indirectly, by the purchaser free of charge or at a reduced price as a Collector considers should be apportioned to the production of the imported goods:

(a) an amount equal to:

(i) where the tooling was acquired by the purchaser from a person who was not related to the purchaser at the time of acquisition—the cost of acquisition;

25 (ii) where the tooling was acquired by the purchaser from a person who was related to the purchaser at the time of acquisition and who did not produce the tooling—the cost of acquisition of the tooling by the person; or

30 (iii) where the tooling was produced by the purchaser or by a person who was related to the purchaser at the time of production of the tools—the cost of production;

(b) the cost of transporting the tooling after its acquisition or production by the purchaser to the place of production of the imported goods;

35 (c) the cost of repairs and modifications of the tooling after its acquisition or production by the purchaser;

'purchaser's work costs', in relation to imported goods, means such part of the sum of the following amounts relating to work goods, or work services, supplied, directly or indirectly, by the purchaser free of charge or at a reduced price, as a Collector considers should be apportioned to the production of the imported goods:

(a) an amount equal to:

(i) where the work goods were available generally to the public in Australia or elsewhere at the time of

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- acquisition by the purchaser (in this definition called 'available goods')—the cost to the public of acquiring the goods;
- (ii) where the work goods (other than available goods) were acquired by the purchaser from a person who was not related to the purchaser at the time of acquisition—the cost of acquisition; 5
- (iii) where the work goods (other than available goods) were acquired by the purchaser from a person who was related to the purchaser at the time of acquisition and who did not produce the work goods—the cost of acquisition by the person; or 10
- (iv) where the work goods (other than available goods) were produced by the purchaser or by a person who was related to the purchaser at the time of the production of the work goods—the cost of that production; 15
- (b) the cost of transporting the work goods, after their acquisition or production by the purchaser to the place of production of the imported goods; 20
- (c) the cost of repairs and modifications outside Australia of the work goods after their acquisition by the purchaser;
- (d) an amount equal to:
- (i) where the work 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 25
- (ii) in any other case—such amount as the Collector determines to be the value of the work services;
- (e) the cost of the supply outside Australia of any further services in relation to the work services; 30
- 'related', in relation to persons, has the meaning given by subsection (3);
- 'request goods' means goods whose owner has requested a Collector to determine their deductive (derived goods sales) value;
- 'royalty', in relation to imported goods, means royalty within the meaning given by section 157; 35
- 'self transported goods' means:
- (a) a ship imported otherwise than in another ship or an aircraft; or
- (b) an aircraft imported otherwise than in a ship or another aircraft; 40
- 'similar goods', in relation to imported goods, has the meaning given by section 156;
- 'similar goods value', in relation to imported goods, has the meaning given by section 101B;

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- 5 'subsidiary goods', in relation to imported goods, means goods supplied,  
directly or indirectly, by the purchaser in relation to the production  
of production materials, production tooling, work goods, or work  
services, supplied, directly or indirectly by the purchaser (whether  
or not free of charge or at a reduced cost) in relation to the  
production of the imported goods;
- 10 'subsidiary services', in relation to imported goods, means services supplied,  
directly or indirectly, by the purchaser in relation to the production  
of production materials, production tooling, work goods, or work  
services, supplied, directly or indirectly by the purchaser (whether  
or not free of charge or at a reduced cost) in relation to the  
production of the imported goods;
- 15 'trade mark' means a mark of a kind capable of registration under the  
*Trade Marks Act 1955*, whether or not it is registered under that  
Act or any other law, but does not include a mark that relates to a  
service;
- 'trader', in relation to goods, means a vendor, exporter, purchaser or  
importer of the goods;
- 20 'transaction value', in relation to imported goods, has the meaning given  
by section 161;
- 'transportation' includes transportation by post and storage or handling  
incidental to transportation;
- 'value unrelated amount', in relation to goods in a sale, means:
- 25 (a) where the sale is on commission—the amount of commission  
usually earned in connection with the sale of other goods of  
the same class and in the same quantity as the goods in the  
sale, being a sale of other goods in Australia at the same  
trade level as the first-mentioned goods;
- 30 (b) where the sale is not on commission—the amount usually  
added for profit and general expenses (including all costs,  
direct or indirect, of marketing), taken as a whole, in  
connection with the sale of other goods of the same class or  
kind and in the same quantity as the goods in the sale, being  
a sale of other goods in Australia at the same trade level as  
35 the first-mentioned goods;
- (c) Australian inland freight and Australian inland insurance in  
respect of the goods in the sale or of the goods from which  
the goods in the sale were derived;
- 40 (d) the amount of any duties of Customs and other taxes payable  
because of the importation into, or the sale in, Australia of  
the goods in the sale or of goods from which the goods in  
the sale were derived; and
- 45 (e) overseas freight and overseas insurance in relation to the  
goods in the sale or of the goods from which the goods in  
the sale were derived;

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'value unrelated matter', in relation to goods the subject of a contract for sale, means:

(a) any rebate of, or other decrease in, the price other than such a rebate or decrease the benefit of which has been received when the price is being determined: or 5

(b) any costs, charges or expenses in relation to activities undertaken by the purchaser on the purchaser's own account in relation to the goods (including any activities of the purchaser relating to advertising or promoting the sale of, or to warranties or guarantees in relation to, the goods); 10

'vendor', in relation to imported goods, means the vendor under the import sales transaction for the goods:

'work goods', in relation to imported goods, means goods relating to production work that was:

(a) required for the production of the imported goods; and 15

(b) undertaken outside Australia.

'work services', in relation to imported goods, means services relating to production work that was:

(a) required for the production of the imported goods; and 20

(b) undertaken outside Australia.

(2) For the purposes of this Division, an event occurs about the same time as another event if the first event occurs:

(a) on the same day as the other event; or

(b) within the 45 days immediately before, or the 45 days immediately after, the day on which the other event occurs. 25

(3) For the purposes of this Division, 2 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 30

(ii) one of them 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); 35

(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; 40

c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate):

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- (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       “(4) A person, whether or not a body corporate, shall be taken to control another body corporate for the purposes of subsection (3) if that person has the capacity to impose any restraint or restrictions upon, or to exercise any direction over, that other body corporate.

10       “(5) Without, by implication, affecting the meaning of any reference to an owner of goods in any other provision of this Act, a reference in this Division to the owner of goods, being a ship or aircraft, shall not be taken to include a person acting as agent for the owner or receiving freight or other charges payable in respect of the ship or aircraft.

**Interpretation—Buying commission**

15       “155. (1) Subject to subsection (2), a reference in this Division to a buying commission in relation to imported goods is a reference to an amount paid or payable by or on behalf of the purchaser of the goods directly or indirectly to a person who, as an agent of the purchaser, represented the purchaser in the purchase of the goods in the import sales transaction.

20       “(2) An amount paid by a purchaser of imported goods to another person in the circumstances referred to in subsection (1) shall be taken not to be a buying commission unless a Collector is satisfied that that other person did not and does not:

- 25       (a) produce, in whole or in part, or control the production, in whole or in part, of:
  - 25           (i) the imported goods, or any other goods whose value would be taken into account in determining, or attempting to determine, the transaction value of the imported goods; or
  - (ii) any other goods of the same class as goods referred to in subparagraph (i);
- 30       (b) supply, or control the supply of, any services:
  - (i) whose value would be taken into account in determining, or attempting to determine, the price of the imported goods; or
  - (ii) any other services of the same class as the services referred to in subparagraph (i);
- 35       (c) transport the imported goods, or any other goods referred to in subparagraph (a) (i), within any foreign country, between a foreign country and Australia, or within Australia, for any purpose associated with the manufacture or importation of those imported goods;
- 40       (d) purchase, exchange, sell, or otherwise trade any of the goods referred to in subparagraph (a) (i) or supply any of the services referred to in subparagraph (b) (i) other than in the capacity of an agent of the purchaser;

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- (e) in relation to any of the goods referred to in subparagraph (a)(i) or any of the services referred to in subparagraph (b)(i):
  - (i) act as an agent for, or in any other way represent, the producer, supplier, or vendor of the goods or services; or
  - (ii) otherwise be associated with any such person except as the agent of the purchaser; or5
  
- (f) claim or receive, directly or indirectly, the benefit of any commission, fee or other payment, in the form of money, letter of credit, negotiable instruments, or any goods or services, from any person as a consequence of the import sales transaction, other than a commission received from the purchaser for the services rendered by that person in that transaction. 10

**Interpretation—Identical goods and similar goods**

“156. (1) Subject to subsection (2), a reference in this Division to identical goods, in relation to imported goods is a reference to goods that a Collector is prepared, or is required by their owner, to treat as identical goods in relation to the imported goods, being goods that the Collector is satisfied: 15

- (a) are the same in all material respects, including physical characteristics, quality and reputation, as the imported goods; 20
- (b) were produced in the same country as the imported goods; and
- (c) were produced by or on behalf of the producer of the imported goods:

but not being goods in relation to which:

- (d) art work, design work, development work, engineering work 25  
undertaken, or substantially undertaken, in Australia; or
- (e) models, plans or sketches prepared, or substantially prepared, in Australia;

was or were supplied directly or indirectly by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production. 30

“(2) Where a Collector, after reasonable inquiry, is not aware of any goods that may be treated under subsection (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 imported goods. 35

“(3) Subject to subsection (4), a reference in this Division to similar goods, in relation to imported goods, is a reference to goods that a Collector is prepared, or is required by their owner, to treat as similar goods in relation to the imported goods, being goods that the Collector is satisfied:

- (a) closely resemble the imported goods in respect of component materials and parts and in respect of physical characteristics; 40

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- (b) are functionally and commercially interchangeable with the imported goods 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 imported goods; and
- 5 (d) were produced by or on behalf of the producer of the imported goods;

but not being goods in relation to which:

- (e) art work, design work, development work or engineering work undertaken, or substantially undertaken, in Australia; or
- 10 (f) models, plans or sketches prepared, or substantially prepared, in Australia;

was or were supplied directly or indirectly by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production.

- 15 (4) Where a Collector, after reasonable inquiry, is not aware of any goods that may be treated under subsection (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 imported goods.

**Interpretation—Royalties**

- 20 (157. (1) A reference in this Division to a royalty includes a reference to an amount paid or credited (however described or computed and whether the payment or credit is periodical or not) to the extent to which the amount is paid or credited as consideration for:

- 25 (a) the making, use, exercise or vending of an invention or the right to make, use, exercise or vend an invention;
- (b) the use of, or the right to use:
  - (i) a design or trade mark;
  - (ii) confidential information; or
  - (iii) machinery, implements, apparatus or other equipment;
- 30 (c) the supply of scientific, technical, industrial, commercial or other knowledge or information;
- (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any matter falling within any of the foregoing paragraphs; or
- 35 (e) a total or partial forbearance in respect of any matter falling within any of the foregoing paragraphs (including paragraph (d)).

(2) Where:

- (a) a person pays an amount of royalty in respect of goods at a time when the goods are not imported goods;
- 40 (b) the goods are imported goods before or after the payment; and

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(c) the payment is made in connection with a scheme entered into or carried out for the purpose of the payment not being royalty for the purposes of this Division;  
the payment shall be deemed, for the purposes of this Division, to have been made at a time when the goods were imported goods. 5

“(3) In this section:

‘design’ means a design of a kind capable of being registered under the *Designs Act 1906*, whether or not it is registered under that Act or any other law;

‘payment’, in relation to an amount, includes the incurring of a liability to pay, and the crediting of, the amount; 10

‘scheme’ means:

(a) an agreement, arrangement, understanding, promise or undertaking, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or 15

(b) a plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise;

‘use’, includes hire-out, lease-out, rent-out, sell, market, distribute or otherwise trade in or dispose of. 20

“(4) For the purposes of this section, a scheme shall be taken to be entered into or carried out for a particular purpose if the person who has, or one or more of the persons who have, entered into or carried out the scheme or a part of the scheme did so for that purpose or for purposes including that purpose. 25

**Interpretation—Transportation costs**

“158. Where the purchaser of imported goods:

(a) has supplied any production material, production tooling or work goods in relation to those imported goods to a person in a foreign country for purposes related to the production of those imported goods; or 30

(b) has supplied any subsidiary goods to a person in a foreign country for purposes related to the production of production materials, production tooling, work goods or work services in relation to those imported goods; 35

references in this Division to the cost of transporting that production material or production tooling or those work goods or subsidiary goods, after their acquisition or production by the purchaser, to the place of production in that foreign country shall be taken to include:

(c) the packing costs for materials and labour paid or payable by or on behalf of the purchaser in relation to that production material, or production tooling or those work goods or subsidiary goods including, but without limiting the generality of the foregoing, costs of 40

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fumigating, cleaning, coating, wrapping or otherwise preparing the material tooling or goods for transportation to the place of production of the imported goods;

- 5 (d) any amount paid or payable by or on behalf of the purchaser in relation to that production material or production tooling or those work goods or subsidiary goods that would:
- (i) if that foreign country were Australia;
  - (ii) if any other country from which that material or tooling or those goods were exported were a foreign country; and
  - 10 (iii) if that material or tooling or those goods were imported goods;
- be an amount of foreign inland freight or foreign inland insurance, overseas freight or overseas insurance, or Australian inland freight or Australian inland insurance; and
- 15 (e) all duties of Customs, sales tax, or other duties or taxes paid or payable in consequence of the importation of that production tooling or those work goods or subsidiary goods or in consequence of any other use, sale or disposition in that foreign country.

**Value of imported goods**

20 "159. (1) Unless the contrary intention appears in this Act or in another Act, the value of imported goods for the purposes of an Act imposing duty is their customs value and the Collector shall determine that customs value in accordance with this section.

25 "(2) Where a Collector can determine the transaction value of imported goods, their customs value is their transaction value.

"(3) Where a Collector cannot determine the transaction value of imported goods but can determine their identical goods value, their customs value is their identical goods value.

"(4) Where a Collector:

- 30 (a) cannot determine the transaction value of imported goods; and  
(b) cannot determine their identical goods value;

but can determine their similar goods value, their customs value is their similar goods value.

"(5) Where a Collector:

- 35 (a) cannot determine the transaction value of imported goods, not being computed valued goods;  
(b) cannot determine their identical goods value; and  
(c) cannot determine their similar goods value;

40 but can determine their deductive (contemporary sales) value, their customs value is their deductive (contemporary sales) value.

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- “(6) Where a Collector:
- (a) cannot determine the transaction value of imported goods, not being computed valued goods;
  - (b) cannot determine their identical goods value;
  - (c) cannot determine their similar goods value; and 5
  - (d) cannot determine their deductive (contemporary sales) value;
- but can determine their deductive (later sales) value, their customs value is their deductive (later sales) value.
- “(7) Where a Collector:
- (a) cannot determine the transaction value of imported goods, not being computed valued goods but being request goods; 10
  - (b) cannot determine their identical goods value;
  - (c) cannot determine their similar goods value;
  - (d) cannot determine their deductive (contemporary sales) value; and
  - (e) cannot determine their deductive (later sales) value; 15
- but can determine their deductive (derived goods sales) value, their customs value is their deductive (derived goods sales) value.
- “(8) Where a Collector:
- (a) cannot determine the transaction value of exporter's goods, not being computed valued goods; 20
  - (b) cannot determine their identical goods value;
  - (c) cannot determine their similar goods value;
  - (d) where they are request goods, cannot determine any of their deductive values; and
  - (e) where they are not request goods: 25
    - (i) cannot determine their deductive (contemporary sales) value; and
    - (ii) cannot determine their deductive (later sales) value;
- but can determine their computed value, their customs value is their computed value. 30
- “(9) Where a Collector:
- (a) cannot determine the transaction value of imported goods, being computed valued goods;
  - (b) cannot determine their identical goods value; and
  - (c) cannot determine their similar goods value; 35
- their customs value is their computed value.
- “(10) Where a Collector:
- a) cannot determine the transaction value of imported goods;
  - b) cannot determine their identical goods value;
  - c) cannot determine their similar goods value;

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- (d) where they are request goods, cannot determine any of their deductive values;
- (e) where they are not request goods:
  - (i) cannot determine their deductive (contemporary sales) value; and
  - (ii) cannot determine their deductive (later sales) value; and
- (f) where they are exporter's goods, cannot determine their computed value;

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their customs value is their fall-back value.

10 **Inability to determine a value of imported goods by reason of insufficient or unreliable information**

“160. (1) Where a Collector is not satisfied that there is sufficient reliable information available to the Collector, being information of a kind referred to in subsection (2), to enable him or her to determine a value of imported goods in accordance with a provision of this Division for determining their customs value, the Collector may determine, in writing, that he or she is not so satisfied and the Collector shall thereupon be taken to be unable to determine that first-mentioned value.

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“(2) Where a Collector is not satisfied that there is sufficient reliable information available to the Collector to enable him or her to determine the quantity and correctness of any amount that is required to be taken into account in determining a value of those goods in accordance with a provision of this Division for determining the customs value of imported goods, then:

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(a) where that amount would ordinarily form part of their customs value under the particular valuation method set out in that provision—the Collector shall determine, in writing, that he or she is not so satisfied and the Collector shall thereupon be taken to be unable to use that method:

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(b) where that amount would ordinarily be deducted from the amount that would otherwise be their customs value under the particular valuation method set out in that provision:

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(i) if the Collector determines, in writing, that he or she is not so satisfied and that he or she does not desire to use the method—the Collector shall thereupon be taken to be unable to use that method; and

35

(ii) if the Collector determines, in writing, that he or she is not so satisfied but that he or she desires to use the method—the Collector may use the method but no deduction shall be allowed on account of that amount.

40 **Transaction value**

“161. (1) The transaction value of imported goods is an amount equal to the sum of their adjusted price in their import sales transaction and of their price related costs to the extent that those costs have not been taken into account in determining the price of the goods.

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“(2) In this section:

‘adjusted price’, in relation to imported goods, means the price of the goods determined by a Collector who deducts from the amount that, but for this subsection, would be the amount of that price, such amounts as the Collector considers necessary to take account of the following matters: 5

- (a) deductible financing costs in relation to the goods;
- (b) any costs that the Collector is satisfied:
  - (i) are payable for the assembly, erection, construction or maintenance of, or any technical assistance in respect of, the goods; 10
  - (ii) are incurred after importation of the goods into Australia; and
  - (iii) are capable of being accurately quantified by reference to the import sales transaction relating to the goods: 15
- (c) Australian inland freight and Australian inland insurance in relation to the goods;
- (d) deductible administrative costs in relation to the goods;
- (e) overseas freight and overseas insurance in relation to the goods. 20

**Identical goods value**

“161A. (1) The identical goods value of imported goods is their value calculated as if the value of each of their units were:

- (a) the unit price of comparable identical goods: or
- (b) if, because 2 or more lots of goods are treated as comparable identical goods, there are 2 or more such unit prices—the lower or lowest of those unit prices. 25

“(2) In this section:

‘comparable identical goods’, in relation to imported goods, means identical goods that a Collector is satisfied: 30

- (a) were exported to Australia about the same time as the imported goods; and
- (b) either:
  - (i) were sold in the same, or substantially the same, quantities, as the imported goods in an import sales transaction at the same trade level as the import sales transaction of the imported goods; or 35
  - (ii) are of a kind that reasonable inquiry by the Collector has not shown to be so sold;

‘unit price’, in relation to comparable identical goods, means their transaction value: 40

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- 5 (a) adjusted to such extent as a Collector considers necessary so that that value is what it would have been if:
- (i) their foreign inland freight and foreign inland insurance had been what that freight and insurance would have been if the goods had been transported, and only transported, over the distances over which, and in the modes in which, the imported goods with which they are comparable identical goods were transported;
  - 10 (ii) the trade levels of the import sales transactions of the comparable identical goods had been those of the import sales transaction of the imported goods; and
  - (iii) the comparable identical goods had been sold in their import sales transactions in the quantity in which the imported goods were sold in their import sales transaction; and
- 15 (b) divided by the number of units of the comparable identical goods.

**Similar goods value**

20 "161B. (1) The similar goods value of imported goods is their value calculated as if the value of each of their units were:

- (a) the unit price of comparable similar goods; or
- (b) if, because 2 or more lots of goods are treated as comparable similar goods, there are 2 or more such unit prices—the lower or lowest of those unit prices.

25 "161C. (2) In this section:

"comparable similar goods", in relation to imported goods, means similar goods that a Collector is satisfied:

- (a) were exported to Australia about the same time as the imported goods; and
- 30 (b) either:
  - (i) were sold in the same, or substantially the same, quantities, as the imported goods in an import sales transaction at the same trade level as the import sales transaction of the imported goods; or
  - 35 (ii) are of a kind that reasonable inquiry by the Collector has not shown to be so sold;

"unit price", in relation to comparable similar goods, means their transaction value:

- 40 (a) adjusted to such extent as a Collector considers necessary so that that value is what it would have been if:
  - (i) their foreign inland freight and foreign inland insurance had been what that freight and insurance would have been if the goods had been transported, and only

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transported, over the distances over which, and in the modes in which, the imported goods with which they are comparable similar goods were transported;

(ii) the trade levels of the import sales transactions of the comparable similar goods had been those of the import sales transaction of the imported goods; and 5

(iii) the comparable similar goods had been sold in their import sales transactions in the quantity in which the imported goods were sold in their import sales transaction; and 10

(b) divided by the number of units of the comparable similar goods.

**Deductive (contemporary sales) value**

"161C. (1) The deductive (contemporary sales) value of imported goods is their value calculated as if the value of each of their units were the unit price of comparable goods sold in the reference sale or sales. 15

"(2) In this section:

'contemporary sale', in relation to comparable goods comparable with imported goods, means a sale known to a Collector of the comparable goods in Australia in the condition in which they were imported, being a sale: 20

(a) at about the same time as the time of importation of the imported goods;

(b) at the first trade level at which the comparable goods were sold after their importation; 25

(c) in circumstances where, in the opinion of the Collector, the purchaser of the comparable goods:

(i) was not, at the time of the sale, related to the vendor of the comparable goods; and

(ii) did not incur any production assist costs in relation to the comparable goods; and 30

(d) that was, in the opinion of the Collector, a sale of a sufficient number of units of comparable goods as to permit an appropriate determination of their price per unit;

'reference sale', in relation to comparable goods, means: 35

(a) where there was only one contemporary sale of the goods—that sale;

(b) where:

(i) there were 2 or more such sales; and

(ii) the comparable goods were sold in those sales at the one unit price: 40

each of those sales:

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(c) where:

- (i) there were 2 or more such sales;
- (ii) the comparable goods were sold in those sales at 2 or more unit prices; and
- 5 (iii) a higher number of units of comparable goods were sold in those sales at one of those unit price than were sold in those sales at any other single particular unit price;

10 the sale, or each of the sales, in which comparable goods were sold at the particular unit price first-mentioned in subparagraph (iii);

(d) where:

- (i) there were 2 or more such sales;
- 15 (ii) the comparable goods were sold in those sales at 2 or more unit prices; and
- (iii) an equal number of units of comparable goods were sold in those sales at each of those unit prices;

the sale or sales in which the comparable goods were sold at the lower or lowest of the unit prices; and

20 (e) where:

- (i) there were 2 or more such sales;
- (ii) the comparable goods were sold in those sales at 2 or more unit prices; and
- 25 (iii) an equal number of units of comparable goods were sold in those sales at 2 or more of those unit prices and that number was not exceeded by the number of units of comparable goods sold in those sales at any other single particular unit price;

30 the sale, or sales, at which comparable goods were sold at the lower or lowest of the unit prices first-mentioned in subparagraph (iii);

'unit price', in relation to comparable goods sold in a contemporary sale, means the price of the goods in that sale:

- 35 (a) reduced by the sum of value unrelated amounts, deductible administrative costs, and deductible financing costs, in relation to the comparable goods; and
- (b) divided by the number of units of the comparable goods.

(3) The following example illustrates the operation of paragraph (c) of the definition of 'reference sale' in subsection (2):

40 *Facts:*

There were 2 contemporary sales of 5 units of comparable goods at a unit price of \$100.

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There were 6 contemporary sales of 3 units of comparable goods at a unit price of \$40.

There was one contemporary sale of 4 units of comparable goods at a unit price of \$40.

There was one contemporary sale of 7 units of comparable goods at a unit price of \$60. 5

There were 3 contemporary sales of 2 units of comparable goods at a unit price of \$60.

This means that:

10 units of comparable goods were sold in contemporary sales at \$100. 10

22 units of comparable goods were sold in contemporary sales at \$40.

13 units of comparable goods were sold in contemporary sales at \$60.

*Result:*

More units of comparable goods were sold in contemporary sales at \$40 than were sold in such sales at any other unit price. 15

Therefore, the reference sales are the sales at the unit price of \$40.

(4) The following example illustrates the operation of paragraph (e) of the definition of 'reference sale' in subsection (2):

*Facts:*

There was one contemporary sale of 10 units of comparable goods at a unit price of \$60. 20

There were 2 contemporary sales of 2 units of comparable goods at a unit price of \$20.

There was one contemporary sale of 6 units of comparable goods at a unit price of \$20. 25

There were 3 contemporary sales of 1 unit of comparable goods at a unit price of \$80.

There was one contemporary sale of 5 units of comparable goods at a unit price of \$70.

There were 2 contemporary sales of 2 units of comparable goods at a unit price of \$70. 30

There were 2 contemporary sales of 1 unit of comparable goods at a unit price of \$50.

There were 2 contemporary sales of 4 units of comparable goods at a unit price of \$50. 35

*Result:*

An equal number of units of comparable goods (10) were sold in contemporary sales at 3 unit prices (\$60, \$20, \$50).

This number is not exceeded by 3 units of comparable goods sold in contemporary sales at \$80 or by 9 units of comparable goods sold in contemporary sales at \$70. 40

Therefore, reference sales are the sales at the unit price of \$20.

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**Deductive (later sales) value**

"161D. (1) The deductive (later sales) value of imported goods is their value calculated as if the value of each of the units were the unit price of comparable goods sold in the reference sale or sales.

5       “(2) In this section:

      ‘later sale’, in relation to comparable goods compared with imported goods, means a sale known to a Collector of the comparable goods in Australia in the condition in which they were imported, being a sale:

- 10           (a) during the 90 days that began on the day of importation of the imported goods;
- (b) at the first trade level at which the comparable goods were sold after their importation;
- 15           (c) in circumstances where, in the opinion of the Collector, the purchaser of the comparable goods:
- (i) was not, at the time of the sale, related to the vendor of the comparable goods; and
- (ii) did not incur any production assist costs in relation to the comparable goods; and
- 20           (d) was, in the opinion of the Collector, a sale of a sufficient number of units of comparable goods as to permit an appropriate determination of their price per unit;

      ‘reference sale’, in relation to comparable goods, means:

- 25           (a) where there was only one later sale of the goods—that sale;
- (b) where there were 2 or more such sales and one of them was on an earlier day than the other or others—that sale; or
- (c) where there were 2 or more such sales on a common day and no such sale occurred on an earlier day:
- 30           (i) if one of the sales on the common day was of a higher number of units of the comparable goods than the other or others on the common day—that sale of a higher number; or
- (ii) if 2 or more of the sales on the common day were of the same number of units of comparable goods and no other sale on the common day was of a higher number of such units—whichever of those 2 or more sales of the same number of units was the sale in which comparable goods were sold at the lower or
- 35           lowest unit price:

40       ‘unit price’, in relation to comparable goods sold in a later sale, means the price of the goods in that sale:

- (a) reduced by the sum of value unrelated amounts, deductible administrative costs, and deductible financing costs, in relation to the comparable goods; and

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(b) divided by the number of units of the comparable goods.

**Deductive (derived goods sales) value**

"161E. (1) The deductive (derived goods sales) value of imported goods is their value calculated as if the value of each of their units were the unit price of derived goods derived from them sold in the reference sale or sales. 5

"(2) In this section:

'derived goods', in relation to imported goods, means the imported goods after they have been assembled, packaged or further processed in Australia;

'derived goods sale', in relation to derived goods derived from imported goods, means a sale known to a Collector of derived goods in Australia, being a sale: 10

(a) during the 90 days that began on the day of importation of the imported goods;

(b) at the first trade level at which the derived goods were sold after that importation: 15

(c) in circumstances where, in the opinion of the Collector, the purchaser of the derived goods:

(i) was not related to the vendor of the derived goods at the time of the sale; and 20

(ii) did not incur any production assist costs in relation to the derived goods; and

(d) that was, in the opinion of the Collector, a sale of a sufficient number of units of derived goods as to permit an appropriate determination of the price per unit of the goods: 25

'reference sale', in relation to derived goods, means:

(a) where there was only one derived goods sale—that sale;

(b) where:

(i) there were 2 or more such sales; and

(ii) derived goods were sold in those sales at the one unit price: 30

each of those sales;

(c) where:

(i) there were 2 or more such sales;

(ii) the derived goods were sold in those sales at 2 or more unit prices; and 35

(iii) a higher number of units of derived goods were sold in those sales at one of those unit prices than were sold in those sales at any other single particular unit price: 40

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the sale, or each of the sales, in which derived goods were sold at the particular unit price first-mentioned in subparagraph (iii);

(d) where:

- 5
- (i) there were 2 or more such sales;
  - (ii) derived goods were sold in those sales at 2 or more unit prices; and
  - (iii) an equal number of units of derived goods were sold in those sales at each of those unit prices;

10 the sale or sales in which the derived goods were sold at the lower or lowest of the unit prices; and

(e) where:

- 15
- (i) there were 2 or more such sales;
  - (ii) derived goods were sold in those sales at 2 or more unit prices; and
  - (iii) an equal number of units of derived goods were sold in those sales at 2 or more of those unit prices and that number was not exceeded by the number of units of derived goods sold in those sales at any other single particular unit price;

20 the sale, or sales, at which derived goods were sold at the lower or lowest of the unit prices first-mentioned in subparagraph (iii);

25 'unit price', in relation to derived goods derived from imported goods and sold in a derived goods sale, means the price of the derived goods in that sale:

(a) reduced by the sum of:

- 30
- (i) value unrelated amounts, in relation to the derived goods;
  - (ii) deductible administrative costs in relation to the derived goods;
  - (iii) deductible financing costs in relation to the derived goods; and
  - (iv) the amount of the value added to the derived goods that is attributable to the assembly, packaging or further processing of the imported goods in Australia; and

35 (b) divided by the number of units of the derived goods.

**Computed value**

40 161F. (1) The computed value of imported goods is such part of the sum of the following amounts as a Collector considers should be apportioned to their production:

- (a) Australian arranged material costs;

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- (b) Australian arranged subsidiary costs;
- (c) Australian arranged tooling costs;
- (d) Australian arranged work costs;
- (e) the value of all other goods used in their production and not included in paragraphs (a) to (d), inclusive; 5
- (f) the costs, charges and expenses incurred by their producer in relation to their production and not included in paragraphs (a) to (e), inclusive;
- (g) the profit and expenses (including all costs, direct or indirect, of marketing but not including costs and expenses included in paragraphs (a) to (f), inclusive) that are usually added to the sale for export to Australia of goods of the same class as the imported goods from the country of export of the imported goods, being a sale of goods by their producer to a purchaser who is not, at the time of sale, related to the producer; 10 15
- (h) packing costs for materials and labour incurred in respect of the goods (including, but without limiting the generality of the foregoing, costs of fumigating, cleaning, coating, wrapping or otherwise preparing the goods for their exportation from a foreign country or otherwise placing them in the condition in which they are imported into Australia but not including the cost of any exempted pallet or exempted container concerned in their exportation), being costs that are not included in paragraphs (a) to (g), inclusive; 20
- (j) foreign inland freight and foreign inland insurance that is usually added to a sale referred to in paragraph (g) and that is not included in paragraphs (a) to (h), inclusive. 25

(12) In this section, 'Australian arranged material costs', 'Australian arranged subsidiary costs', 'Australian arranged tooling costs' and 'Australian arranged work costs', in relation to imported goods, have the meanings that 'purchaser's material costs', 'purchaser's subsidiary costs', 'purchaser's tooling costs' and 'purchaser's work costs' respectively, would have, in relation to imported goods, if the references in the 4 last-mentioned definitions to purchaser were references to a person in Australia. 30

**Fail-back value**

(16)G. The fail-back value of imported goods is such value as a Collector determines, having regard to the other methods of valuation under this Division in the order in which those methods would ordinarily be considered under section 159 and to such other matters as the Collector considers relevant, but not having regard to any of the following matters: 35

- (a) the selling price in Australia of goods produced in Australia; 40
- (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 from which the imported goods were exported;

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- (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 and not imported into Australia;
- 5 (f) any system that provides for minimum values for Customs purposes;
- (g) arbitrary or fictitious values.

**When transaction value unable to be determined**

10 "161H. (1) Without limiting section 160, a Collector cannot determine the transaction value of imported goods for the purposes of this Division, including, but without limiting the generality of the foregoing, section 161A or 161B, if the Collector:

- (a) after reasonable inquiry, is not aware of any import sales transaction in relation to the goods;
- 15 (b) has, in accordance with subsection (3), (5) or (7), decided that the transaction value of the goods cannot be determined; or
- (c) is satisfied that the disposition or use of the goods by the purchaser is subject to restrictions, not being restrictions of the following kinds:
  - 20 (i) restrictions imposed or required by, or by any public officer or authority acting in accordance with, any law in force in Australia;
  - (ii) restrictions that limit the geographical area in which the goods may be sold;
  - (iii) restrictions that do not substantially affect the commercial value of the goods.

25 "161I. (2) Where, in relation to goods required to be valued, a Collector:

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

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

- (c) advise the purchaser of:
  - 35 (i) the view that the Collector has formed of the possible effect on the price of the goods of the relationship between the purchaser and the vendor;
  - (ii) the reasons for forming that view; and
  - (iii) the fact that, because of that view, the Collector may be required to decide under subsection (3) that the transaction value of the goods cannot be determined; and
  - 40 (d) invite the purchaser to put before the Collector, within a period specified in the notice (not being a period of less than 28 days),

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such further information as the purchaser considers might serve to satisfy the Collector as to any of the matters set out in subsection (3).

“(3) On the expiration of the period specified in a notice under subsection (2), the Collector shall, unless the purchaser of the imported goods has satisfied the Collector that: 5

- (a) a relationship between the purchaser and the vendor of the goods did not influence the price of the goods; or
- (b) 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 import sales transaction for the goods divided by the number of the units of the goods closely approximates, having regard to all relevant factors: 10
  - (i) the unit price within the meaning of section 161A of identical goods that were exported to Australia about the same time as the imported goods; 15
  - (ii) the unit price within the meaning of section 161B of similar goods that were exported to Australia about the same time as the imported goods;
  - (iii) the unit price of identical goods or similar goods sold in a contemporary sale within the meaning of section 161C as determined in accordance with that section; or 20
  - (iv) the computed unit price of identical goods or similar goods that were imported into Australia about the same time as the imported goods being the computed value of those identical or similar goods determined in accordance with section 161F divided by the number of units of those identical or similar goods; 25

be taken to be unable to determine the transaction value of the goods.

“(4) Where, in relation to goods required to be valued, a Collector is of the opinion that the price at which the goods were sold in their import sales transaction is different from the price at which goods that are identical goods or similar goods to the first-mentioned goods would normally be sold in an import sales transaction similar to the first-mentioned import sales transaction, the Collector shall, by notice in writing served, personally or by post, on the purchaser: 30 35

- (a) advise the purchaser of the Collector's opinion; and
- (b) require the purchaser to satisfy the Collector, within the period specified in the notice, not being a period of less than 28 days, that the price difference was not designed to obtain a reduction of, or to avoid duty. 40

“(5) On the expiration of the period specified in a notice under subsection (4) in relation to imported goods, the Collector shall, unless the purchaser of the goods to whom the notice was given has satisfied the Collector as

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required by the notice, be taken to be unable to determine the transaction value of the goods.

5       “(6) Where, in relation to services provided in respect of goods required to be valued, a Collector is of the opinion that the services were provided in relation to the goods under the terms of their import sales transaction at a price different from the price normally paid for the provision of identical or similar services in relation to goods that are identical goods or similar goods to the first-mentioned goods, sold in an import sales transaction similar to the first-mentioned import sales transaction, the Collector shall, by notice  
10 in writing served, personally or by post, on the purchaser:

- (a) advise the purchaser of the Collector's opinion; and
- (b) require the purchaser to satisfy the Collector, within the period specified in the notice, not being a period of less than 28 days, that the price difference was not designed to obtain a reduction of, or to  
15 avoid duty.

“(7) On the expiration of the period specified in a notice under subsection (6) in relation to imported goods, the Collector shall, unless the purchaser of the goods to whom the notice was given has satisfied the Collector as  
20 required by the notice, be taken to be unable to determine the transaction value of the goods.

**Value of goods to be in Australian currency**

“(161). (1) Where an amount that is, in accordance with this Division, required to be taken into account for the purpose of ascertaining a value of any imported goods is an amount in a currency other than Australian  
25 currency, the amount to be so taken into account shall be the equivalent in Australian currency of that amount, ascertained according to the ruling rate of exchange in relation to that other currency in respect of the day of exportation of the goods.

“(2) For the purposes of this section, the Comptroller may specify, by notice published in the *Gazette*:

- a) a rate that is to be deemed to be, or to have been, the ruling rate of exchange, in relation to any currency, in respect of a day, or of each day occurring during a period, preceding the day of publication of the notice; or
- 35 b) a rate that is to be deemed to be, or to have been, the ruling rate of exchange, in relation to any currency, in respect of each day occurring during a period commencing on the day of publication of the notice, or on an earlier day specified in the notice, and ending on the revocation of the notice;

40 after having regard:

- c) where the ruling rate of exchange is specified in respect of a day— to commercial rates of exchange that prevailed on or about that day;

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- (d) where the ruling rate of exchange is specified in respect of a period commencing before the day of publication of the notice—to commercial rates of exchange that prevailed during so much of that period as preceded the day of publication of the notice; and
- (e) where the ruling rate of exchange is specified in respect of any other period—to commercial rates of exchange that last prevailed before the publication of that notice. 5

“(3) At any time, the ruling rate of exchange in relation to a particular foreign currency, in respect of a particular day, shall be:

- (a) if a rate of exchange has been specified at that time under subsection (2) as the ruling rate of exchange, in relation to that currency, in respect of that day, or in respect of a period that includes that day—the rate so specified; and 10
- (b) if a rate of exchange has not been so specified at that time—such a rate of exchange as the Comptroller determines to be the ruling rate of exchange, in relation to that currency, in respect of that day, after having regard to commercial rates of exchange prevailing on or about that day and to such other matters as the Comptroller considers relevant. 15

“(4) In this section: 20

‘day of exportation’, in relation to imported goods, means:

- (a) where the goods were exported by post from the place of export and a Collector is satisfied as to the day of posting—that day;
- (b) where the goods departed or were transported from their place of export in any other way and a Collector is satisfied as to the day of their departure or transportation—that day; and 25
- (c) in any other case—a day determined by the Collector.

**Owner to be advised of value of goods 30**

“161K. (1) Where the Comptroller or a Collector has determined the customs value of goods in accordance with this Division, the Comptroller or the Collector shall cause the value to be recorded on the entry in respect of them or otherwise advise their owner of the amount.

“(2) Where a Collector signifies, in a manner prescribed by the regulations, his or her acceptance of an estimate of the value of the goods, whether that estimate appears on the entry in respect of those goods or in any other statement of information provided in respect of those goods, the Collector shall, by so signifying, be taken for the purposes of subsection (1) to have determined the customs value of the goods and to have advised their owner of that amount. 35 40

“(3) If, within 28 days after being advised under subsection (1) of the customs value of goods determined in accordance with this Division, an

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owner of the goods requests a Collector, in writing, to give the owner particulars of the valuation, the Collector shall, within 28 days after the making of the request, give the owner a notice in writing setting out:

- 5 (a) the method by which the customs 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 was made and the information on which those calculations were based.

10 “(4) Nothing in this section requires, or permits, the giving of information that:

- (a) relates to the personal affairs or business affairs of a person, other than the person making the request because of which information was given; and
- 15 (b) is information:
  - (i) that was supplied in confidence;
  - (ii) the publication of which would reveal a trade secret;
  - (iii) that was given in compliance with a duty imposed by an enactment; or
  - 20 (iv) the giving 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 information was given a duty not to divulge or communicate to any
  - 25 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.

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

**Review of determinations and other decisions**

30 “161L. (1) At any time after the making of a determination or other decision by an officer under this Division in relation to goods, 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
- 35 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 in accordance with this Division.

40 “(2) Where, by reason that the Comptroller, under subsection (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:



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**Powers of officers to inspect commercial documents in other circumstances**

5 "214AB. (1) An authorised officer may, with the consent of the occupier of any premises, enter the premises and exercise the powers of an authorised officer under this section in relation to those premises.

10 "(2) Where the Comptroller or a Collector has reasonable grounds for believing that there are on any premises commercial documents relating to information that was supplied to a Collector for purposes connected with the entry of goods, the Comptroller or that Collector may make an application to a Magistrate for a warrant authorising an authorised officer who is nominated for the purpose to enter the premises and to exercise the powers of an authorised officer under this section in relation to those premises.

15 "(3) If, on an application under subsection (2), the Magistrate is satisfied, by information on oath or affirmation, that:

- 20 (a) there is reasonable ground for believing that there are on the premises the subject of the application commercial documents of the kind referred to in subsection (2); and
- (b) the occupier of the premises has not given consent for an authorised officer to enter the premises and exercise the powers of an authorised officer under this section in relation to those premises:

25 the Magistrate shall grant a warrant authorising the nominated authorised officer, with such assistance as the officer thinks necessary and if necessary by force, to enter the premises, during such hours of the day or night as the warrant specifies, or, if the warrant so specifies, at any time, and to exercise the powers of an authorised officer under this section in relation to those premises.

"(4) There shall be included in a warrant issued under this section:

- 30 a) a statement of the purpose for which the warrant is issued; and
- b) the time, not being a time more than 30 days after the day of issue of the warrant, at which the warrant ceases to have effect.

35 "(5) Where premises entered by an authorised officer under this section are occupied at the time of the entry, the person occupying, or apparently in charge of, the premises shall provide the officer with all reasonable facilities and assistance for the effective exercise of his or her powers under this section.

Penalty: \$1,000.

40 "(6) An authorised officer who has entered premises under a warrant shall, upon request of a person occupying, or apparently in charge of, the premises, produce the warrant for inspection by that person.

"(7) The powers of an authorised officer under this section in relation to premises are:

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- (a) to search the premises for commercial documents relating to the entry of the goods concerned; and
- (b) to inspect, examine, make copies of, or take extracts from, any such documents found on those premises.

“(8) In this section ‘authorised officer’ means an officer of Customs who is authorised, in writing, by the Comptroller to exercise powers under this section. 5

**Warrants may be granted by telephone etc.**

“214AC. (1) Where, by reason of circumstances of urgency, the Comptroller or a Collector considers it necessary to do so, he or she may make an application for a warrant under subsection 214AB (2) by radio, telephone or other means of communication, in accordance with this section. 10

“(2) Before so making application, the Comptroller or a Collector shall prepare an information of a kind referred to in subsection 214AB (3) that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the information has been sworn. 15

“(3) Where a Magistrate to whom an application under subsection (1) is made is satisfied:

- a) after having considered the terms of the information prepared in accordance with subsection (2); and 20
- b) after having received such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the Magistrate shall complete and sign such a search warrant as the Magistrate would issue under section 214AB if the application had been made in accordance with that section. 25

“(4) Where a Magistrate signs a warrant under subsection (3):

- a) the Magistrate shall inform the Comptroller or a Collector of the terms of the warrant and the date on which and the time at which it was signed, and record on the warrant the reasons for the granting of the warrant; and 30

b) the Comptroller or a Collector shall complete a form of warrant in the terms furnished to him or her by the Magistrate and write on it: 35

- (i) the name of the Magistrate;
- (ii) the date on which and the time at which the warrant was signed; and
- (iii) particulars of a means of communication with the Magistrate nominated by the Magistrate for purposes of verifying the issue of the warrant. 40

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5       “(5) Where the Comptroller or a Collector completes a form of warrant in accordance with subsection (4), he or she shall, not later than the day next following the last day on which the warrant has effect, forward to the Magistrate who signed the warrant the form of warrant completed by the Comptroller or a Collector and the information duly sworn in connection with the warrant.

10       “(6) Upon receipt of the documents referred to in subsection (5), the Magistrate shall attach to them the warrant signed by the Magistrate and deal with the documents in the manner in which the Magistrate would have dealt with the information if the application for the warrant had been made in accordance with section 214AB.

15       “(7) A form of warrant duly completed by the Comptroller or a Collector in accordance with subsection (4) is, if it is in accordance with the terms of the warrant signed by the Magistrate, authority for any entry of an authorised officer of premises specified in the warrant, and for the exercise by the authorised officer of the powers of an authorised officer as set out in subsection 214AB (7) in relation to those premises.

20       “(8) An authorised officer who has entered premises under authority of a warrant issued under this section shall, upon request of a person occupying, or apparently in charge of, the premises, produce a form of the warrant that authorised that entry, duly completed by the Comptroller or a Collector in accordance with subsection (4), for inspection by that person.

25       “(9) Where it is material, in any proceedings, for a court to be satisfied that an entry of premises or the exercise of the powers of an authorised officer within the meaning of subsection 214AB (7) was authorised in accordance with this section, and the warrant signed by a Magistrate in accordance with this section authorising the entry or exercise of those powers is not produced in evidence, the court shall assume, unless the contrary is proved, that the entry or exercise of those powers was not authorised by such a warrant.”

30       10. After section 239 of the Principal Act the following section is inserted:

**Commercial documents to be kept**

35       “240. (1) A person who imports goods into Australia shall keep all the relevant commercial documents relating to the goods that came into that person's possession or control before, or come into that person's possession or control on or after, the entry of those goods for any purpose, being documents that are necessary to enable a Collector to ascertain whether the goods are properly described and, in the case of goods that are entered for home consumption, properly valued or rated for duty until:

- 40       (a) if the goods are not ultimately entered for home consumption—the goods cease to be subject to the control of Customs; and

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- (b) if the goods are entered, or ultimately entered, for home consumption—the expiration of the period of 5 years after the goods are so entered.

Penalty: \$2,000.

“(2) Where, in accordance with the requirement of any law of the Commonwealth or of a State or Territory or with ordinary commercial practice a document that would, but for this subsection, be required to be kept in accordance with subsection (1), is required by that law or practice to be surrendered to another person, this section shall be taken to be complied with if, at all times after the document is so surrendered and during the period that the document would have been required to be kept, a true copy of the document, certified in accordance with subsection (3), is kept in its stead. 5 10

“(3) Where a person is required to surrender a commercial document referred to in subsection (1) to another person for a reason set out in subsection (2), the first-mentioned person may make a true copy of the document and, if the first-mentioned person does so, and attaches to the copy a certificate, signed by the first-mentioned person: 15

(a) to the effect:

- (i) that the copy is a true copy of the original document; and 20  
(ii) that the original document has been surrendered to that other person for that reason; and

(b) providing particulars of the reason referred to in subparagraph (a)(ii);

the certified copy shall be treated by the Comptroller or a Collector, and shall be admissible in all courts, as if it were the original document. 25

“(4) A person who is required by subsection (1) to keep commercial documents relating to particular goods:

(a) shall keep the documents in such a manner as will enable a Collector readily to ascertain whether the goods have been properly described, and, in the case of goods entered for home consumption, properly valued or rated for duty; 30

(b) shall, on request, in writing, by a Collector, inform the Collector as to the whereabouts of the documents; and

(c) subject to subsection (5), shall not alter or deface any commercial document required to be so kept. 35

Penalty: \$2,000.

“(5) Nothing in paragraph (4)(c) shall be taken to prohibit the notation or marking of a document in accordance with ordinary commercial practice.

“(6) Where: 40

(a) a person is convicted of an offence against subsection (1) or (4); and

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(b) the court before which the person is convicted is satisfied that the person has previously been convicted of a records offence;  
the penalty that the court may impose in respect of the first-mentioned offence is a fine not exceeding \$5,000.

5       “(7) This section shall not require the keeping of any commercial documents:

(a) by a company that has gone into liquidation and that has been dissolved;

10       (b) by a class of persons that is declared by the regulations to be a class to which this section does not apply; or

(c) of a kind declared by the regulations to be commercial documents to which this section does not apply.”.

**Review of decisions**

15       11. Section 273GA of the Principal Act is amended by omitting paragraph (h) and substituting the following paragraph:

“(h) a decision of the Comptroller under subsection 161J (2) specifying a rate of exchange:”.

**Goods entered before 1 January 1988**

20       12. Notwithstanding the amendments of the *Customs Act 1901* made by sections 7 and 11 of this Act, the provisions of Division 2 of Part VIII and section 273GA of the *Customs Act 1901* as in force immediately before 1 July 1989 continue to apply in respect of the valuation of goods that are entered under section 36 of the *Customs Act 1901* before that date, whether or not the goods are valued before that date, as if those amendments had  
25       not been made.

**PART III—AMENDMENTS OF THE EXCISE ACT 1901**

**Principal Act**

13. In this Part, “Principal Act” means the *Excise Act 1901*.

**Interpretation**

30       14. Section 4 of the Principal Act is amended:

a) by omitting from subsection (1) the definition of “‘Officer’ or ‘Officer of Customs’” and substituting the following definitions:

“‘Officer’ means an officer of Customs;

‘Officer of Customs’ means a person:

35       a) employed in the Customs; or

b) authorised in writing by the Comptroller to perform all or the functions of an officer of Customs;

and includes:

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- (c) in relation to a provision of an Excise Act, a person authorised in writing by the Comptroller to perform the functions of an officer of Customs under that provision; or
- (d) in relation to a power conferred by a provision of an Excise Act, a person authorised in writing by the Comptroller to perform the functions of an officer of Customs in relation to the exercise of that power;”

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NOTES

1. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 5, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42 and 111, 1960; No. 48, 1963; Nos. 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 134, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 92, 116, 177 and 180, 1979; Nos. 13, 15 and 110, 1980; Nos. 45, 64, 67, 152 and 157, 1981; Nos. 48, 51, 80, 108, 115 and 137, 1982; No. 51, 1982 (as amended by No. 39, 1983); Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39, 40 and 175, 1985; Nos. 10, 34 and 149, 1986; and Nos. 51, 76, 81, 104 and 141, 1987; and Nos. 63, 66 and 76, 1988.
2. No. 9, 1901, as amended. For previous amendments, see No. 26, 1918; No. 8, 1923; No. 44, 1934; No. 16, 1942; No. 38, 1947; No. 46, 1949; No. 55, 1952; No. 10, 1957; No. 49, 1958; No. 37, 1962; No. 49, 1963; No. 139, 1965; No. 93, 1966; Nos. 15 and 105, 1968; No. 23, 1972; Nos. 24 and 145, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 29, 1974; No. 91, 1976; No. 110, 1978; Nos. 11 and 50, 1979; No. 42, 1980; Nos. 61 and 65, 1981; Nos. 51, 80 and 108, 1982; No. 31, 1982 (as amended by No. 39, 1983); Nos. 39 and 101, 1983; Nos. 72 and 165, 1984; Nos. 39, 40 and 175, 1985; Nos. 10, 34 and 149, 1986; Nos. 51 and 104, 1987; and No. 99, 1988.

*Minister's second reading speech made in—  
House of Representatives on 18 November 1987  
Senate on 25 November 1987*