



REPUBLIC OF NAURU

# CUSTOMS TARIFF (AMENDMENT) ACT 2022

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No. 13 of 2022

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An Act to amend the *Customs Tariff Act 2014*.

Certified: [8<sup>th</sup> June 2022]

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Enacted by the Parliament of Nauru as follows:

**1 Short title**

This Act may be cited as the *Customs Tariff (Amendment) Act 2022*.

**2 Commencement**

This Act commences on the 1 July 2022.

**3 Amendment of Customs Tariff Act 2014**

The *Customs Tariff Act 2014* is amended by the provisions of this Act.

**4 Amendment of Section 2**

Section 2 is amended by deleting ‘*of the Customs Act 2014*’ in the definition of ‘**Customs value or value**’.

**5 Amendment of Section 13**

Section 13 is deleted and substituted as follows:

**‘13 Certification of Working Tariff Document**

*(1) The Chief Collector of Customs shall maintain a Working Tariff Document which shall be certified once in every 5 years, or any other period required under a written law.*

*(2) Cabinet shall approve the Working Tariff Document before it is certified by the Chief Collector of Customs under subsection (1).’.*

**6 Amendment of Section 14**

Section 14 is amended in subsection (2)(a), by deleting ‘*2014*’ and substituting with ‘*Working*’.

**7 Insert new Schedule 2**

A new Schedule 2 is inserted as follows:

**‘SCHEDULE 2**

**CUSTOMS VALUATION OF GOODS FOR TARIFF**

*[Section 2]*

**1 Definitions**

*(1) In this Schedule:*

**'computed value'** means the value determined in accordance with Clause 7;

**'country of export, or the country from which any goods are exported'** means the country from which the goods are shipped directly to the Republic, or as the case maybe, the country from which the goods are deemed to be shipped under this Act;

**'deductive value'** means the value determined in accordance with Clause 6;

**'goods of the same class or kind'** means imported goods that:

(a) are within a group or range of imported goods produced by a particular industry or industry sector that includes identical goods or similar goods in relation to the goods being valued; and

(b) for the purposes of:

(i) Clause 6, were exported from any country; and

(ii) Clause 7, were produced in and exported from the country in and from which the goods being valued were produced and exported;

**'identical goods'** means imported goods that:

(a) are the same in all respects, including physical characteristics, quality, and reputation, as the goods being valued, except for minor differences in appearance that do not affect the value of the goods;

(b) were produced in the country in which the goods being valued were produced; and

(c) were produced by or on behalf of the person who produced the goods being valued:

but does not include imported goods where engineering, development work, artwork, design work, plans, or sketches undertaken in the Republic were supplied, directly or indirectly, by the buyer of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;

**'price paid or payable'** in relation to any goods, means the aggregate of all amounts paid or payable by the buyer to or for the benefit of the seller in respect of the goods;

**'similar goods'** means imported goods that:

(a) *closely resemble the goods being valued in respect of component materials and parts and characteristics and are functionally and commercially interchangeable with the goods being valued having regard to the quality and reputation of the goods and the goods being valued;*

(b) *were produced in the country in which the goods being valued were produced;and*

(c) *were produced by or on behalf of the person who produced the goods being valued,*

*but does not include imported goods where engineering, development work, artwork, design work, plans, or sketches undertaken in the Republic were supplied, directly or indirectly, by the buyer of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods;*

*'sufficient information' in respect of the determination of any amount, difference, or adjustment, means objective and quantifiable information that clearly establishes the accuracy of the amount, difference, or adjustment;*

*'to produce' includes to grow, to manufacture, and to mine; and*

*'transaction value' means the value determined in accordance with Clauses 2 and 3.*

(2) *For the purposes of this Schedule, persons are deemed to be related only if:*

(a) *they are officers or directors of one another's business;*

(b) *they are legally recognised partners in business;*

(c) *they are employer and employee;*

(d) *any person directly or indirectly owns, controls, or holds 5 percent or more of the outstanding voting stock or shares of both of them;*

(e) *one of them directly or indirectly controls the other;*

(f) *both of them are directly or indirectly controlled by a third person;*

(g) *together they directly or indirectly control a third person; or*

(h) *they are members of the same family.*

- (3) *For the purposes of this Schedule, persons are deemed to be members of the same family if:*
- (a) *they are connected by blood relationship within the fourth degree of relationship;*
  - (b) *they are married to, or in a civil union or a de facto relationship with, one another or if one is married to, or in a civil union or a de facto relationship with, a person who is within the fourth degree of relationship to the other; or*
  - (c) *one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other.*
- (4) *For the purposes of this Schedule, where there are no goods that were produced by or on behalf of the person who produced the goods being valued and that are otherwise identical goods or similar goods, goods that were produced by or on behalf of a different person and that are otherwise identical goods or similar goods are deemed to be identical goods or similar goods, as the case may be.*
- (5) *For the purposes of this Schedule, charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the Customs value in any case where:*
- (a) *the charges are distinguished from the price actually paid or payable for the goods;*
  - (b) *such goods are actually sold at the price declared as the price actually paid or payable; and*
  - (c) *the buyer, if required, can demonstrate that:*
    - (i) *the financing arrangement was made in writing; or*
    - (ii) *the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.*

## **2 Transaction Value as primary basis of valuation**

- (1) *The Customs value of imported goods shall be their transaction value, that is, the price paid or payable for the goods when sold for*

*export to the Republic, adjusted in accordance with Clause 3, if:*

- (a) there are no restrictions respecting the disposition or use of the goods by the buyer, other than restrictions that:
    - (i) are imposed by law;*
    - (ii) limit the geographical area in which the goods may be resold; or*
    - (iii) do not substantially affect the value of the goods;**
  - (b) the sale of the goods or the price paid or payable for the goods is not subject to some condition or consideration in respect of which a value cannot be determined;*
  - (c) where any part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer is to accrue, directly or indirectly, to the seller, the price paid or payable for the goods includes the value of that part of the proceeds or can be adjusted in accordance with Clause 3; or*
  - (d) the buyer and seller of the goods are not related at the time the goods are sold for export, or, where the buyer and seller are related at that time:
    - (i) their relationship did not influence the price paid or payable for the goods; or*
    - (ii) the importer demonstrates that the transaction value of the goods meets the requirements set out in subclause (2).**
- (2) In a sale between related persons, for the purpose of showing that the relationship did not influence the transaction value, the importer shall produce evidence that the transaction value of the goods being valued, taking into consideration any relevant factors including such factors and differences as may be prescribed, closely approximates the Customs value of other goods exported at the time or substantially at the same time as the goods being valued, being:*
- (a) the transaction value of identical goods or similar goods in respect of a sale of those goods for export to the Republic between a seller and buyer who are not related at the time of the sale;*

- (b) *the deductive value of identical or similar goods determined in accordance with Clause 6; or*
  - (c) *the computed value of identical or similar goods determined in accordance with Clause 7.*
- (3) *In any case where the Chief Collector of Customs is of the opinion that the relationship between the buyer and seller of any goods influence the price paid or payable for the goods, the Chief Collector of Customs shall inform the importer, in writing if so requested, of the grounds on which the Chief Collector of Customs formed that opinion, and shall give the importer a reasonable opportunity to satisfy the Chief Collector of Customs that the relationship did not influence the price.*
- (4) *Where subclause (2) applies, the importer shall, without limiting the generality of subclause (2), provide the following information:*
- (a) *the nature of goods being valued;*
  - (b) *the nature of the industry that produces the goods being valued;*
  - (c) *the season in which the goods being valued are imported;*
  - (d) *whether the difference in values is commercially significant;*
  - (e) *the trade levels at which the sales take place;*
  - (f) *the quantity levels of the sales;*
  - (g) *any of the amounts referred to in Clause 3; and*
  - (h) *the costs, charges, or expenses incurred by a seller when the seller sells to a buyer to whom the seller is not related that are not incurred when the seller sells to a buyer to whom the seller is related.*
- (5) *Where:*
- (a) *in the opinion of the Chief Collector of Customs, the Customs value cannot be determined under this Clause; or*
  - (b) *the Chief Collector of Customs has reason to doubt the truth or accuracy of the declared Customs value and, after having*

*sought further explanation or other evidence that the declared Customs value represents the total amount actually paid or payable for the imported goods, the Chief Collector of Customs is still not satisfied that the Customs value can be determined under this Clause,*

*the Chief Collector of Customs may determine the Customs value of the goods by proceeding sequentially through Clauses 4 to 8 to the first such clause of this Schedule under which the Customs value can, in the opinion of the Chief Collector of Customs, be determined.*

- (6) *Notwithstanding subclause (5), on the written request of the importer to the Chief Collector of Customs, the order of consideration of the valuation basis provided for in Clauses 6 and 7 must be reversed.*

### **3 Adjustment of price paid or payable**

- (1) *In determining the transaction value of goods under Clause 2, the price paid or payable for the goods shall be adjusted:*
- (a) *by adding thereto amounts, to the extent that each such amount is not otherwise included in the price paid or payable for the goods and is determined on the basis of sufficient information, equal to:*
- (i) *commissions and brokerage in respect of the goods incurred by the buyer, other than fees paid or payable by the buyer to the buyer's agent for the service of representing the buyer overseas in respect of the purchase of the goods;*
- (ii) *the packing costs and charges incurred by the buyer in respect of the goods, including the cost of cartons, cases and other containers and coverings that are treated for Customs purposes as being part of the imported goods and all expenses of packing incidental to placing the goods in the condition in which they are shipped to the Republic; and*
- (iii) *the value of any of the following goods and services:*
- (A) *materials, component parts and other goods incorporated in the imported goods;*



- (B) *tools, dies, moulds, and other goods utilised in the production of the imported goods;*
- (C) *materials consumed in the production of the imported goods;*
- (D) *engineering, development work, artwork, design work, plans and sketches undertaken elsewhere than in the Republic and necessary for the production of the imported goods,*

*determined in accordance with subclause (2) that are supplied, directly or indirectly, by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods, apportioned to the imported goods in a reasonable manner and in accordance with generally accepted accounting principles; and*

- (iv) *royalties and license fees, including payments for patents, trademarks and copyrights in respect of the imported goods that the buyer must pay, directly or indirectly, as a condition of the sale of goods for export to the Republic, exclusive of charges for the right to reproduce the imported goods in the Republic;*
  - (v) *the value of any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer that accrues or is to accrue, directly or indirectly, to the seller;*
  - (vi) *the value of any materials, component parts, and other goods incorporated in the imported goods for the purpose of repair to, or refurbishment of, those goods prior to export of the goods to the Republic, and the price paid for the service of repair or refurbishment, as the case may be; and*
  - (vii) *the costs of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses associated with the transportation of, the imported goods until the goods have left the country of export if such costs, charges, and expenses are paid or payable by the buyer, directly or indirectly, to or for the benefit of the seller as a condition of the transaction;*
- (b) *by deducting therefrom amounts, to the extent that each such amount is otherwise included in the price paid or payable for the*

goods, equal to:

(i) *the costs of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses associated with the transportation of, the imported goods from the time the goods have left the country of export, other than any cost, charge or expense referred to in subparagraph (ii)(B); and*

(ii) *any of the following costs, charges or expenses:*

(A) *any reasonable cost, charge, or expense that is incurred for the construction, erection, assembly or maintenance of, or technical assistance provided in respect of, the goods after the goods are imported;*

(B) *any reasonable cost, charge, or expense that is incurred in respect of the transportation or insurance of the goods within the Republic and any reasonable cost, charge, or expense associated therewith;*

(C) *any Customs duties or other taxes payable in the Republic by reason of the importation or sale of the goods,*

*if the cost, charge or expense is identified separately from the balance of the price paid or payable for the goods;*

(c) *in respect of carrier media bearing data or instructions, by deducting the value of the data or instructions from the price paid or payable for the goods if:*

(i) *the value of the data or instructions is distinguished from the cost or value of the carrier media; and*

(ii) *the data or instructions are not incorporated in data processing equipment.*

(2) *The value of the goods and services described in subclause (1) (a)(iii) shall be determined:*

(a) *in the case of materials, components, parts and other goods incorporated in the goods being valued or any materials consumed in the production of the goods being valued:*

(i) *by ascertaining:*

- (A) *their cost of acquisition where they were acquired by the buyer from a person who was not related to the buyer at the time of their acquisition;*
- (B) *their cost of acquisition incurred by the person related to the buyer, where the goods were acquired by the buyer from a person who was related to the buyer at the time of their acquisition but who did not produce them; or*
- (C) *their cost of production where they were produced by the buyer or a person related to the buyer at the time of their production; and*

(ii) *by adding thereto:*

- (A) *the cost of their transportation to the place of production of the goods being valued; and*
- (B) *the value added to them by any repairs or modifications made to them after they were so acquired or produced.*

(b) *in case of tools, dies, moulds and other goods, utilised in the production of the goods being valued:*

(i) *by ascertaining:*

- (A) *their cost of acquisition where they were acquired by the buyer from a person who was not related to the buyer at the time they were so acquired;*
- (B) *their cost of acquisition incurred by the person related to the buyer, where they were acquired by the buyer from a person related to the buyer at the time they were so acquired but who did not produce them; or*
- (C) *their cost of production where they were produced by the buyer or a person related to the buyer at the time of their production; and*

(ii) *by adding thereto:*

- (A) *the cost of their transportation to the place of production of the goods being valued; and*

(B) *the value added to them by any repairs or modifications made to them after they were so acquired or produced; and*

(iii) *by deducting therefrom an amount to account for any previous use of the goods made after the goods were so acquired or produced;*

(c) *in the case of engineering, development work, artwork, design work, plans and sketches undertaken elsewhere than in the Republic and necessary for the production of the goods being valued by ascertaining:*

(i) *their cost of acquisition or of the lease thereof, where they were acquired or leased by the buyer from a person who was not related to the buyer at the time they were so acquired or leased and are not generally available to the public;*

(ii) *their cost of acquisition or of the lease thereof incurred by the person related to the buyer, where they were acquired or leased by the buyer from a person related to the buyer at the time they were so acquired or leased, but who did not produce them and are not generally available to the public;*

(iii) *the cost of the public of obtaining them where they were available generally to the public; or*

(iv) *the cost of production thereof where they were produced by the buyer or a person related to the buyer at the time of their production.*

(3) *For the purposes of subclause (1)(c), the expression for:*

(a) **'carrier media'** *does not include integrated circuits, semi-conductors and similar devices, or articles incorporating such circuits or devices; and*

(b) **'data or instructions'** *does not include sound, cinematic, or video recordings.*

(4) *Where any adjustment in terms of this clause cannot, in the opinion of the Chief Collector of Customs, be made because of the lack of sufficient information, the transaction value of the goods being valued cannot be determined under Clause 2.*

#### **4 Transaction value of identical goods as Customs value**

- (1) *Subject to subclauses (2) to (4), where the Customs value of imported goods cannot, in the opinion of the Chief Collector of Customs, be determined under Clause 2, the Customs value of the goods shall be the transaction value of identical goods in respect of a sale of those goods for export to the Republic if that transaction value is the Customs value of the identical goods and the identical goods were exported at the same or substantially the same time as the good being valued and were sold under the following conditions:*

  - (a) *to a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and*
  - (b) *in the same or substantially the same quantities as the goods being valued.*
- (2) *Where the Customs value of imported goods cannot be determined under subclause (1) because identical goods were not sold under the conditions described in subclauses (1)(a) and (b), there shall be substituted therefor identical goods sold under any of the following conditions:*

  - (a) *to a buyer at the same or substantially the same trade level as the buyer of the goods being valued but in quantities different from the quantities in which those goods were sold;*
  - (b) *to a buyer at a trade level different from that of the buyer of the goods being valued but in the same or substantially the same quantities as the quantities in which those goods were sold; or*
  - (c) *to a buyer at a trade level different from that of the buyer of the goods being valued and in quantities different from the quantities in which those goods were sold.*
- (3) *For the purposes of determining the Customs value of imported goods under subclause (1), the transaction value of identical goods shall be adjusted by adding thereto or deducting therefrom, as the case may be, amounts to account for:*

  - (a) *commercially significant differences between the costs, charges, and expenses referred to in Clause 3(1)(a)(vii) in respect of the identical goods and those costs, charges and expenses in respect of the goods being valued that are attributable to differences in distances*

*and modes of transport; or*

*(b) where the transaction value is in respect of identical goods sold under the conditions described in any of the paragraphs (a) to (c) of subclause (2), differences in the trade levels of the buyers of the identical goods and the goods being valued or the quantities in which the identical goods and the goods being valued were sold or both, as the case may be,*

*if each amount can, in the opinion of the Chief Collector of Customs be determined, the Customs value of the goods being valued must not be determined on the basis of the transaction value of those identical goods under this Clause.*

*(4) Where in relation to imported goods being valued, there are 2 or more transaction values of identical goods that meet all requirements set out in subclauses (1) and (3) or where there is no such transaction value but there are 2 or more transaction values of identical goods sold under the conditions described in any of the paragraphs (a) to (c) of subclause (2) that meet all the requirements set out in this Clause that are applicable by virtue of subclause (2), the Customs value of the goods being valued must be determined on the basis of the lowest such transaction value.*

## **5 Transaction value of similar goods as Customs value**

*(1) Subject to subclauses (2) to (4) of clause (4), where the Customs value of imported goods cannot, in the opinion of the Chief Collector of Customs, be determined under Clause 4, the Customs value of the goods shall be the transaction value of similar goods in respect of a sale of those goods for export to the Republic if that transaction value is the Customs value of the similar goods and the similar goods were exported at the same or substantially the same time as the goods being valued and were sold under the following conditions:*

*(a) to a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and*

*(b) in the same or substantially the same quantities as the goods being valued.*

*(2) Clause 4 subclauses (2) to (4) apply to this Clause in respect of similar goods as if every reference in those subclauses to identical goods were a reference to similar goods.*

## **6 Deductive value as Customs value**

- (1) Subject to Clause 2 subclauses (5) and (6), where the Customs value cannot, in the opinion of the Chief Collector of Customs, be determined under Clause 5, the Customs value of the goods shall be the deductive value in respect of the goods.*
- (2) Where the goods being valued or identical goods or similar goods are sold in the Republic in the condition in which they were imported at the same or substantially the same time as the time of importation of the goods being valued the deductive value of the goods being valued shall be the price per unit in respect of sales described in subclause (5), determined in accordance with that subclause and adjusted in accordance with subclause (6), at which the greatest number of units of the goods being valued or identical goods or similar goods are so sold.*
- (3) Where the goods being valued or identical goods or similar goods are sold in the Republic in the condition in which they were imported before the expiration of 90 days after the importation of the goods being valued but are not so sold at the same or substantially the same time as the time of that importation, the deductive value of the goods being valued shall be the price per unit in respect of sales described in sub clause (5), determined in accordance with that subclause and adjusted in accordance with sub clause (6), at which the greatest number of units of the goods being valued or identical goods or similar goods are so sold at the earliest date after the importation of the goods being valued.*
- (4) Where the goods being valued or identical goods or similar goods are not sold in the Republic in the circumstances described in subclause (2) or subclause (3), but the goods being valued after being assembled, packaged or further processed in the Republic, are sold in the Republic before the expiration of 90 days after the importation thereof and the importer of the goods being valued requests that this subclause be applied in the determination of the Customs value of those goods, the deductive value of the goods being valued shall be the price per unit, in respect of sales described in subclause (5), determined in accordance with that subclause and adjusted in accordance with subclause (6), at which the greatest number of units of the goods being valued are so sold.*
- (5) For the purposes of subclauses (2) to (4), the price per unit in respect of any goods being valued or identical goods or similar goods, shall be determined by ascertaining the unit price in respect of sales of the goods at the first trade level after their importation to persons who:
  - (a) are not related to the persons from whom they buy the goods at the time the goods are sold to them; and*
  - (b) have not supplied, directly or indirectly, free of charge or at a reduced cost for use in connection with the production and sale of export of the goods, any of the goods or services referred to in Clause 3(1)(a)(iii),**

*at which the greatest number of units of the goods is sold where, in the opinion of the Chief Collector of Customs, a sufficient number of such sales have been made to permit a determination of the price per unit of the goods.*

- (6) *For the purposes of subclauses (2) to (4), the price per unit in respect of the goods being valued or identical goods or similar goods, shall be adjusted by deducting therefrom an amount equal to the aggregate of:*
- (a) *an amount, determined in accordance with subclause (7), equal to:*
    - (i) *the amount of commission generally earned on a unit basis; or*
    - (ii) *the amount for profit and general expenses, including all costs of marketing the goods, considered together as a whole, that is generally reflected on a unit basis,*  
  
*in connection with sales in the Republic of goods of the same class or kind as those goods;*
  - (b) *reasonable costs, charges and expenses that are incurred in respect of the transportation and insurance of the goods within the Republic and reasonable costs, charges, and expense associated therewith to the extent that an amount for such costs, charges, and expenses is not deducted in respect of general expenses under paragraph (a) of this subclause;*
  - (c) *the costs, charges and expenses referred to in Clause 3(1)(b)(i) incurred in respect of the goods, to the extent that an amount for such costs, charges and expenses is not deducted in respect of general expenses under paragraph (a) of this subclause;*
  - (d) *any Customs duties or other taxes payable in the Republic by reason of the importation or sale of the goods, to the extent that an amount for such duties and taxes is not deducted in respect of general expenses under paragraph (a) of this subclause;*
  - (e) *where subclause (4) applies, the amount of the value added to the goods that is attributable to the assembly, packaging or further processing in the Republic of the goods, if that amount is determined in the opinion of the Chief Collector of Customs, on the basis of sufficient information.*
- (7) *The amount considered to be equal to the amount of commission or the amount for profit and general expenses referred to in subclause (6)(a) shall be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally accepted accounting principles that is supplied:*



- (a) *by or on behalf of the importer of the goods being valued; or*
  - (b) *where the information supplied by or on behalf of the importer of the goods being valued is not sufficient information, but an examination of sales in the Republic of the narrowest group or range of goods of the same class or kind as the goods being valued from which sufficient information can, in the opinion of the Chief Collector of Customs, be obtained.*
- (8) *Where an amount referred to in subclause (6)(e) in respect of any goods being valued cannot, in the opinion of the Chief Collector of Customs be determined on the basis of sufficient information, the Customs value of the goods cannot be determined on the basis of the deductive value under subclause (4).*

## **7 Computed value as Customs value**

- (1) *Subject to Clause 2 subclauses (3) and (5), where the Customs value of imported goods cannot, in the opinion of the Chief Collector of Customs, be determined under Clause 6, the Customs value of the goods shall be the computed value in respect of those goods.*
- (2) *The computed value of the goods being valued is the aggregate of amounts equal to:*
- (a) *the costs, charges and expenses incurred in respect of, or the value of:*
    - (i) *materials employed in producing the goods being valued; and*
    - (ii) *the production or other processing of the goods being valued,*  
*determined on the basis of:*
      - (A) *the commercial accounts of the producer of the goods being valued; or*
      - (B) *any other sufficient information relating to the production of the goods being valued,*  
*that are supplied by or on behalf of the producer of the goods and prepared in a manner consistent with the generally accepted accounting principles of the country of production of the goods being valued, including, without limiting the generality of the foregoing,*
  - (iii) *the costs, charges, and expenses referred to in Clause 3(1)(a)(ii);*
  - (iv) *the value of any of the goods and services referred to in Clause 3(1)(a)(iii) and (vi), determined and apportioned to the goods being valued as referred to in that Clause, whether or not such goods and services have been supplied free of charge or at a reduced cost; and*

- (v) *the costs, charges, and expenses incurred by the producer in respect of engineering, development work, artwork, design work, plans, or sketches undertaken in the Republic that were supplied, directly or indirectly, by the buyer of the goods being valued for use in connection with the production and sale for export of those goods to the extent that such elements are charged to the producer of the goods, apportioned to the goods being valued as referred to in Clause 3(1)(a)(iii);*
  - (b) *the amount, determined in accordance with subclause (4), for profit and general expenses, considered together as a whole, generally referred in sales for export to the Republic of goods of the same class or kind as the goods being valued, made by the producers of the goods to buyers in the Republic who are not related to the producers from whom they buy the goods at the time the goods are sold to them.*
- (3) *For the purposes of this Clause, the expression general expenses mean the direct and indirect costs, charges and expenses of producing and selling goods for export, other than the costs, charges and expenses referred to in subclause (2)(a).*
- (4) *The amount of profit and general expenses referred to in subclause (2)(b) shall be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally accepted accounting principles of the country of production of the goods being valued and that is supplied:*
  - (a) *by or on behalf of the producer of the goods being valued; or*
  - (b) *where the information supplied by or on behalf of the producer of the goods being valued is not sufficient information, by an examination of sales for export to the Republic of the narrowest group or range of goods of the same class or kind from which sufficient information can, in the opinion of the Chief Collector of Customs be obtained.*

## **8 Residual basis of valuation**

- (1) *Where the Customs value of imported goods cannot, in the opinion of the Chief Collector of Customs, be determined under Clause 7, it shall be determined on information available in the Republic on the basis of a value derived from the methods of valuation set out in Clauses 2 to 7 interpreted in a flexible manner and reasonably adjusted to the extent necessary to arrive at a Customs value of the goods.*
- (2) *A Customs value must not be determined on the basis of:*
  - (a) *the selling price in the Republic of goods produced in the Republic;*
  - (b) *a basis which provides for the acceptance of the higher of 2 alternative values;*

- (c) *the price of goods on the domestic market of the country of exportation;*
- (d) *the cost of production, other than computed values that have been determined for identical or similar goods in accordance with Clause 7;*
- (e) *the price of goods for export to a country other than the Republic, unless the goods were imported into the Republic;*
- (f) *minimum Customs values; or*
- (g) *arbitrary or fictitious values.'*