REPUBLIC OF VANUATU

IMPORT DUTIES (CONSOLIDATION) (AMENDMENT) ACT NO. 29 OF 2013

Arrangement of Sections

REPUBLIC OF VANUATU

Assent: **16/01/2014**
Commencement: **25/03/2014**

IMPORT DUTIES (CONSOLIDATION) (AMENDMENT) ACT NO. 29 OF 2013

An Act to amend the Import Duties (Consolidation) Act [CAP 91].

Be it enacted by the President and Parliament as follows-

1 Amendment

The Import Duties (Consolidation) Act [CAP 91] is amended as set out in the Schedule.

2 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF IMPORT DUTIES (CONSOLIDATION) ACT [CAP 91]

1 After Section 4

Insert

"4A Anti-dumping duty, countervailing duty and safeguard measures

(1) For the purposes of this section:

anti-dumping duty means a Customs duty imposed to offset the injury caused by dumping;

countervailing duty means a Customs duty imposed to offset the injury caused by subsidised imports;

designated authority means the Director of the Department responsible for Trade;

dumping in relation to goods, means that the export price of goods intended to be imported into Vanuatu is less than the normal value of the goods in the exporting country;

safeguard measure means a remedy or procedure imposed to offset the injury caused by a significant increase in imports.

4B Notification and provisional payment

(1) If the designated authority has reasonable cause to suspect that there is dumping, subsidisation or increased importation of certain goods into Vanuatu, he or she may by notice published in the Gazette declare that an investigation be carried out on the alleged dumping, subsidisation or increased imports of the goods stated in the notice.

(2) The notice may also direct the Director of Customs to impose a provisional payment in respect of the goods subject to the notice, for such period and for such amount specified in that notice.

(3) The designated authority may repeal or amend the notice at any time, with or without retrospective effect.

(4) The Director of Customs may require an importer to pay a sum of money as a security in lieu of the actual payment of a provisional payment.

(5) The security provided for under subsection (4) is only to be converted if a definitive measure is imposed with retrospective effect.

(6) If no anti-dumping duty, countervailing duty or safeguard measure is imposed during the period for which a provisional payment is imposed:

(a) the amount of such payment is to be refunded to the importer; or

(b) the security is to be released to the importer.

4C Definitive measures

(1) The Council of Ministers may, upon being made aware of a notice published under subsection 4B(1), require the Director of Customs to impose a definitive measure on the goods subject to the notice, for such period as determined by the Minister.

(2) A definitive measure is the final or permanent duty imposed on goods subject to a notice under subsection 4B(1).

(3) The definitive measure imposed by the Director under subsection (1), is to be made by notice published in the Gazette.

4D Anti-dumping duty, countervailing duty or safeguard measures

(1) The Minister may instruct the Director of Customs to impose an anti-dumping duty, countervailing duty or safeguard measure on goods subject to a notice made under subsection 4B(1).

(2) Unless the Minister indicates otherwise, an anti-dumping duty, countervailing duty or safeguard measure is not to be applied to a product that is imported for further processing and that is subsequently re-exported.

4E Anti-dumping duty and countervailing duty

(1) The imposition of an anti-dumping duty or a countervailing duty on goods subject to a notice made under subsection 4B(1), is valid for a period not exceeding 5 years.

(2) Despite subsection (1), a notice made under subsection 4B(1) may be extended for more than 5 years if a review initiated before the expiry of the initial period of the imposition of anti dumping duty determines that the dumping of the goods is continuing.

4F Safeguard measures

(1) The imposition of a safeguard measure on goods subject to a notice made under subsection 4B(1), is valid for a period not exceeding 4 years and may be extended.

(2) The total period for a safeguard measure, including extensions made to the period, must not exceed 10 years.

(3) If a safeguard quota is imposed, the Director of Customs must ensure that the quota is administered properly.

4G Suspension of anti-dumping duty, countervailing duty or safeguard measure

(1) Despite sections 4D, 4E and 4F, the Director of Customs may, on a request made by the Council of Ministers, temporarily suspend the application of any anti-dumping duty, countervailing or safeguard measure if:

(a) a shortage of the product necessitates such suspension; or

(b) in the public interest, the suspension of the measure is required to be made.

(2) The designated authority may, in accordance with any request made to him or her by the Council of Ministers, by notice published in the Gazette, withdraw or reduce, with or without retrospective effect and to such extent as specified in the request, any anti-dumping duty, countervailing duty, or safeguard measure.

4H Refund of provisional payment

(1) If the amount of any provisional payment made under subsection 4B(2):

(a) exceeds the amount of any anti-dumping, countervailing or safeguard measure retrospectively imposed on such goods under section 4D, the amount of the difference is to be refunded; or

(b) is less than the amount of the anti-dumping, countervailing or safeguard duty so imposed, the amount of the difference is not to be collected.

(2) If a definitive safeguard measure other than a safeguard duty is imposed with retrospective effect, the full provisional safeguard measure is to be collected definitively."

2 Section 8

Repeal the section.

3 Schedule 2 – subclauses 1(8) and 1(9)

Repeal the subclauses, substitute

"(8) In determining the customs value of imported carrier media bearing data or instructions, only the cost or value of the carrier medium itself is to be taken into account. The customs value must not, include the cost or value of the data or instructions, provided that this is distinguished from the cost or the value of the carrier medium.

(9) For the purposes of subclause (8):

(a) "carrier medium" is not to be taken to include integrated circuits, semiconductors and similar devices or articles incorporating such circuits or devices; and

(b) "data or instructions" is not to be taken to include sound, cinematic or video recordings.

(10) For the purposes of this Schedule, information submitted by an importer, buyer or producer in relation to valuing imported goods must not be rejected by the Director of Customs because of the accounting method by which the information was prepared if it was prepared in accordance with generally accepted accounting principles.

(11) In interpreting this Schedule, regard must be made to the Interpretative Notes in Annex 1 to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (the WTO Customs Valuation Agreement). These Interpretative Notes are presented as Annex 1 to this Schedule."

4 Schedule 2 – subparagraph 4(2)(f)(ii)

Delete ", unloading"

5 Schedule 2 – paragraphs 4(5)(a) and 4(5)(b)

Delete "reasonable" (wherever occurring in these paragraphs).

6 At the end of Schedule 2

Insert

"ANNEX 1 TO SCHEDULE II

INTERPRETATIVE NOTES TO THE WTO CUSTOMS VALUATION AGREEMENT

General Note

Sequential Application of Valuation Methods

1. Articles 1 to 7 inclusive, define how the customs value of imported goods is to be determined under the provisions of this Agreement. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Article 1 and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.

2. If the customs value cannot be determined under the provisions of Article 1 it is to be determined by proceeding sequentially through the succeeding Articles to the first such Article under which the customs value can be determined. Except as provided in Article 4 it is only when the customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article in the sequence can be used.

3. If the importer does not request that the order of Articles 5 and 6 be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the provisions of Article 6, the customs value is to be determined under the provisions of Article 5, if it can be so determined.

4. If the customs value cannot be determined under the provisions of Articles 1 to 6 inclusive, it is to be determined under the provisions of Article 7.

Use of Generally Accepted Accounting Principles

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to:

   (a) which economic resources and obligations should be recorded as assets and liabilities;

   (b) which changes in assets and liabilities should be recorded;

   (c) how the assets and liabilities and changes in them should be measured;

   (d) what information should be disclosed and how it should be disclosed;

   (e) which financial statements should be prepared.

   These standards may be broad guidelines of general application as well as detailed practices and procedures.

2. For the purposes of this Agreement, the customs administration of each Member shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example:

   (a) the determination of usual profit and general expenses under the provisions of Article 5 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of importation;

(b) the determination of usual profit and general expenses under the provisions of Article 6 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production;

(c) the determination of an element provided for in paragraph 1(b)(ii) of Article 8 undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.

Note to Article 1

Price Actually Paid or Payable

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.

The customs value must not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

(a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;

(b) the cost of transport after importation;

(c) duties and taxes of the country of importation.

The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Paragraph 1(a)(iii)

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Paragraph 1(b)

If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include:

(a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;

(b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;

(c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi- finished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation shall not result in rejection of the transaction value for the purposes of Article 1. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

Paragraph 2

1. Paragraphs 2(a) and 2(b) provide different means of establishing the acceptability of a transaction value.

2. Paragraph 2(a) provides that if the buyer and the seller are related, the circumstances surrounding the sale is to be examined and the transaction

value is to be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs administration has no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs administration may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. If the customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 15, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Paragraph 2(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the customs administration and is therefore acceptable under the provisions of Article 1. Where a test under paragraph 2(b) is met, it is not necessary to examine the question of influence under paragraph 2(a). If the customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2(b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In paragraph 2(b) the

term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Paragraph 2(b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in paragraph 2(b) of Article 1.

Note to Article 2

1. In applying Article 2, the customs administration shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

   (a) a sale at the same commercial level but in different quantities; or

   (b) a sale at a different commercial level but in substantially the same quantities; or

   (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

   (a) quantity factors only; or

   (b) commercial level factors only; or

   (c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of Article 2 the transaction value of identical imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2 of this Article, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 2 is not appropriate.

Note to Article 3

1. In applying Article 3, the customs administration shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

   (a) a sale at the same commercial level but in different quantities;

   (b) a sale at a different commercial level but in substantially the same quantities; or

   (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

(a) quantity factors only;

(b) commercial level factors only; or

(c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purpose of Article 3, the transaction value of similar imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2 of this Article, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 3 is not appropriate.

Note to Article 5

1. The term "unit price at which ... goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1-10 units	100	10 sales of 5 units	
		5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
over 25 units	90	1 sale of 30 units	
		1 sale of 50 units	80

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

(a) Sales

Sale quantity	Unit price
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105

35 units	90
5 units	100

(b) Totals

Total quantity sold	Unit price
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in the importing country, as described in paragraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in paragraph 1(b) of Article 8, should not be taken into account in establishing the unit price for the purposes of Article 5.

6. It should be noted that "profit and general expenses" referred to in paragraph 1 of Article 5 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtained in sales in the country of importation of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The "general expenses" include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of paragraph 1(a)(iv) of Article 5 shall be deducted under the provisions of paragraph 1(a)(i) of Article 5.

9. In determining either the commissions or the usual profits and general expenses under the provisions of paragraph 1 of Article 5, the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 5, "goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of paragraph 1(b) of Article 5, the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

11. Where the method in paragraph 2 of Article 5 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

12. It is recognized that the method of valuation provided for in paragraph 2 of Article 5 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to Article 6

1. As a general rule, customs value is determined under this Agreement on the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of

importation. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The "cost or value" referred to in paragraph 1(a) of Article 6 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The "cost or value" shall include the cost of elements specified in paragraphs 1(a)(ii) and (iii) of Article 8. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 8, of any element specified in paragraph 1(b) of Article 8 which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in paragraph 1(b)(iv) of Article 8 which are undertaken in the country of importation shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The "amount for profit and general expenses" referred to in paragraph 1(b) of Article 6 is to be determined on the basis of information supplied by or on behalf of the producer unless his figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.

5. It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and his general expenses are high, his profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the country of importation and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate that he is taking a low profit on his

sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the authorities of the importing country shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Article 10.

7. The "general expenses" referred to in paragraph 1(b) of Article 6 covers the direct and indirect costs of producing and selling the goods for export which are not included under paragraph 1(a) of Article 6.

8. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 6, sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 6, "goods of the same class or kind" must be from the same country as the goods being valued.

Note to Article 7

1. Customs values determined under the provisions of Article 7 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under Article 7 should be those laid down in Articles 1 to 6, inclusive, but a reasonable flexibility in the

application of such methods would be in conformity with the aims and provisions of Article 7.

3. Some examples of reasonable flexibility are as follows:

(a) Identical goods - the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Articles 5 and 6 could be used.

(b) Similar goods - the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Articles 5 and 6 could be used.

(c) Deductive method - the requirement that the goods shall have been sold in the "condition as imported" in paragraph 1(a) of Article 5 could be flexibly interpreted; the "ninety days" requirement could be administered flexibly.

Note to Article 8

Paragraph 1(a)(i)

The term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

Paragraph 1(b)(ii)

1. There are two factors involved in the apportionment of the elements specified in paragraph 1(b)(ii) of Article 8 to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to him, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the customs administration to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Paragraph 1(b)(iv)

1. Additions for the elements specified in paragraph 1(b)(iv) of Article 8 should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 8.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

Paragraph 1(c)

1. The royalties and licence fees referred to in paragraph 1(c) of Article 8 may include, among other things, payments in respect to patents, trade marks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Paragraph 3

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 8, the transaction value cannot be determined under the provisions of Article 1. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

Note to Article 9

For the purposes of Article 9, "time of importation" may include the time of entry for customs purposes.

Note to Article 11

1. Article 11 provides the importer with the right to appeal against a valuation determination made by the customs administration for the goods being valued. Appeal may first be to a higher level in the customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.

2. "Without penalty" means that the importer shall not be subject to a fine or threat of fine merely because he chose to exercise his right of appeal. Payment of normal court costs and lawyers' fees shall not be considered to be a fine.

3. However, nothing in Article 11 shall prevent a Member from requiring full payment of assessed customs duties prior to an appeal.

Note to Article 15

Paragraph 4

For the purposes of this Article, the term "persons" includes legal person, where appropriate.

Paragraph 4(e)

For the purposes of this Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter."

7 Schedule 3 – SECTION 4 TEMPORARILY IMPORTED GOODS, X.40

After clause X.40C, insert

"**D. Foreign Registered Super Yachts**

Super Yachts temporarily visiting Vanuatu for the purposes of charter or personal use, may be admitted free of duty for a maximum period of six months, subject to the following conditions:

(a) For charter:

- (i) the vessel is valued in excess of VT 200,000,000;
- (ii) must hold current, internationally recognised survey certificates permitting charter;
- (iii) permission for charter is provided by the Principal Licensing Section, Ports and Marine;
- (iv) must engage a local agent registered for VAT and who holds a current Vanuatu business licence as a ship's agent;
- (v) the local agent must pay VAT on all purchases made on behalf of the vessel and charter fees while in Vanuatu.

(b) For personal use:

As per (i), (iv) and (v) above."

8 After Schedule 3

Insert

"SCHEDULE 4

1. Subject to Articles 3 and 4 of this Schedule, goods are to be accepted as originating in a country if:

(a) they have been wholly obtained or produced in the country as provided for in paragraph 2 of this Schedule; or

(b) they have been produced in the country wholly or partially from materials imported from outside the country or of undetermined origin by a process of production which effects a substantial transformation of those materials such that:

(i) the value added resulting from the process of production accounts for at least 30 per cent of the ex-factory cost of the goods; or

(ii) the goods are classified or become classifiable under a tariff heading other than the tariff heading under which they were imported into the country.

2. For the purposes of Article 1(a) of this Schedule, the following are the products that are to be regarded as wholly obtained or produced in a country:

(a) mineral products extracted from the ground or sea-bed of the country;

(b) vegetable products harvested within the country;

(c) live animals born and raised within the country;

(d) products obtained from live animals within the country;

(e) products obtained by hunting or fishing conducted within the country;

(f) products obtained from the sea and from rivers and lakes within the country by a vessel of the country;

(g) products manufactured in a factory of the country exclusively from the products referred to in sub-paragraph (f) of this paragraph;

(h) used articles fit only for the recovery of materials, provided that such articles have been collected from users within the country;

(i) scrap and waste resulting from manufacturing operations within the country;

(j) goods produced within the country exclusively or mainly from products referred to in sub-paragraphs (a) to (i) of this Article.

3. Despite the provisions of Article 1 of this Schedule, the following operations and processes are not to be considered as sufficient to support a declaration that goods originate from a country:

(a) packaging, bottling, placing in flasks, bags, cases and boxes, fixing on cards or boards and all other simple packaging operations;

(b) simple mixing of ingredients imported from outside the country;

(c) simple assembly of components and parts imported from outside the country to constitute a complete product;

(d) simple mixing and assembly;

(e) operations to ensure the preservation of merchandise in good condition during transportation and storage such as ventilation, spreading out, drying, freezing, placing in brine, sulphur dioxide or other aqueous solutions, removal of damaged parts and similar operations;

(f) changes of packing and breaking up of or assembly of consignments;

(g) marking, labelling or affixing other like distinguishing signs on products or their packages;

(h) simple operations consisting of removal of dust, sifting or screening, sorting, classifying and matching, including the making up of sets of goods, washing, painting and cutting up;

(i) a combination of two or more operations specified in sub-paragraphs (a) to (h) of this paragraph;

(j) slaughter of animals.

4. To avoid doubt, this Schedule does not override the rules of origin provisions of any bilateral or multilateral preferential trade agreement that has been entered into by the Government of Vanuatu, or of any non-reciprocal preferential trade agreement of which the Government of Vanuatu is a beneficiary."