NEW ZEALAND
CUSTOMS SERVICE
TE MANA ĀRAI O AOTEAROA

Customer guide:
Customs valuation guide

Protecting and promoting
New Zealand across borders

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Introduction | Whakatakinga

Use these guidelines to assist with understanding the:

- World Trade Organization (WTO) Valuation Agreement 1994[1], which is the basis of New Zealand's legislation on Customs valuation
- Customs valuation methods, rules and principles that must be complied with to determine the Customs value of goods imported into New Zealand
- common Customs valuation situations, and how to deal with them.

Please refer to the relevant legislation that applies in your case and seek independent advice if you need assistance in respect of any specific matter.

Role of Valuation, Origin and Classification (VOC)

The Valuation, Origin and Classification section's (VOC) primary role is to provide assistance to Customs officers and importers and exporters on Customs Valuation, Tariff Classification, Tariff Concessions, and Origin matters.

VOC also has responsibility for issuing Customs Rulings for imported goods in accordance with Part 5 of the Customs and Excise Act 2018 (CEA 2018). These rulings cover Customs Valuation, Tariff Classification, Rules of Origin, and Concession applicability.

Basis of Customs valuation

What is Customs valuation?

When goods are transported across international borders, a tariff duty can be levied on imported goods either as a percentage of the monetary value of the goods (ad valorem), a specific rate of duty (eg, $1 per litre of alcohol), or a combination of ad valorem plus specific rate of duty.

Most countries calculate tariff duty on an ad valorem basis (a percentage of the value) as it is more equitable, transparent and easier to estimate. However, the amount of duty payable depends on the value of the imported goods. For example, if the value of a good is determined at $1,000, an ad valorem duty of 10% will result in a duty payable of $100; while if the value of the goods is $1,200, the importer will have to pay $120. Consequently, importers could be subject to inconsistent Customs duty if valuation is not consistent. Therefore, it is important that Customs valuation is as simple and predictable as possible to prevent valuation being used to assess duties on an arbitrary or discriminatory basis.

Customs valuation is used by Customs administrations around the world for importers and exporters to work out the value of their goods, and to ensure that goods are levied a fair duty when imported into a country.

[1] Officially known as the Agreement on Implementation of Article VII of GATT 1994

Customs valuation is also used by many countries as a tool for:

- compiling trade statistics
- calculating Goods and Services Tax (GST) or Value Added Tax (VAT)
- monitoring quantitative restrictions.

Basic principles of Customs valuation

As a member of the World Trade Organisation (WTO), New Zealand has an obligation to comply with the rules and principles established under the WTO Valuation Agreement 1994.

As outlined in the Agreement, the basic principles of Customs valuation are that:

- the basis for Customs valuation should, to the greatest extent possible, be the transaction value of the goods being valued
- Customs value should be based on simple and equitable criteria consistent with commercial practice
- valuation procedures should be of general application without distinction between sources of supply
- valuation procedures should not be used to combat the dumping of goods.[2]

The WTO Customs Valuation rules are incorporated under Schedule 4 of the CEA 2018.

Customs valuation framework

Obligation to specify Customs value on import entry

Every entry for imported goods **must** include the Customs value of the goods as determined in accordance with Schedule 4 of the CEA 2018.[3]

The importer must specify the Customs value when making an import entry, using an appropriate method as provided under Schedule 4 of the CEA 2018.

Note: A Customs value must be determined regardless of whether the goods are the subject of a sale, are supplied free-of-charge, are personal possessions, or are temporarily imported into New Zealand.

The valuation methods

Overall, there are six methods to determine the Customs value of goods.

The methods are:

- Method 1 - Transaction Value

[2] Trade (Anti-dumping and Countervailing Duties) Act 1988
[3] Section 101 of CEA 2018.

- Method 2 - Transaction value of identical goods
- Method 3 - Transaction value of similar goods
- Method 4 - Deductive value
- Method 5 - Computed value
- Method 6 - Residual basis of valuation.

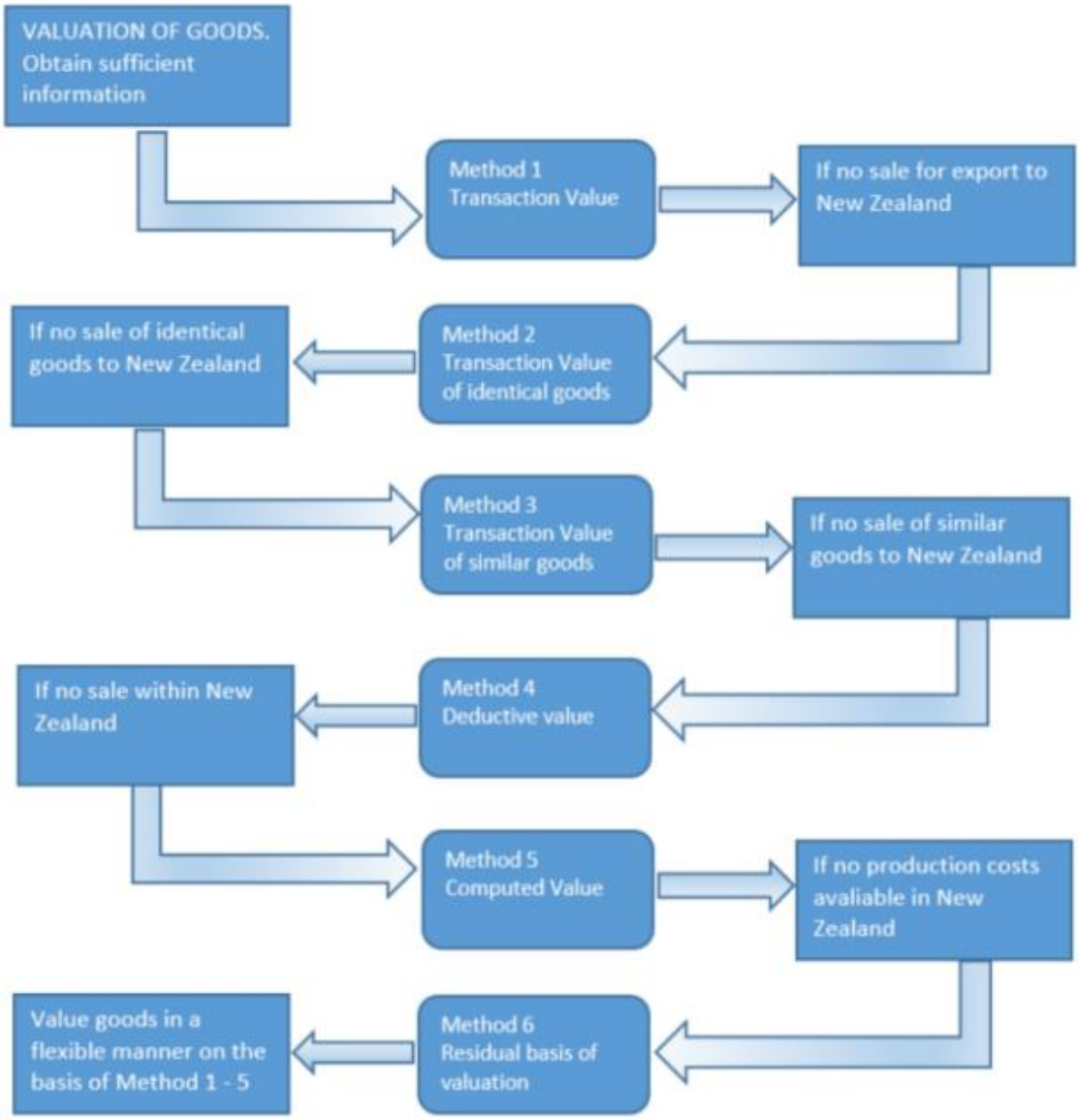
The basic principles in applying the methods of valuation are:

- The primary method of valuation is the Transaction Value Method[4], the agreed invoice price of the goods.
- When it is not possible to determine a Customs value under the Transaction Value method, Customs may (in consultation with the importer) determine the Customs value by proceeding sequentially through methods 2 to 6. The first method that can establish the value, must be used.[5]
- Customs must reverse the order of consideration of method 4 and 5 if requested by the importer.[6]

The rules and principles of each of the valuation methods are explained later in this Guide.

[4] Clause 4(1) Schedule 4 of CEA 2018
[5] Clause 4(3) Schedule 4 of CEA 2018
[6] Clause 4(5) Schedule 4 of CEA 2018

Process flowchart



Accuracy of declared Customs value

It is important that a Customs value is determined based on sufficient reliable information. If there is reason to doubt the truth or accuracy of a declared Customs value, Customs may seek an explanation or other evidence.[7]

If there is evidence that the valuation assessment made by the importer is inconsistent with Schedule 4 of the CEA 2018, or is for any other reason incorrect, Customs can amend (or revise) the Customs value declared by the importer[8]. This authority applies whether or not the goods have been released from the control of Customs and whether or not any duty has been paid.

Customs can amend a value at any time, but there are time limits for Customs to increase an assessment of duty (except in cases of fraud or wilfully misleading entries) or refund duty.[9]

Provisional values

An importer may include a provisional Customs value in an entry for imported goods if:

- they cannot determine the cost of their imported goods at the time of import, or
- the Customs value of their imported goods is likely to change after import.

To submit a provisional Customs value, importers must be registered with Customs.

Information on how to apply to be on the Provisional Values Scheme is outlined in the Provisional Values Scheme Guide.

Customs valuation ruling

To provide importers with certainty about how to meet Customs' requirements for determining Customs value, importers may apply to Customs for a ruling prior to the goods arriving in New Zealand.

A valuation ruling provides applicants with legal certainty about Customs view of the correct application of any provision of Schedule 4 of the CEA 2018, and therefore how much duty they need to pay on their goods.

Customs is obliged to complete a valuation ruling within 150 calendar days.

The cost of applying for a Customs ruling will depend on the time Customs spend on it and whether there is a need for any specialist input.

Information on how to apply for a Valuation Ruling is outlined in the Guide to applying for a Customs valuation ruling on imported goods.

[7] Regulation 59 of CEA Reg 1996.
Section 357 of CEA 2018
[8] Section 103 of CEA 2018
[9] Section 118 and 142 of 2018

Appeal Rights

An importer who is dissatisfied with Customs' decision as to the assessment of a Customs value, or a Customs valuation ruling, has the right to appeal to the Customs Appeal Authority.[10]

Method 1: Transaction value

The transaction value method is the primary method of valuation. It is the most widely used method and is used to determine the Customs value in 90-95% of imports.

The provisions for this method are set out in clauses 4 to 8 of Schedule 4 of the CEA 2018.

As New Zealand uses the free-on-board (FOB) basis of valuation, a Customs value is calculated based on the transaction value of the goods when loaded onto the craft (ship/aircraft) in the country of export.

In the simplest form, the transaction value refers to the total price agreed upon by the **buyer** and **seller** of the goods (**Note**: as distinct from the importer and the exporter of the goods).

The transaction value is made up of the price paid or payable for the goods, plus certain adjustments that must form part of the Customs value (if the amount has not been included in the price paid or payable).

Customs value calculated using transaction value method

Goods can only be valued under the transaction value method if:

- the importer has evidence of a sale for export to New Zealand, for example, a commercial invoice, contract, or purchase order. If there are multiple sales for export, then the Customs value is based on the "last sale" that occurs immediately before the goods enter New Zealand, and
- any relationship between the buyer and seller must not have affected the price paid or payable for the goods, and
- the price paid or payable for the goods must not be subject to any condition or consideration where a value cannot be determined, and
- where any part of the proceeds of any resale, disposal, or use of the goods by the buyer is to accrue to the seller, that value is included in the price paid or payable, and there must not be any restrictions in the sale about how the buyer will dispose of, or use the goods, except for those:
  - imposed by law, or
  - that limit where the item can be sold, or
  - that do not have a substantial effect on the value of the goods.

[10] Sections 117 and 344 of the CEA 2018

Sold for export to New Zealand

The phrase “sold for export to New Zealand” (clause 2 of Schedule 4 of the CEA 2018) means:

- *“the last sale of the goods occurring prior to the importation of the goods into New Zealand”*.

Situations when there is no sale

If the imported goods were gifted or donated, or imported under a hire or lease contract, the transaction value method cannot be applied because there is no sale of the goods. The Customs value of the goods must then be determined using an alternative method of valuation (methods 2 to 6).

Other examples of situations where there is **no sale**:

- Goods imported on a consignment basis (eg, goods imported into New Zealand to be sold by auction, as there was no transfer of title at the time of import).
- Goods imported by distributors, who sell the goods on behalf of the exporter, and then send the proceeds to the exporter (as there was no transfer of title at the time of import).
- Goods imported by branches that are not separate legal entities (as the buyer and seller are not separate legal entities, ie, one cannot sell to oneself).

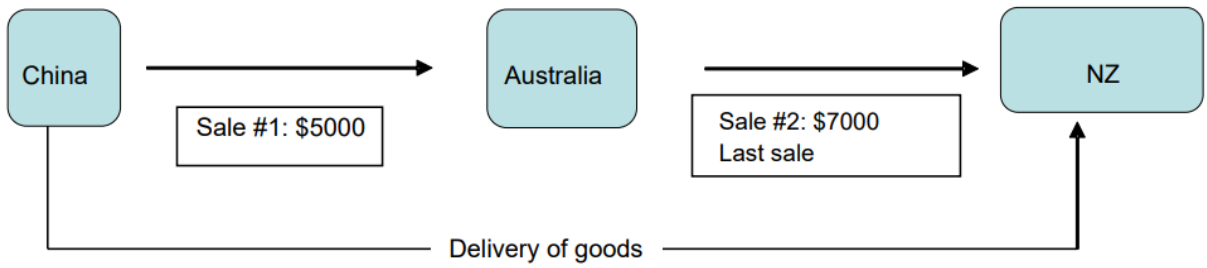
How to interpret ‘sale’

The term “sale” should be interpreted in the widest sense, to conform with the WTO Valuation Agreement 1994 that the transaction value of imported goods should be used to the greatest extent possible for Customs valuation purposes.

The phrase “last sale” simply means that only the price of the last sale occurring immediately before the goods enter into New Zealand can be used to determine a transaction value.

If there is only one sale for export to New Zealand, then that transaction will form the basis of determining the Customs value. However, if there is more than one successive sale, then the last invoice price must be used to determine the value of the imported goods.

Example delivery of goods flowchart:



For a more detailed explanation of ‘last sale’, refer to Customs’ Customer Guide on Last Sale.

Calculating the transaction value

The transaction value is to be calculated by taking the price paid or payable for the goods when sold for export to New Zealand, and to the extent that each amount is not included in the price paid or payable for the goods.

- + **Adding** the relevant payments and costs set out in sub-clause 7(b)(i) to (vii) of Schedule 4 of the CEA 2018; and
- - **Deducting** the amounts set out in sub-clause 7(c)(i) and (ii), and 7(d) of Schedule 4 of the CEA 2018.

The phrase "price paid or payable" means:[11]

- "the aggregate of all amounts paid or payable by the buyer to or for the benefit of the seller in respect of the goods".

This means that a "price paid or payable":

- should include all payments that have already been paid at the time of valuation/import, **and** the payments that have not been paid by the time of valuation/import but have already been agreed to be paid
- need not be paid to the seller directly but can also be made to someone designated by the seller
- may be expressed in money or in kind (eg, goods or services or rights), or partly in money and partly in kind.

The specific requirements that determine whether or not a particular amount must be added or deducted from the price paid or payable are explained more below under 'Additions and Deductions to the Price Paid or Payable'.

Treatment of discounts under the transaction value method

If a seller agrees to reduce the price for particular imported goods in return for the buyer meeting certain conditions, the discounted price may form the "price paid or payable" for the goods. The importer must be able to show that the discount:

- is agreed to by the parties prior to the arrival or import of the goods into New Zealand, and
- is in respect of the particular sale of those goods for export to New Zealand, and
- has been used by the buyer at the time of import, or there is evidence that the buyer would take the discount on payment of the goods.

Examples of the types of discounts that may be allowed to determine the price paid or payable are:

- **Cash discount** – eg, a discount for cash or on settlement within a stipulated period, or discount for payment in advance

[11] Clause 2 of Schedule 4 of the CEA 2018

- **Quantity discount** – eg, deduction from the price of the goods allowed by the seller to its buyers according to the quantity of goods purchased over a given basic period
- **Trade discount** – eg, a discount, the rate of which may vary from consignment to consignment, available to all buyers of the goods at a particular commercial level.

The discount cannot be allowed if it is actually remuneration for other goods, services, rights (which are not connected with the goods), or the discount is an offset against a previous import.

Related party transactions

When determining whether a transaction value is acceptable, the fact that a seller and buyer are related are not grounds for regarding the transaction value as unacceptable. However, to be acceptable all transactions between related parties must be at arm's length.

It is important to note that a buyer and seller are considered **related**[12] if:

- they are officers or directors of one another's business
- they are legally recognised partners in business
- they are an employer and employee
- any person directly or indirectly owns, controls, or hold 5% or more of the outstanding voting stock or shares of both of them
- one of them directly or indirectly controls the other
- both of them are directly or indirectly controlled by a third person
- together they directly or indirectly control a third person
- they are members of the same family.[13]

When the buyer and seller are related, if Customs requires it, the importer must produce evidence to establish the acceptability of the price paid or payable.[14]

It is common for related parties to have a Transfer Pricing arrangement study/report prepared for tax purposes to evidence that their transaction is an at arm's length transaction. Whether the Transfer Pricing study/report is acceptable to determine the transfer price for Customs purposes will be considered on a case-by-case basis.

When a different valuation method can be used

A different valuation method can be used when:[15]

- the pre-conditions of applying the transaction value method are not met

[12] Refer clause 2(2) of Schedule 4
[13] For description as to who are considered as 'members of the same family', refer clause 2(2)(b) of Schedule 4
[14] Refer clause 6 of Schedule 4
[15] Refer clause 4(2) of Schedule 4

- an adjustment required to be made to the price paid or payable cannot be made because of lack of information
- there is reason to doubt the truth or accuracy of the declared Customs value.

Additions and deductions to price paid or payable

Adjustment to price paid or payable

To determine the transaction value, the entire commercial transaction must be taken into account.

If the buyer has paid other costs in respect of the goods, and the costs have not been included in the invoice price, these costs must be included in the final Customs value. The costs that must be added or deducted are outlined below.

For many of the additions to apply, the amount must have been incurred, paid or payable by the buyer.

No additions or deductions, other than those listed in clauses 7(b), 7(c) and 7(d) of Schedule 4 of the CEA 2018 can be made from the price paid or payable for the imported goods.

Adding and deducting from the price paid or payable to form the transaction value

The additions and deductions that are allowed to be made to the price paid or payable, are:[16]

Additions	Deductions
- commissions and brokerage - packing costs and charges - goods and services supplied by the buyer free-of-charge or at a reduced cost - royalties and licence fees - the value of any part of the proceeds of any subsequent resale - the value of any materials, components parts, and other goods incorporated in the imported goods - transportation and insurance costs in the country of export.	- transportation and insurance costs from the time the goods have left the country of export - any reasonable cost incurred for the construction, erection, assembly, maintenance, or technical assistance provided in respect of the goods after they are imported into New Zealand - any reasonable cost incurred for transportation or insurance of the goods within New Zealand - any Customs duties or other taxes payable in New Zealand - the value of the data or instructions incorporated in carrier media.

[16] Refer clause 7(b), and clause 7(c) of Schedule 4.

Additions to price paid or payable

Commissions and brokerage

Commissions and brokerage fees paid by the buyer to an agent for services.

All commissions and brokerage (with one exception) incurred by a buyer for the purchase of imported goods must be added to the price paid or payable.

The **exception** is when the fees are paid or payable by the buyer to their agent for representing them overseas in respect of the purchase of the goods (often referred to as “buying commission”). For example, if the buyer were to hire an agent to go abroad to negotiate the purchase of the goods, the fees paid to their agent are considered a “buying commission” and need not be added to the value.

Refer to The Treatment of Commissions and Brokerage, under Common Valuation Questions below.

Packing costs and charges

Packing costs and charges include:

- the costs of cartons, cases, and other containers and coverings that are treated as being part of the imported goods (eg, bottles and packaging which go to the consumer), and
- all expenses of packing incidental to placing the goods in the condition in which they are shipped to New Zealand (eg, boxes, non-reusable shipping containers).

Note: It is the cost (as distinct from the value) of the cartons and containers that is to be added (not including shipping containers).

The cost of re-useable containers and pallets (that is, large commercial containers used for long distance transport and then reused for other shipments) and the charges for the loading/unloading of the re-usable containers are generally not considered as part of packing costs and charges. This is because these “containers” are modes of transport that are usually not treated as being one with the goods. Re-useable containers and pallets would, in most cases, be the property of the freight forwarder or shipping company and are reused continually.

In cases where the buyer sends a representative overseas primarily to pack the goods for shipping to New Zealand, the personnel costs including travel and accommodation expenses may either in full or in part be considered to be packing costs and are to be included in the value for duty.

Value of goods and services supplied by buyer (Assists)

When the importer buys directly from the seller and provides goods and/or services (‘assists’) to the seller, the value of the assists are to be added to the value for duty.

The value of assists provided by the buyer to the seller must be added to the final value if they were:

- free of charge, or at a reduced cost, and
- were used in connection with the production and sale for export.

The assists to be added are:

- materials, component parts, and other goods incorporated in the imported goods – this covers tangible items which physically exist in the goods
- tools, dies, moulds and other goods used in the production of the imported goods – this covers items used in the production of the goods
- materials consumed in the production of the imported goods – this covers materials, such as, catalysts, abrasives, and similar materials which are used in the production of the imported goods, but which do not become part of the goods (eg, petrol to run the machinery producing the goods)
- engineering, development work, artwork, design work, plans, and sketches undertaken outside New Zealand and necessary for the production of the imported goods.

The value of the assists must be determined in accordance with clause 8 of Schedule 4 of the CEA 2018.

In some cases, the value of an assist may be an amount that is incurred for a number of purchases or productions. In such situations, the value of the assist must be reasonably apportioned to the imported goods and in accordance with accepted accounting principles.

Royalties and licence fees

A royalty or licence fee is a payment for the acquisition or use of a protected right. When imported goods are licensed goods, or contain protected rights, the importer may be required to pay royalties or licence fees to the licensor (ie, holder of the right) under a separate agreement. Examples of when a royalty or licence fee payment may need to be added include goods:

- bearing a trademark
- with content that is copyrighted
- produced using patented methods or proprietary technology.

All royalties and licence fees payable for goods must be added to the price paid or payable for the imported goods. The only exception is when the royalty or licence fee is the right to reproduce the imported goods in New Zealand.

To determine whether a royalty or licence fee is dutiable, the true nature of the transactions and overall arrangement between the parties will need to be examined. The conditions that need to be examined are whether the royalty or license fee payment is made:

- for the imported goods that the buyer must pay, directly or indirectly
- as a condition of the sale of the goods for export to New Zealand.

Note: The gross amount of royalties that is paid or payable by the buyer must be added and NOT the net amount of the royalties that are actually remitted (ie, after the deduction of any New Zealand withholding tax). If the importer has to pay part of the royalty to Inland Revenue on behalf of the supplier, that portion of the royalty must also be added to form the Customs value.

Proceeds of subsequent resale, disposal or use of the goods

In some situations, there may be an agreement between the buyer and the seller to share the proceeds of subsequent resale, disposal, or use of the imported goods. The part of the proceeds that accrues to the seller may need to be added to the price paid or payable.

For example, an importer pays $1,000 for pens exported from China. Under a separate agreement the importer agrees to pay 10% of the resale value of the pens to the Chinese seller. The importer sells the pens for $2,000. The part of the resale that must be added to the value for duty is 10% of $2,000, or $200.

Note: The proceeds of any subsequent resale, disposal, or use of the goods should not be confused with the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods.

The conditions that must be satisfied before this addition can be added are:

- the proceeds must be from a subsequent resale, disposal, or use of the goods by the buyer, and
- the proceeds must accrue, directly or indirectly, to the seller.

Value of repair and refurbishment

This addition is specific to New Zealand and is not in the WTO Valuation Agreement. It was added to clarify the treatment of additions in connection to used vehicles purchased overseas and repaired by a third party overseas before import into New Zealand.

For example, an importer pays $10,000 for a damaged motor vehicle from an auction dealer in Australia. Before importing the car, it is sent to a motor vehicle repairer for $7,500 of repairs and replacement parts to be fitted. The additional cost of the parts that must be added to the value for duty is $7,500.

Note: For this addition to be applied there is **no** requirement that the value of the repairs and refurbishments are paid by the buyer to the seller, or that the materials, component parts etc incorporated in the imported goods are supplied by the buyer or seller.

Costs of transportation and insurance in the country of export

Costs of transportation may be divided into:

- inland freight in the country of export
- international freight
- inland freight incurred within New Zealand.

Customs uses the Free on Board (FOB) system of valuation, which excludes international freight and insurance costs. Because of this, the only transport and insurance costs that may need to be added is inland freight and insurance in the country of export (if this was paid by the buyer to the seller).

Example: A collector of books purchased several books from different sellers in Australia through online auctions. To save on the cost of shipping, arrangements were made with the sellers of the

books that, instead of sending all the various books directly to New Zealand, the books would be sent to a friend living in Australia, and the friend would then send the books to New Zealand in one consignment. In this situation, the amount paid by the buyer to each seller for sending the books to his friend in Australia would be considered as inland freight in the country of export and must be added to the transaction value of the imported books to arrive at the Customs value.

Note: When imported goods move from one country to another and are then exported from the second country, the border of the first country would be the cut-off point, despite the fact that the contracted price might be at the port where the goods are loaded onto a ship or aircraft (vis-à-vis “until the goods have left the country of export”).

Example: Goods are sold for export to New Zealand from France. The contract price is FOB Rotterdam, Netherlands. The Customs value of the goods is the price inclusive of transport and insurance to the French border, not Rotterdam.

The inland freight incurred in the country of export that must be added must include:

- the costs of transportation and insurance
- loading, unloading, and handling charges
- other charges and expenses associated with the transportation of the imported goods until the goods have left the country of export.

Expenses such as export licence fees, export taxes, and inspection fees must not be added unless such costs are associated with the transportation, insurance, loading, unloading and handling of the goods.

It is important to note that for this addition to be included costs must be:

- paid by the buyer (directly or indirectly)
- to or for the benefit of the seller.

For example, in the case where goods are purchased by the buyer from the seller at an "ex works" price, and the seller organises the transportation of the goods through a third party, that freight cost need not be included in the value for duty as it is not paid to or for the benefit of the seller.

Deductions to price paid or payable

International freight and insurance

As set out above, any international freight (ie, costs of transporting the goods from the country of export to New Zealand) and any costs of inland freight and insurance within New Zealand are not to be included in the transaction value of the imported goods. If any such amount is included in the price paid or payable for the goods and can be distinguished from the price, the amount must be deducted from the price paid or payable to arrive at the transaction value. For example, where goods were sold for export to New Zealand on a cost, insurance and freight (CIF) basis, the actual costs paid for international freight and insurance will have to be deducted from the price paid or payable when determining the transaction value of the goods for Customs purposes, (refer to Valuation of goods purchased on CIF, DDP or similar basis, under Common Valuation Questions below).

The international freight amount that can be deducted includes the costs of transportation and insurance, 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.

In applying the deductions if there is a single “through rate” for the transport of the goods from the country of export to an interior point within New Zealand, there is no need to differentiate the international freight and inland New Zealand freight, as the entire costs can be deducted, refer clause 7(c), Schedule 4 of the CEA 2018.

It is important to note that it is the actual cost of the international freight that is to be deducted from the price paid or payable for the goods. The actual cost must be proven on objective and quantifiable data (eg, on the commercial invoice). If it cannot be proven the cost cannot be deducted.

Construction, erection, assembly, maintenance, or technical assistance provided after import

Any reasonable cost, charge or expense that is incurred for the construction, erection, assembly, maintenance, or technical assistance provided for the imported goods after the goods are imported, need not be included if the amount can be identified separately from the transaction value of the imported goods.

This deduction is relevant to the import of capital goods and equipment, for example, industrial plant and machinery.

The cost, charge or expense that can be deducted for any construction, erection, assembly, maintenance, or technical assistance provided can include both the cost of materials, as well as the value of services provided.

Any reasonable cost, charge or expense claimed by the importer as an admissible deduction must be substantiated by documentary evidence.

Duties and other taxes payable in New Zealand

Only Customs duties and taxes payable in New Zealand for the import or sale of the goods (eg, tariff duties and goods and services tax (GST)) are to be deducted from the price paid or payable (refer to clause 7(c)(ii)(C) of Schedule 4 of the CEA 2018). This does not include the treatment of any foreign duties or taxes which may have been paid or refunded. (Refer to Treatment of overseas tax which has been refunded, under Common Valuation Questions below).

Carrier media bearing data or instructions

In determining the Customs value of imported carrier media bearing data or instructions, only the cost or value of the carrier media itself shall be considered. If the price paid or payable for the carrier media includes the value of the data or instructions (eg, software), the value of the data or instructions will need to be deducted from the price paid or payable, provided:

- the value of the data or instructions can be distinguished from the cost or the value of the carrier media, and

- data or instructions are not incorporated in data processing equipment.

Note. The expression "carrier media" does not include integrated circuits, semi-conductors and similar devices, or articles incorporating circuits or devices; and the expression "data or instructions" does not include sound, cinematic or video recordings (eg, music and movie CDs/DVDs) (clause 2(i) of Schedule 4 of the CEA 2018).

The implications of clauses 7(d)(i) and (ii) of the CEA 2018 are that if the data or instructions are incorporated in a laptop or computer (ie, data processing equipment), or if the data or instructions consist of sound or video recordings (eg, music and movie CDs/DVDs), no deduction can be made for the value of the data or instructions from the price paid or payable for the imported goods.

Unsubstantiated adjustments

Where any adjustments cannot be made because of insufficient information, then the value for duty of the goods may not be able to be determined using the transaction value method (eg, where the actual costs of transporting the goods to New Zealand is not given by the importer in the case of a CIF invoice price).

In such situations, the importer may be asked to move to an alternative method by proceeding sequentially through methods 2 to 6. Nevertheless, before rejecting the transaction value method, consideration should be given to whether alternative information is available that could be used to verify the additions or deductions to be made.

Methods 2 and 3: Identical and similar goods

The identical and similar goods methods (clauses 9 to 12 of Schedule 4 of the CEA 2018) use the transaction value of identical/similar goods, exported at the same or substantially the same time as the goods being valued, and sold at the same trade and quantity levels as the imported goods.

The identical and similar goods methods can only be used when the imported goods cannot be valued under the transaction value method.

According to the interpretation clause 2(1) of Schedule 4 of the CEA 2018:

Term	Meaning
Identical goods	Means goods that: › are the same in all respects as the goods being valued including physical characteristics, quality, and reputation, except for minor differences in appearance that do not affect the value of the goods; and › were produced in the same country as the goods being valued; and › were produced by, or on behalf of, the person who produced the goods being valued; but

	› does not include goods with engineering, development work, artwork, design work, plans, or sketches undertaken in New Zealand and supplied (directly or indirectly) by the buyer of the goods free of charge, or at a reduced cost, for use in connection with the production and sale for export of those goods.
Similar goods	Means goods that: › closely resemble the goods being valued, with component materials and parts and characteristics that are functionally and commercially interchangeable with the goods being valued, with comparable quality and reputation; and › were produced in the same country as the goods being valued; and › were produced by, or on behalf of, the person who produced the goods being valued; but › does not include goods with engineering, development work, artwork, design work, plans, or sketches undertaken in New Zealand and supplied (directly or indirectly) by the buyer of the goods free of charge, or at a reduced cost, for use in connection with the production and sale for export of those goods.

Where there are no identical or similar goods produced by the same person (who produced the goods being valued), then identical or similar goods (as the case may be) produced by a different person in the same country may be taken into account.[17]

Requirements of transaction value of identical or similar goods

For the transaction value of **identical goods** or **similar goods** previously sold for export to New Zealand to be applicable, that transaction:

- must have already been accepted under Method 1 (transaction value method) by Customs, and
- must have taken place at the same or at substantially the same time as the goods being valued, and
- whenever possible, must be at the same trade level and in substantially the same quantities as the goods being valued.

If such conditions do not exist, a transaction of identical or similar goods occurring under any one of the following conditions may be used. A sale at:

- the same commercial level but in different quantities, or
- a different commercial level but in substantially the same quantities, or

[17] Refer clause 2(3) of Schedule 4.

- a different commercial level and in different quantities.

In these situations, adjustments to the value will need to be made to account for different trade levels and/or quantities, and where necessary, any commercially significant differences in the transportation costs.

Any adjustment to the value of identical goods or similar goods made because of different trade levels or quantities must be based on evidence. The evidence must establish the accuracy of the adjustment (eg, valid price lists for different trade levels or different quantities). If such an amount cannot be determined, the Customs value of the goods cannot be determined using the transaction value of those identical goods or similar goods.

Lastly, in cases where there are two or more transaction values of identical/similar goods that meet the requirements of Method 2 or 3, then the Customs value of the goods being valued is determined based on the lowest transaction value.

Limited application in New Zealand of the identical goods and similar goods methods of valuation

Often, goods that are identical or similar to the goods being imported cannot be found in New Zealand, since the company (importer) is often the sole importer of the goods. Furthermore, even if Customs holds information about the Customs value of identical or similar goods previously imported, commercial confidentiality would prohibit the release of this information to the importer. Therefore, in normal circumstances, there is limited application of the identical or similar goods valuation methods.

The most likely circumstances would be the import of **replacement** goods, which are supplied to the importer free of charge (vis-à-vis the transaction value of the originally imported goods could be used to establish the Customs value of the replacement goods). The other situation is when a buyer is given free samples or goods by the seller (eg, the purchaser buys 10 products and is given one product free by the seller).

Example: A New Zealand importer is sent a replacement widget from Singapore at no cost, to replace one that was received in a faulty or broken state. The Customs value of the replacement widget can be determined using the price paid for the broken one, as it can be considered to be an identical good.

Method 4: Deductive value

The deductive method determines the value for duty of the goods based upon the resale price in New Zealand, subject to allowable deductions, to arrive at a value at the point of export. The goods are initially imported through use of a provisional value. See clauses 13 to 18 of Schedule 4 of the CEA 2018.

The deductive value method can only be used when the imported goods cannot be valued under the transaction value method, identical goods method and similar goods methods. For the deductive value method to be applicable:

- the imported goods must be intended for resale in New Zealand in the same condition as imported (**Note:** the deductive value method can still apply if the goods need to undergo further processing in New Zealand provided the nature of the goods has not changed)
- the sale in New Zealand must take place between unrelated parties
- the sale must take place at, or about the time of import of the goods being valued. If no sale took place at, or about the time of import, it is permitted to use sales up to 90 days after import of the goods being valued.

The order of consideration of the deductive value method can be reversed with the computed value method, upon written request from the importer.[18]

The general approach of the deductive value method is that valuation begins with the resale price in New Zealand of the goods, or of identical or similar goods. Appropriate deductions are then made to arrive at a value at the point of export (FOB value).

The deductive value method would generally be suited to those cases where the importer does not have title to the goods, and the goods are imported into New Zealand for resale. Examples of situations where the deductive value method of valuation can be used are:

- goods imported into New Zealand on a consignment basis (eg, to be sold at auction)
- an overseas company transfers goods to its own branch in New Zealand, with the branch office then selling the goods (which still belong to the overseas company)
- goods delivered to an agent of the supplier, who is based in New Zealand and who does not have title to the imported goods.

An importer using the deductive method of valuation should be on the Provisional Values Scheme, as they would need to provide a provisional value for their goods at the time of import, and reconcile the final value when their goods are resold in New Zealand.

Calculation of Deductive Value

The formula for calculating the deductive value is:

Resale price of imported goods in New Zealand (at which the greatest number of units are sold) less either:

- commission received by New Zealand distributor, or
- profit and general expenses incurred by New Zealand distributor, and
- any Customs duty or other taxes payable in New Zealand (if not included as a general expense above).

To calculate the deductive value, the following needs to be established:

- what is the resale “price per unit” of the goods

[18] Refer clause 4(5) of Schedule 4.

- does the importer or New Zealand distributor receive a commission or profit when the goods are sold
- if a commission or profit is received, how much is it
- if a profit is made by the distributor, what is the margin of profit, and is this (with expenses) consistent with similar operations.

Price per unit

The price per unit is determined by ascertaining the unit price for sales of the goods, at which the greatest number of units are sold, at the first trade level after import (refer below) to persons who:

- were not related to the persons who they bought the goods from at the time the goods were sold to them, and
- had not supplied, directly or indirectly, free of charge or at a reduced cost, for use in the production and sale for export of the goods, any assists provided by the buyer to the supplier.

The purpose of the "first trade level after importation" provision is to exclude the use of sales made after the importer has sold the goods.

Sufficient sales must have been made to allow a determination of the price per unit of the goods.

The price per unit must be verifiable by Customs with reference to the importer's records, for example, a computer printout of sales and payments, sales ledger, inventory records, sales invoices, or documentary evidence submitted to Inland Revenue.

The importer must also show proof of the number of units that have been sold at the resale price. The decision about what is a sufficient number of units sold will be made on a case-by-case basis, depending on the circumstances and the marketing practices surrounding the import and the sales in New Zealand. For example, the unit price at which the greatest number of goods is sold would not be acceptable if the number of goods sold at that price is only a small percentage of the total sales of those goods. However, there will be situations when a single sale of a good may be sufficient to determine the price per unit (eg, specialised machinery).

The following examples illustrate how the price per unit is established in different situations.

Example One: Imported goods are sold in New Zealand to different wholesalers in various quantities and at various prices.

In this example, the greatest number of units sold at the same price is 65. Therefore, the price per unit is $90.

Sales

Sale quantity	NZ$ Unit price
40 units	$100
30 units	$90

Sale quantity	NZ$ Unit price
15 units	$100
50 units	$95
25 units	$105
35 units	$90
5 units	$100

Total Sales

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

Example Two: Goods are sold by the importer to various commercial levels in New Zealand:

In this example, the greatest number of units, 7000 in total, are sold at $1.00. Therefore, the price per unit is $1.00.

Sales to Distributors

Sales quantity	NZ$ Unit price
6000 units	$0.95
5700 units	$0.98
1000 units	$1.00

Total Sales Wholesalers

Sales quantity	NZ$ Unit price
2000 units	$1.00
1900 units	$1.04
1500 units	$1.06

Total Sales to Retailers

Sales quantity	NZ$ Unit price
4000 units	$1.00
2500 units	$1.08
1500 units	$1.10

Total Sales

Total quantity sold	NZ$ Unit price
6000 units	$0.95
5700 units	$0.98
7000 units	$1.00
1900 units	$1.04
1500 units	$1.06
2500 units	$1.08
1500 units	$1.10

Deductions from the price per unit

Once the price per unit is identified, deductions must be made to arrive at the Customs value of the goods at the point of export (FOB value).

Clauses 18(1) and (2) of Schedule 4 of the CEA 2018 require the following four categories of deductions to be made.

- The amount of commission earned on a unit basis in connection with sales in New Zealand for goods of the same class or kind as compared to the imported goods; **OR** the amount for profit and general expenses, including all marketing costs, considered together as a whole, that is generally reflected on a unit basis in connection with sales of goods of the same class or kind as those goods.
- Reasonable costs, charges and expenses incurred for the transportation and insurance of the goods within New Zealand and reasonable associated costs, charges, and expenses not deducted under category 1 above.
- The costs, charges, and expenses referred to in clause 7(c)(i) of Schedule 4 of the CEA 2018 incurred not already deducted under category 1 above.
- Customs duties and other taxes payable in New Zealand due to the import or sale of the goods not already deducted under category 1 above.

The deductions in category 1 above (in clause (18)(1)(a) of Schedule 4 of the CEA 2018) would depend on the facts and circumstances of the case. These deductions can be claimed through either of the following alternatives:

(a) the commission is made by an agent who receives commission

(b) the mark-up of the goods reflects the importer/seller's profit and general expenses.

The amount of commission or the amount for profit and general expenses referred to in category 1 (clause (18)(1)(a) of Schedule 4 of the CEA 2018) is calculated on a percentage basis, and the amounts determined based on information prepared in a manner consistent with generally accepted accounting principles supplied:

(a) by or on behalf of the importer of the goods being valued; or

(b) where the information supplied by the importer in (a) above is not sufficient, the Chief Executive or delegated officer believes that sufficient information can be obtained from an examination of sales in New Zealand of the narrowest group or range of goods of the same class or kind as the goods being valued.

Confirm that other deductions have been calculated correctly eg, transportation costs within the country of import, duties and taxes, overseas freight charges.

The simple example below illustrates how the price per unit ($90 from Example One above) is adjusted to establish the deductive value for the determination of the Customs value.

In this example the importer deducts a commission instead of profit and general expenses because they received a commission on sales in New Zealand.

Price per unit	$90.00	[determined under clause 15(2)]
Less deductions		
Commission	$6.00	[clause 18(1)(a)(i), and 18(2)]
Inland transport	$1.50	[clause 18(1)(b)(i)]
Insurance	$1.25	[clause 18(1)(b)(i) and clause 18(1)(b)(ii)]
International transport	$7.50	[clause 18(1)(b)(ii)]
Packing costs	$0.75	[clause 18(1)(b)(ii)]
GST	$13.50	[clause 18(1)(b)(iii)]
TOTAL DEDUCTIONS	$30.50	
Customs Value	**$59.50**	

Goods sold after undergoing further processing in New Zealand

The importer of the goods may request that the goods be valued under the deductive value method if imported and then sent for further processing. In special cases, this includes where the goods being valued, or identical or similar goods, are not sold in New Zealand in the condition in which they were imported, but instead are being valued after being assembled, packaged, or further processed, and are then sold before the expiration of 90 days after their import.

The deductive value under this provision can only be established in situations where the value added to the goods that is attributable to the assembly, packaging, or further processing can be determined based on sufficient information. If there is insufficient information to determine that value, the goods cannot be valued under the deductive value method.

The same method for determining the deductive value as outlined in the procedures above is used. However, an additional deduction from the price per unit is required for the value added to the goods that is attributable to the assembly, packing, or further processing in New Zealand.

Method 5: Computed value

The computed value method is determined using the built-up cost of the imported goods, and can be summarised as:

- Production costs plus the usual profit and general expenses made by the producer.

See clause 19, and clause 20 of Schedule 4 of the CEA 2018.

The computed value method can only be used if the importer shows the imported goods cannot be valued under the transaction value method, identical goods method, similar goods method, or deductive value method.

In accordance with clause 4(5) of Schedule 4 of the CEA 2018, the order of consideration of the computed value method can be reversed with the deductive value method, upon written request from the importer.

As the determination of a computed value requires examination of the costs of producing the goods being valued, the use of the Computed Value method would generally be suitable where the buyer and seller are related, and the producer of the goods is prepared to supply to Customs the necessary costing information.

Calculation of computed value

The computed value of imported goods consists of the sum of the production costs:

- the costs, charges, and expenses incurred, or the value of, materials employed in producing the goods being valued
- the costs, charges, and expenses incurred, or the value of, the production or other processing of the goods being valued
- the packing costs, charges, and expenses
- the value of any of the goods and services supplied, directly or indirectly, by the buyer of the goods for use in connection with the production and sale for export of the imported goods, that are not reflected in the producer's costs (ie, assists)
- the value of any materials, component parts, and other goods incorporated in the imported goods for repair, or refurbishment of, those goods prior to export of the goods to New Zealand, and the price paid for the service of repair or refurbishment
- the costs, charges, and expenses incurred by the producer for engineering, development work, artwork, design-work, plans, or sketches undertaken in New Zealand and supplied, directly or indirectly, by the buyer of the goods being valued for use in the production and sale for export of those goods to the extent that such elements are charged to the producer of the goods.

Plus, profit and general expenses being:

- the amount of profit and general expenses, considered together as a whole, generally reflected in sales for export to New Zealand of goods of the same class or kind as the goods being valued, made by the producers of the goods. The buyers in New Zealand must not be related to the producers from whom they buy the goods at the time the goods are sold to them.

Note: The expression "goods of the same class or kind" (above) means imported goods that:

- are within a group or range of imported goods produced by a particular industry or industry sector that includes identical goods or similar goods to the goods being valued, and

- were produced in and exported from the country in which the goods being valued were produced and exported.

The calculation of the combined costs of materials, production, and related goods and services incurred in producing the imported goods (referred to as “production costs”) are based on the commercial accounts of the actual producer of the imported goods. The profit and general expenses amount must be consistent with producers of similar goods.

Production costs

To determine the production costs, the actual amounts incurred in producing the goods must be ascertained.

Costs, charges, and expenses must be determined based on:

- the commercial accounts of the producer of the goods being valued, or
- any other information relating to the production of the goods being valued.

This information must be supplied by, or on behalf of, the producer of the goods and prepared in a manner consistent with accepted accounting principles of the country of production of the goods being valued.

Any costs such as packing costs and charges, assists, and engineering work undertaken in New Zealand must be added to the production costs, if they have not been included in the producer’s accounts.

In some cases, the producer’s costs may be an amount incurred for a variety of transactions or products. In these cases, the value of such costs, charges, or expenses must be apportioned to the imported goods in a reasonable manner and in accordance with accepted accounting principles.

It is possible certain costs, charges, and expenses can be categorised as production costs or as part of the producer’s general expenses. For example, transportation costs and depreciation on a production plant would mostly be treated as part of production costs, but in some cases, these costs might be deemed general expenses.

Note: Care should be taken to ensure that a particular cost is not included twice when figures from two sources are used.

Profit and general expenses

In practical terms, profit is the proceeds or income received by the producer from the transaction as a result of subtracting the various costs and expenses from the proceeds of sale of the goods.

General expenses (see clause 20(4) of Schedule 4 of the CEA 2018) means the direct and indirect costs, charges, and expenses of producing and selling goods for export (other than those already included in the production costs). The amount of profit and general expenses (considered together as a whole) must be calculated on a percentage basis and based on information prepared in a manner consistent with acceptable accounting principles of the country of production.

Information on the amount of profit and general expenses (as referred to in clause 20(1)(b) of Schedule 4 of the CEA 2018) must, in the first instance, be supplied by, or on behalf of, the producer of the goods being valued.

If the information supplied by, or on behalf of, the producer of the goods is not sufficient then the amount to be added for profit and general expenses can be based on information drawn from an examination of sales for export to New Zealand of the narrowest group, or range of goods of the same class or kind from which sufficient information can be obtained. Insufficient information is a different issue than an officer's concerns about the truth or accuracy of the information being presented.

In cases where the producer's figures for profit and general expenses together are lower than those usually reflected in sales for export to New Zealand, the actual profit figures can still be accepted, if the producer can demonstrate that there are valid commercial reasons to justify the figures. Some examples of valid reasons demonstrating a drop in profit margin would be an unexpected drop in demand for the goods, or the product is being launched in New Zealand and the pricing policy reflects usual industry pricing policies.

If the import is on an ongoing basis, the producer's figures for profit should be reviewed regularly to ensure that the computed value of the goods is up to date.

Note: General expenses are often overhead items that do not vary with the volume of production or sales. Since the amount of profit and general expenses must be considered as a whole, it is possible for goods that have a low production volume to have a high percentage of general expenses per unit. In these circumstances, the profit will be low or non-existent. In such cases the amount can be accepted, if it is consistent with what is usually reflected in sales of goods of the same class or kind.

Method 6: Residual basis of valuation

The residual basis method refers to a flexible interpretation of one of the previous methods to determine the value for duty, however minimum, arbitrary, or made-up values cannot be used. See clause 21 of Schedule 4 of the CEA 2018.

The residual basis of valuation can only be used if the importer shows that the imported goods cannot be valued under the transaction value method, identical goods method, similar goods method, deductive value method, or computed value method. In applying the residual basis of valuation to determine method, or the Customs value of imported goods, the Customs value should be determined based on:

- information available in New Zealand
- a value derived from the methods of valuation set out in previous valuation methods interpreted in a flexible manner, and reasonably adjusted to the extent necessary to arrive at a Customs value of the goods.

However, clause 21(2) of Schedule 4 of the CEA 2018 states that a Customs value shall not be determined on the basis of:

- the selling price in New Zealand of goods produced in New Zealand, or

- the acceptance of the higher of two alternative values, or
- the price of goods on the domestic market of the country of export, or
- the cost of production, other than computed values that have been determined for identical or similar goods in accordance with clause 20 of Schedule 4 of the CEA 2018, or
- the price of goods for export to a country other than New Zealand, unless the goods were imported into New Zealand, or
- minimum Customs values, or
- arbitrary or fictitious values.

The approach used will need to be considered on a case-by-case basis depending on the circumstances, and the information available.

Information available in New Zealand

The phrase "using information available in New Zealand" in clause 21(1) of Schedule 4 of the CEA 2018 does not mean the information must originate from New Zealand, only that such data is available in New Zealand. The source of the information would therefore not be a barrier provided the information was available in New Zealand and the truth or accuracy of the information could be satisfied.[19]

Interpreted in a flexible manner

When flexibly interpreting the methods of valuation set out in clauses 4 to 21 of Schedule 4 of the CEA 2018, there is no mandatory requirement that the hierarchical order of clauses 4 to 21 is followed, but where possible, this sequence should be used. For example, where a residual value could be established using either a flexible application of the transaction value method or the deductive value method, the value determined from the flexible application of the transaction value method should take precedence.

On occasion, it may not be possible to determine the Customs value under clause 21 by flexible application of clauses 4 to 21 of Schedule 4 of the CEA 2018. In such circumstances, the Customs value may be determined using other reasonable methods provided they are not precluded by clause 21(2) of Schedule 4 and are consistent with the principles and general provisions of the Customs Valuation Agreement.[20]

Some examples of "interpreted in a flexible manner" are:

- Price paid or payable
    - The importer was given some new products free of charge by the supplier, together with the supplier's price lists for future orders of those goods. The list prices of the goods could

[19] 9 Refer Advisory Opinion 12.3 (Use of Data from Foreign Sources in Applying Article 7) issued by the Technical Committee on Customs Valuation (TCCV).
[20] Refer Advisory Opinion 12.1 (Flexible Application of Article 7 of the Agreement) issued by the Technical Committee on Customs Valuation (TCCV)

be flexibly interpreted as the transaction value of the goods given free of charge to the importer.

- Identical or similar goods
  - There was no import of identical or similar goods at the same, or substantially the same time as the goods being valued, but there was record of an import of identical or similar goods that took place at another time. It may be possible to use the transaction value of the previously imported goods as the basis for determining the Customs value under clause 21 of Schedule 4 of the CEA 2018 (by flexibly interpreting the requirements under the identical goods or similar goods methods).
- Deductive method
  - There were no sales of the goods within New Zealand that met the 90-day period requirement under clause 14 of Schedule 4 of the CEA 2018, but there were sales that occurred after that period. It may be possible to use the price per unit from those sales as the basis for determining the Customs value under clause 21 (by flexibly interpreting the 90-day period requirement under the deductive value method).

Situations where the residual basis of valuation could be applied

Examples of common situations where it may be necessary to apply the residual basis of valuation would be when importing:

- gifts, trade samples
- personal property
- goods under a hire or leasing agreement
- animals for breeding purposes.

Common valuation questions

Obtaining an independent valuation

On occasions, an independent valuation may be necessary to help determine a Customs value under the residual basis of valuation.

An independent valuation of imported goods should be:

- carried out by an independent assessor located in New Zealand (at the importer's own expense)
- based on the condition of the goods at the time of import; and
- provided on the basis of the sale value of the goods in New Zealand, less reasonable deductions as allowed under clause 18 of Schedule 4 of the CEA 2018 (eg, for a motor vehicle, the New Zealand car dealer's commission, New Zealand GST, international freight).

Any “dealer’s commissions”, “New Zealand GST” and “international freight” etc. should NOT be automatically deducted, without taking into consideration the manner in which the value of the goods is arrived at by the independent assessor. For example, if the assessed value provided by independent assessment did not include New Zealand GST, an amount for New Zealand GST should not be deducted from the assessed value to arrive at the Customs value.

The assessed value of the goods provided by the independent assessor must be based either on a physical examination of the goods, or examination of the records of the goods (eg, logbook, maintenance record).

Valuation of imported personal property

An individual arriving in New Zealand may bring in valuable personal property such as computers or furniture, which they have owned and used for many years overseas. In such cases, the person may no longer have information of the goods purchase price or value.

Since the import of the personal property is not the subject of a sale between a buyer and seller, the transaction value method cannot be applied to determine the Customs value. It is also unlikely the Customs value of the personal property can be determined under Methods 2 to 5 (transaction value method, identical or similar goods, deductive method, or computed method). The only option to determine the Customs value of the personal property is using Method 6, residual basis of valuation.

Under the residual basis of valuation, depending on the information available, it may be possible to use one of the following options to determine the Customs value:

- the valid list price for identical or similar goods (new or second-hand goods, as may be applicable) representing a sale for export to New Zealand, or
- a valuation given by an independent assessor, or
- the value of the goods, as recorded based on a recent valuation.

Valuation of privately imported motor vehicles, boats and pleasure crafts

Visitors, new migrants and returning residents may sometimes bring their own motor vehicle, boat, pleasure craft or aircraft (newly purchased or second-hand) into New Zealand.

Two types of situations may arise:

- the vehicle/vessel/aircraft is purchased overseas and imported by the owner without intervening use, or
- the vehicle/vessel/aircraft is purchased overseas and imported by the owner after additional use.

Importation without intervening use

If the import was made following a purchase overseas without intervening use, the price actually paid or payable in connection with that transaction should serve as the basis for establishing the

Customs value (as long as the transaction satisfies the transaction value method conditions, eg, the sale is between two independent parties).

Should the vehicle/vessel/aircraft have any repairs or servicing after the purchase but before import into New Zealand, the transaction value must include the value of all materials, component parts and goods incorporated into the vehicle/vessel/aircraft, as well as the price paid for the service or repair or refurbishment.

Importation after additional use

If the vehicle/vessel/aircraft is imported after additional use since the purchase, then the establishment of the Customs value would depend on whether it:

- can still be regarded (for valuation purposes) as being the same vehicle/vessel/aircraft as when last sold, and
- had been “personally owned and personally used” by the importer.

If both these requirements are satisfied, the Customs value may be determined by using the original purchase price, less a rate of depreciation for the length of period which the importer had owned and used the vehicle/vessel/aircraft.

The depreciation period is calculated from the time of delivery (the date possession is taken following purchase) until the date on which the ship or aircraft carrying the vehicle/vessel/aircraft arrives in New Zealand territorial waters.

Depreciation rate to be applied

The rate of depreciation should follow the Inland Revenue (IR) straight-line depreciation formula.

The IR rates provide a reasonable and fair depreciation rate for imported goods. These rates have been calculated on the basis of the estimated life of the type of goods being imported, and although IR prescribe both a straight-line and a diminishing value rate, for Customs valuation purposes the straight-line rate is to be used.

Allowance for depreciation is only applicable to vehicles that have been personally owned and used overseas by the importer for more than three months, and to a maximum depreciation rate of 75%. For entry purposes a vehicle/vessel/aircraft must have a minimum Customs value of NZD$100.

The current IR depreciation rates for the different vehicles/vessels/aircraft can be found in a document titled IR265 – General Depreciation Rates at New Zealand Inland Revenue’s website.

Where the vehicle is no longer the same as purchased, or is no longer personally owned

If there is a long gap between the date of purchase and the date of import into New Zealand, the vehicle may no longer be the same as when last sold (eg, the owner could have upgraded or changed certain parts).

In the event that:

- there is no price paid or payable for the vehicle/vessel/aircraft, or
- the imported vehicle/vessel/aircraft is no longer the same as when last sold, or
- the vehicle/vessel/aircraft was not personally owned and used by the importer whilst overseas,

then the Customs value of the vehicle must be determined by an alternative method of valuation, Method 2 to 6 of Schedule 4 of the CEA 2018, or another approach under the residual basis of valuation.

Depending on the circumstances of the import and nature of the goods, approaches to be considered to determine the Customs value would be based on:

- the valid list price for identical or similar goods representing a sale for export to New Zealand
- a valuation given by an independent assessor (**Note:** the independent valuation will have to be carried out by an independent motor vehicle/vessel/aircraft trader in New Zealand after import, on the basis of the sale value of the vehicle in New Zealand, less the allowable deductions as set out under sub-clause 18(1) and (2) of Schedule 4 of the CEA 2018, if applicable (eg, the trader's commission, NZ GST).

Valuation of goods imported under a hire or leasing agreement

As hire or leasing transactions by their very nature do not constitute a sale for export to New Zealand, the transaction value method cannot be applied to determine the Customs value.

Assuming that the Customs value of the goods cannot be determined under Methods 1 to 5 (transaction value method, transaction value of identical or similar goods, deductive value, or computed value), the Customs value must be determined under Method 6 (residual basis of valuation). Depending on the information available, it may be possible that the Customs value of the goods could be determined using one of the following:

- a valid list price for identical or similar equipment representing a sale for export to New Zealand
- a valuation given by an independent assessor
- the purchase option price specified in the lease agreement (if available)
- the lease charges paid or payable for the imported goods during the “economic life” of the goods (as distinct from the lease period)
- the value of the goods, as recorded based on a recent valuation.

Treatment of credits for earlier transactions under the transaction value method

Often, if goods are faulty or require exchange, the seller will account for this by offering the buyer credit against their next purchase, which has the effect of reducing the amount that the buyer must pay for the next import. As an example, this transaction will often be reflected on an invoice as follows:

100 x Widgets	$10,000
Less: Credit for faulty Widgets	$600
==========	==========
Total to pay	$9,400

For Customs valuation purposes, it is important to remember that the value for the imported goods must relate to the goods that are actually imported into New Zealand. Any credit offered for an earlier transaction must be disregarded when determining the valuation of the goods being imported. This would mean that, in the example given above, the price paid or payable when determining the transaction value of goods under clause 4 of Schedule 4 of the CEA 2018 would be $10,000 (*not* $9,400).

In addition, Customs' treatment of the previous transaction that gave rise to the credit must be decided separately from any decision on the proper Customs value of the current shipment.

Valuation of goods purchased on CIF, DDP or similar basis

Guidance on how to account for international transportation and insurance costs, where goods have been sold for export to New Zealand on a Cost, Insurance and Freight (CIF) or similar basis is set out in Customs Release number 188, on 8 February 2013 (as below).

"These guidelines should be used by anyone lodging import entries to ensure that a consistent approach is followed.

In general, the guidelines provide for the following scenarios:

1. All costs are identified separately

If the cost of the goods and costs of international transportation and insurance are identified separately, the Customs value of the goods must be determined, and the Customs value along with the costs of international transportation and insurance should be entered into the relevant fields of the import entry.

2. No breakdown of costs are provided

If the cost of the goods and costs of international transportation and insurance are bundled into a single figure, the person lodging the import entry should take all reasonable steps to obtain a breakdown of the transportation and insurance costs, supported by suitable evidence, before completing the relevant fields of the import entry.

3. Breakdown of costs cannot be obtained

If the person lodging the import entry has exhausted all reasonable avenues to obtain the breakdown of costs, eg, through making enquiries with the importer, seller or freight forwarder, the import entry may be treated in the following way:

a) *Provided the cost of the goods and costs of international transportation and insurance are included in the bundled price, the total CIF price (including any required additions) may be declared as the Customs value. A value of $0.00 may be entered in the freight and insurance fields of the import entry.*

b) The Customs value must be established by proceeding sequentially through the other methods of Customs valuation (refer Schedule 4 of the Customs and Excise Act 2018) until the Customs value can be determined. A written independent quote with the same shipping route must also be obtained from a freight forwarder. The determined Customs value and quoted transportation and insurance costs are then to be entered into the appropriate fields of the import entry.

Note:

The treatment applied under (3) above should not be taken as the default option. All reasonable steps must be taken to obtain a breakdown of individual costs before the import entry is submitted using the third option above.

For either treatment detailed in (3) below, the person lodging the import entry must make a brief comment in the remarks field specifying which treatment has been applied."

Treatment of price review or escalation clauses under the transaction valuation method

In commercial practice, some contracts (commonly those for a long period of time) may include a price review or price escalation clause whereby the price is only provisionally fixed. The final determination of the price payable for the goods is subject to certain factors contained in the provisions of the contract. Examples of situations where this may occur include:

- goods are delivered after the original order is placed (eg, turnkey infrastructure or capital equipment made to order). The contract may specify that the final price is determined on an agreed formula that recognises increases or decreases in elements such as labour cost, raw materials, overhead costs and other inputs incurred in the production of the goods
- the quantity of goods ordered is manufactured and delivered over time. In this situation, the price of the goods will change from year to year as dictated by the terms of the contract; however, each price will be derived from a formula specified in the original contract.

Where imported goods are being valued according to the transaction value method, it is important to determine the full price actually paid or payable. Therefore, any contractual stipulations such as a price escalation clause that affects the value of the goods must be included in the Customs value.

The existence of a price escalation clause does not prohibit goods from being valued using the transaction value method. Since the price paid or payable for the goods can only be determined by reference to the terms specified in the contract, price escalation clauses cannot be considered as a condition or consideration for which a value cannot be determined according to clause 5(b) of Schedule 4 of the CEA 2018.

When price review clauses have already been taken into account in the value of the goods at the time of import, no problems arise as the price actually paid or payable is already known.

Price review clauses become more problematic when they are linked to variables that are only known after import. If this is the case, registration in the Provisional values scheme or a voluntary

disclosure may be required to determine the final Customs value of the goods when all the information related to the price review clause is known.

Treatment of warranty payment under Transaction Value method

Warranty is a form of guarantee on goods, which covers costs of correcting defects or replacement subject to certain conditions being met by the warranty holder.

Warranty payments may sometimes be included in the price paid for the goods. On occasions, the amount paid for the warranty may be separately identified on the invoice, or in a separate invoice.

Whether or not a warranty payment should be included in the calculation of a Customs value, depends on:

- whether the warranty payment is linked to the contract of sale of the goods (ie, the warranty is a guarantee for the goods), and
- who the warranty payment is paid to.

In general, if the warranty payment is paid by the buyer to the seller, and the charge forms part of the invoice price of the goods, the payment should be considered as part of the price actually paid or payable. The payment will need to be included when determining the Customs value. There is no provision under clause 7(c) of Schedule 4 of the CEA 2018 for the warranty payment to be deducted, even if it is distinguished from the price actually paid or payable for the goods.

However, if the warranty is undertaken by the buyer on their own account, and the warranty payment is made by the buyer to a third party, then the payment should not be included in the Customs value (as the payment does not meet the requirements of price paid or payable).

The treatment of commissions and brokerage

When calculating the transaction value of goods under clause 7 of Schedule 4 of the CEA 2018, commission and brokerage fees (excluding any buying agent fees) incurred by the buyer in respect of the imported goods must be included in the Customs value:

- where the buying commission is included in the invoice for the goods, the commission automatically becomes dutiable, as there is no legislative provision to deduct it from the price paid or payable
- only fees paid by the buyer to their own representative are excluded. This is on the basis that if the buyer goes overseas to negotiate the purchase, or sends a salaried employee, their travel expenses and salaries are considered the buyer's own cost/expenses and are not to be added to the price.

A person (intermediary) who assists a buyer with the purchase of goods from overseas can either be a buying agent or a selling agent. Since fees paid or payable to the buyer's own representative need not be added to the price paid or payable, it is essential to identify what the nature of services being provided by the intermediary are to determine whether or not the commission or brokerage is required to be added to the value of the goods.

The following are common characteristics of buying agents and selling agents.

Buying Agents

A buying agent is a person who acts for the account of the buyer to buy goods overseas, rendering the buyer with the services of finding suppliers, informing the seller of the desires of the buyer, collecting samples, inspecting goods, and can include arranging the insurance, transport, storage, and delivery of the goods.

The buying agent's remuneration is usually termed a "buying commission" and is paid by the buyer to the agent separate to the purchase of the goods.

Selling Agents

A selling agent is a person who acts for the account of a seller rendering the seller with the services of finding buyers, collecting orders, informing the seller of the buyer's requirements, and can include arranging the insurance, transport, storage, and delivery of the goods.

Suppliers who deliver their goods using the services of a selling agent normally pay the selling agent directly and charge the buyer an "inclusive price". In such instances there is no need for the invoice price to be adjusted to take account of these services.

If the terms of a sale require the buyer to pay an additional commission (either to the seller or to the selling agent) that additional price must be added to the price paid or payable when determining the transaction value of the goods.

Brokers

There may be instances where a "broker" is involved in the transaction, and they are paid a "brokerage" fee. In general, there is no clear distinction between the term "buying/selling agents" and "brokers", and "commissions" and "brokerage". It is important the nature of the role must first be established in order to determine whether their fee should be included as part of the price paid or payable.

Where the term "broker" is used it generally refers to an intermediary who acts for both the buyer and the seller and has no role other than to connect both parties for the transaction. When the broker is paid by the supplier of the goods and the fee is included as part of the supplier's invoice, there is no need to adjust the price paid or payable. However, in cases where the broker is paid by both the seller and buyer, only the share of the brokerage paid by the buyer (as the seller's share would have been added to the invoice price) needs to be added to the price paid or payable, unless the amount paid by the buyer to the broker is considered to be a buying commission.

When is an intermediary a buying agent

A determination of whether or not the payments made to an intermediary should be treated as a buying commission will depend on the relevant facts and circumstances of each case, and the entire evidence available. No single factor can be considered as determinative of the issue.

The fact that an intermediary is referred to as a "buying agent" does not necessarily mean they are a buying agent. An important factor to consider is the role that the intermediary plays in the transaction.

The courts in New Zealand have provided guidance on the factors to be considered when determining whether or not a person is a buying agent. In Elitunnel Merchanting Limited V Regional Collector of Customs (Northern) (High Court, No 147/97, Auckland, 20 November 1998) Salmon J listed seven factors from the United States Customs publication titled Buying and Selling Commissions (1996)[21] in determining whether an intermediary is a bona fide buying agent:

- which party bears the risk of loss for lost or damaged merchandise? (generally, a buying agent does not bear the risk of loss)
- who absorbs the cost of shipping and handling? (generally buying agents do not absorb such costs)
- which party controls the manner of payment for the goods? (generally, a buying agent would not control how and when the seller is paid)
- could the buyer purchase from the manufacturer without using the services of the agent? (if the answer is no, the agent may be a selling agent)
- was the intermediary operating an independent business primarily for its own benefit? (if the answer is yes, it is possible that the intermediary is not an agent but an independent seller)
- is the intermediary financially detached from the manufacturer or seller? (if not, it is possible that the intermediary may not be acting on behalf of the buyer, but on behalf of the seller)
- what do the commercial documents show? (how are the parties referred to in the documents, is there a buying agency agreement, is there a purchase agreement and if so, who are the parties thereto).

Answering the questions listed above with the relevant facts and circumstances of the particular case will assist in determining whether or not the intermediary is a buying agent.

It is unlikely that an intermediary can be considered a buying agent if the assessment of the facts and circumstances indicate one or more of the following:

- the intermediary has more control over the buying process than the buyer
- the intermediary is acting on its own account
- the intermediary has proprietary interests in the goods.

Where any adjustments cannot be made due to insufficient information, the Customs value of the goods cannot be determined using Method 1 the Transaction Value Method as provided under Schedule 4 of the CEA 2018. The Customs value should be determined by proceeding sequentially through Methods 2 to 6 until the first method under which the Customs value can be determined.

[21] This publication was updated by the US Customs in 2000 and in October 2006, and is now entitled “What Every Member of the Trade Community Should Know About: Buying and Selling Commission”

Valuation of goods supplied “on consignment” basis

Some goods are traded under an "on consignment" arrangement that may lead to the true valuation not being known until the goods have been sold in New Zealand. For example, fresh produce shipped on consignment by an exporter to a commission agent in New Zealand for sale.

Upon import, the goods remain the property of the exporter. Once the agent finds a buyer in New Zealand, the agent will deduct its commission and other expenses and remit the balance to the exporter.

While such transactions are frequently referred to loosely as “sales on consignment”, they are not sales since the goods shipped remain the property of the exporter. The sale of the goods by the agent in New Zealand is a domestic sale, therefore there is no sale for export and no price which a transaction value can be based on. The Customs value of such goods cannot be determined using the transaction value method and must be determined by proceeding sequentially through the alternative methods of valuation outlined in Methods 2 to 6 of Schedule 4 of the CEA 2018, to the first clause under which a Customs value can be determined.

Under these circumstances, the exporter and their New Zealand agent may have arranged an agreed price at which the goods will be sold in New Zealand, prior to import. Please note that this “price” cannot be considered as the transaction value and should not be used as the basis for establishing the Customs value of the imported goods, as the intended “price” may not be the final price of the goods.

Valuation of goods re-imported into New Zealand after being exported

Sections 151 and 152 of the CEA 2018 allows goods that have been exported from New Zealand to be re-imported free of duty or at a rate or amount of duty determined by Customs. These goods must be re-imported in substantially the same condition as exported.

It is important to note that although goods re-imported into New Zealand may not have any duty payable, this does not mean that a Customs value need not be declared for the goods.

Valuation of goods re-imported under section 151 and 152 of the CEA 2018 must be in accordance with Schedule 4 of the CEA 2018.

For goods that will be in substantially the same condition as when they were exported - no repairs or refurbishment

- Section 151 of the CEA 2018 applies.
- The Customs value is the value of the goods as exported, applying the residual basis of valuation (see section 151(1) of the CEA 2018).
  - Refer to Part 6 of Schedule 4 for residual basis of valuation.
- When entering a lodgement within TSW, use a detail line with the item and Customs value of the goods, zero-rate charges payable and enter concession 109000D

For goods that will be in substantially the same condition as when they were exported, but have been repaired or refurbished

- Section 152 of the CEA 2018 applies.

- The Customs value is the value of the goods as exported, applying the residual basis of valuation (see section 152(1) of the CEA 2018).
  - Refer to Part 6 of Schedule 4 for residual basis of valuation.
- When entering a lodgement, use separate detail lines within TSW:
  - A detail line with the item and Customs value of the goods, zero-rate charges payable and enter concession 109000D.
  - An additional line with value of repair/refurbishment and charges payable.

  Note: Importers must pay normal tariff duty and GST on the 'cost of repair or refurbishment' unless the repair or refurbishment was done under warranty and the importer did not have to pay any charge for the repair or refurbishment.

Valuation of goods supplied free of charge, or which have no commercial value

It is common for certain imported goods into New Zealand to be supplied to an importer on a "free of charge" basis, or to be described as having "no commercial value". Examples of these include gifts, samples, promotional items, and stock transfers between related entities. Generally, such goods are of low value, but some may be high value products.

While the importer may not need to pay for the goods, it is important to note there is no legal basis for allowing goods to be entered on an import entry as having a nil value, as this practice is contrary to the principles of Customs valuation. This would result in a distortion of the import/export data and would return incorrect trade statistics.

In such cases, given there is no transaction value for the goods, the Customs value must be determined by proceeding sequentially from Method 2 to Method 6 (transaction value of identical or similar goods, deductive value, computed value, residual basis of valuation), to the first Method that can be used to determine the Customs value.

Depending on the situation, it may be possible to establish the Customs value of the goods under the identical or similar goods method (if the goods are shipped together with goods for which a sale has taken place). However, normally it would be necessary to determine the Customs value of the goods under Method 6 residual basis method, such as, by reference to the valid price list of the goods (representing a sale for export of such goods to New Zealand).

If there is doubt about the "no commercial value" tag applied to the goods, officers should verify the actual commercial transactions leading to the import, to ensure the correct Customs value is declared.

Valuation of replacement goods supplied free of charge

"Replacement goods" could be supplied to an importer free of charge if the goods originally supplied were:

- faulty, and are under a guarantee or warranty, or
- incorrect, or

- damaged in transit.

It is important to note that for Customs valuation purposes, the replacement goods must be treated as a separate matter from the originally imported goods.

Notwithstanding that the replacement goods are provided “free of charge” to the importer, the replacement goods must be treated as a new import, and the importer will have to pay tariff duty (if any) and GST on entry of the goods.

As the goods have no transaction value, the Customs value of the goods must be determined by proceeding sequentially from Method 2 to Method 6 (transaction value of identical or similar goods, deductive value, computed value, residual basis of valuation), to the first Method that can be used to determine the Customs value.

Depending on the situation, the Customs value of the replacement goods could be determined based on the Customs value declared for the originally imported goods (applying the identical goods value method), or by reference to the latest list price of the goods (representing a sale for export to New Zealand).

If the importer can show the originally (incorrectly or damaged) imported goods have been re-exported overseas or have been destroyed under Customs supervision, the importer can claim a refund of tariff duty on those goods, but the refund application is considered as a separate matter.

Treatment of overseas tax which has been refunded

It is not uncommon for importers to declare goods they purchased overseas, and hold supporting documents which show they have received a refund of internal taxes paid as part of the goods price.

When valuing such goods, the overseas taxes paid on the goods which has been refunded can be excluded from the VFD (although in general there is no provision to deduct such amount from the price paid or payable for the goods under Schedule 4 of the CEA 2018).

This exclusion is allowed in accordance with Paragraph 3 of Article VII of GATT, which reads:

- *‘3. The value for Customs purposes of any imported goods should not include the amount of any internal tax, applicable within the country of origin or export, from which the imported product has been exempted or has been or will be relieved by means of a refund.’*

For an importer to be able to exclude the internal tax paid from the Customs value, they need to be able to show written evidence that the internal tax:

- was included in the purchase of the goods, and
- has been or will be refunded, prior to the goods being entered.

In most circumstances, the payment and refund of the internal tax would be evidenced as follows:

Payment

- on an invoice showing the internal tax listed separately to the goods being purchased, and
- a receipt or evidence of payment showing the full amount has been paid.

Refund

- on an official notification from the issuing authority that the internal tax has been refunded, or
- an official notification from the issuing authority that the application has been received and will be paid.

If evidence of the refund is not produced prior to the goods being imported and entered, it may not be possible for the importer to subsequently claim a refund for the internal tax paid. This is because section 142 of the CEA 2018 only permits the Chief Executive to refund duty paid in error. If the overseas tax is refunded to the importer after they have entered their goods into New Zealand, the overseas tax may not be considered to have been paid in error, as it was correct at the time it was paid.

Note to users of this Guide

This document was compiled by Valuation, Origin and Classification (VOC). Should you require any further clarification or assistance on any of the contents please email voc@customs.govt.nz