



I assent,

TAUFA'AHAU TUPOU IV,

18th November, 2003.

### AN ACT

#### TO AMEND THE CUSTOMS AND EXCISE ACT

[4th of September 2003.]

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

- 1. (1) This Act may be cited as the Customs and Excise (Amendment No. 3) Act 2003. Short title and commencement
- (2) The Customs & Excise Act (Cap. 67) as amended, is in this Act referred to as the Principal Act.
- (3) This Act shall come into force on a day to be proclaimed by His Majesty in Council.
- 2. (1) Section 15 of the Principal Act is repealed. Amendment of section 15
- (2) Notwithstanding subsection (1), valuation of goods imported before the date of commencement of this Act shall continue to be valued under section 15 as if it has not been repealed.
- 3. The Principal Act is amended by inserting the following Part at the end of Part II - New PART 11A

#### "PART IIA

#### VALUATION OF IMPORTED GOODS

- Application** 44A. This Part shall apply to all goods imported on or after the date of commencement of this Act.
- Interpretation** 44B. (1) In this Part, unless the context requires otherwise -

“family” means, in relation to an individual, the husband or wife of the individual, a relative of the individual, and a relative of the individual’s husband or wife, and “relative” means mother, father, brother, sister, ancestor or lineal descendant and includes any person who is adopted legally or customarily by or as a sibling to the individual;

“foreign inland insurance” means the cost of any insurance relating to foreign inland freight;

“foreign inland freight” means the cost of transportation (including loading, unloading,

“foreign inland freight” means the cost of transportation (including loading, unloading, handling and other expenses associated with transportation) of the goods to the place in the country of export from which the goods were shipped to Tonga;

“identical goods”, in relation to imported goods, means goods that the Chief Commissioner is satisfied –

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

but does not include goods in relation to which –

- (i) art, design, development, or engineering work undertaken or substantially undertaken in Tonga; or
- (ii) models, plans, or sketches prepared or substantially prepared in Tonga,

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

“overseas freight”, in relation to imported goods, means amounts (but not an amount of overseas insurance) paid or payable in respect of the transportation of the goods from their place of export to Tonga;

“overseas insurance”, in relation to imported goods, means amounts paid or payable in respect of insurance of the goods from their place of export to Tonga;

“place of export”, in relation to imported goods, means:

- (a) the place where the goods were posted for export to Tonga;
- (b) the place in the country of export to Tonga that the goods were packed into a transport container;
- (c) if goods, not being goods referred to in (a) or (b), were exported from a country by air or sea – the place where the goods were placed on board a ship or aircraft for export to Tonga; or
- (d) in any other case – a place determined by the Chief Commissioner;

“price”, in respect of imported goods, means the sum of all amounts paid or payable, directly or indirectly, for the goods by or on behalf of the purchaser to or for the benefit of the vendor;

“similar goods”, in relation to imported goods, means goods that the Chief Commissioner is satisfied –

- (a) closely resemble the imported goods in respect of their component materials and characteristics;
- (b) are functionally and commercially interchangeable with the imported goods;
- (c) were produced in the same country as the imported goods; and
- (d) were produced by or on behalf of the same producer as the imported goods,

but does not include goods in relation to which –

- (i) art, design, development, or engineering work undertaken or substantially undertaken in Tonga; or
- (ii) models, plans, or sketches prepared or substantially prepared in Tonga,

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

“time of importation”, in respect of goods means the date on which the Chief Commissioner prescribes those particular goods are deemed to be imported.

- (2) For the purposes of this Part, two persons are related persons if –
- (a) both being natural persons –
    - (i) they are connected by family; or
    - (ii) one of them is an officer or director of a company controlled, directly or indirectly, by the the other;
  - (b) both being companies –
    - (i) both are controlled, directly or indirectly, by a third person (whether or not a company);
    - (ii) both together control, directly or indirectly, a third company; or
    - (iii) the same person (whether or not a company) is in a position to cast, or control the casting of 5% or more of the maximum number of votes that might be cast at a general meeting of each company;
  - (c) one person being a company is, directly or indirectly, controlled by the other person (whether or not a company);
  - (d) one person being a natural person, is an employee, officer, or director of the other person; or
  - (e) they are members of the same partnership.

- Customs value 44C. (1) For the purposes of any Act under which any import duty is imposed on imported goods by reference to their value, the value of the goods for customs purposes shall be the customs value determined in accordance with this section.
- (2) Subject to this section, the customs value of imported goods shall be the transaction value of the goods as determined under section 44E.

Transaction value of imported goods not to apply 44D

- (3) If the Chief Commissioner cannot determine the transaction value of imported goods or the transaction value cannot be used as a result of section 44D, the customs value of the goods shall be determined in accordance with the first of the following methods, applied in the order set out below, that can be applied in respect of the goods -
  - (a) the transaction value of identical goods as determined under section 44F;
  - (b) the transaction value of similar goods as determined under section 44G;
  - (c) the deductive value of the goods determined under section 44H; or
  - (d) the computed value of the goods determined under section 44I.
- (4) An importer may apply, in writing, to the Chief Commissioner for the order of consideration of the methods in subsection (3)(c) and (d) to be reversed.
- (5) An application under subsection (4) must be made before the Chief Commissioner commences to determine the customs value of the goods.
- (6) If the customs value of imported goods cannot be determined under subsection (3), the customs value shall be determined under section 44J.

Transaction value of imported goods not to apply

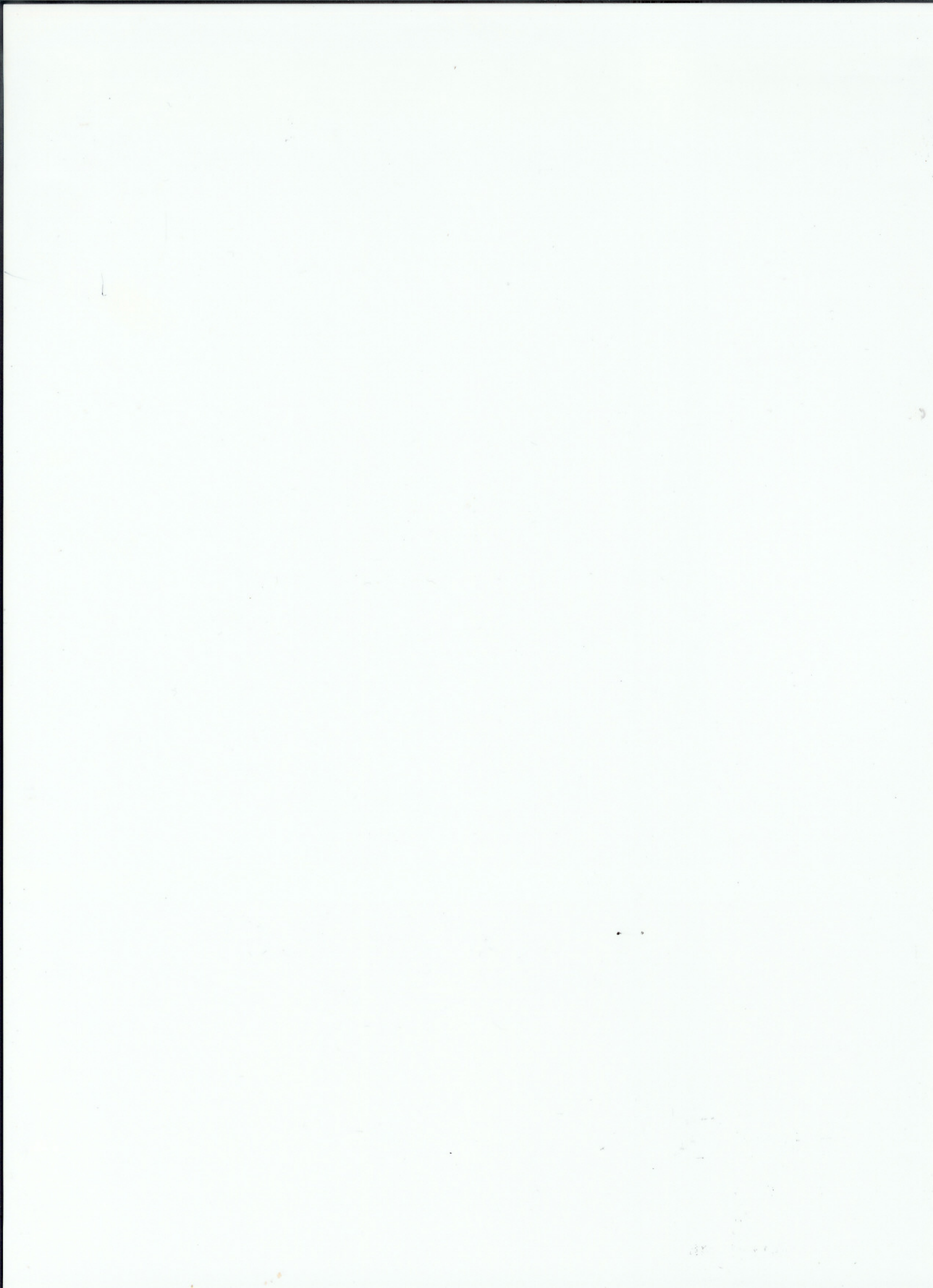
- 44D. The transaction value of imported goods shall not be the customs value of the goods if -
- (a) there is a restriction on the disposition or use of the goods by the purchaser, other than a restriction -
    - (i) imposed by Tongan law;
    - (ii) limiting the geographical area in which the goods may be resold; or
    - (iii) that does not substantially affect the value of the goods;
  - (b) the sale or price of the goods is subject to a condition or consideration for which a value cannot be determined;

- (c) part of the proceeds of any disposal, use or resale of the goods by the purchaser accrues, directly or indirectly, to the vendor, unless an appropriate adjustment can be made in terms of section 44E(2)(g); or
- (d) the vendor and purchaser are related persons at the time the goods were sold for export unless -
  - (i) the Chief Commissioner is satisfied that the relationship did not influence the price paid or payable for the goods; or
  - (ii) the importer satisfies the Chief Commissioner that the transaction value of the goods closely approximates the transaction value, deductive value, or computed value of identical or similar goods sold at comparable trade and quantity levels to unrelated buyers in Tonga at or about the same time as the goods to be valued.

Transaction  
value of  
imported  
goods

44E. (1) The transaction value of imported goods is the price of the goods at the time they are sold for export to Tonga increased by the amounts specified in subsection (2) and decreased by the amounts specified in subsection (3).

- (2) For the purposes of computing the transaction value of imported goods, the price of the goods shall be increased by the sum of the following amounts paid or payable, directly or indirectly, by or on behalf of the purchaser in respect of the goods to the extent that the amount is not included in the price:-
  - (a) commission and brokerage, other than buying commission;
  - (b) packing costs, including any labour and material costs;
  - (c) the cost of containers that are treated as being one with the goods;
  - (d) royalties or licence fees payable as a condition of sale, other than for the right to reproduce the goods in Tonga;



- (e) the cost of foreign inland freight and foreign inland insurance;
  - (f) the cost of overseas freight and overseas insurance;
  - (g) the whole or any part of the proceeds of a subsequent use, resale or disposal of the goods by or on behalf of the purchaser that accrues to the vendor; and
  - (h) the value of any of the following goods and services supplied, directly or indirectly, by the purchaser free of charge or for reduced consideration for use in connection with the production and sale for export of the imported goods, apportioned to the goods in a reasonable manner and in accordance with generally accepted accounting principles –
    - (i) any materials, components, parts, and other goods incorporated in the imported goods;
    - (ii) any tools, dies, moulds, and other goods utilised in the production of the imported goods;
    - (iii) any materials consumed in the production of the imported goods; and
    - (iv) any engineering, development, art, or design work, plans or sketches undertaken outside Tonga and necessary for the production of the goods.
- (3) For the purposes of computing the transaction value of imported goods, the price of the goods shall be decreased by the sum of the following amounts to the extent that these amounts are separately identified in the price paid or payable for the goods;
- (a) any expenditure incurred for the construction, erection, assembling or maintenance of, or technical assistance provided in respect of the goods after importation;
  - (b) the cost of transportation (including loading, unloading, handling and other expenses associated with transportation) of the goods after importation, and the cost of any insurance relating to such transportation; and



(c) any duties or taxes paid or payable by reason of the importation or sale of the goods in Tonga.

Transaction  
value of  
identical goods

44F. (1) If the customs value of imported goods cannot be determined under section 44E, the customs value shall be the transaction value of identical goods in a sale of those goods for export to Tonga if –

- (a) the transaction value of the identical goods is the customs value of those goods; and
- (b) the identical goods were exported to Tonga at the same or substantially the same time as the imported goods and were sold to a purchaser –
  - (i) at the same or substantially the same trade level as the imported goods; and
  - (ii) in the same quantities as the imported goods.

(2) If subsection (1) does not apply solely because identical goods were not sold under the conditions specified in subsection (1)(b), the customs value of the imported goods may be determined by reference to the transaction value of identical goods in a sale of those goods for export to Tonga if the identical goods were sold under any of the following conditions –

- (a) to a purchaser at the same or substantially the same trade level, but in different quantities from the imported goods;
- (b) to a purchaser at a trade level different from the purchaser of the imported goods, but in the same or substantially the same quantities as the imported goods; or
- (c) to a purchaser at a trade level different from the purchaser of the imported goods and in different quantities from the imported goods.

(3) The customs value of imported goods under this section shall be the transaction value of identical goods referred to in subsection (1) or (2) adjusted to take account of –

Transaction  
value of  
similar goods

Deductive  
value



- (a) commercially significant differences in the foreign inland freight and foreign inland insurance costs of the identical goods and those costs for the imported goods attributable to differences in distance and modes of transport; and
  - (b) if subsection (2) applies, differences in the trade levels, quantities, or both, as the case may be.
- (4) If, in relation to imported goods, there are two or more transaction values for identical goods that meet the requirements of subsection (1) or (2), as the case may be, the customs value of the imported goods shall be determined on the basis of the lowest of such transaction value.
- (5) This section shall not apply if there is insufficient information to determine the customs value of imported goods under subsection (3).

Transaction value of similar goods

- 44G. (1) If the customs value of imported goods cannot be determined under section 44E or 44F, the customs value shall be the transaction value of similar goods in a sale of those goods for export to Tonga if –
- (a) the transaction value of the similar goods is the customs value of those goods; and
  - (b) the similar goods were exported to Tonga at the same or substantially the same time as the imported goods were sold to a purchaser –
    - (i) at the same or substantially the same trade level as the imported goods; and
    - (ii) in the same quantities as the imported goods.
- (2) Section 44F(2) to (5) apply for the purposes of this subsection on the basis that the reference to “identical goods” is a reference to “similar goods”.

Deductive value

- 44H. (1) Subject to section 44C, if the customs value of imported goods cannot be determined under section 44E, 44F, or 44G, the customs value shall be the deductive value of the goods.

## (2) If -

- (a) the imported goods, or identical or similar goods are sold in Tonga at the same or substantially the same time as the time of importation of the imported goods;
- (b) the goods were sold in Tonga in the same condition in which they were imported;
- (c) the sale was made at the first trade level after importation; and
- (d) the Chief Commissioner is satisfied that the purchaser in the sale was not related to the importer and did not incur any costs referred to in section 44E(2)(h) in relation to the goods sold,

the deductive value of the imported goods is the unit price of the imported goods, or identical or similar goods, as the case may be, at which the greatest number of the goods are sold, reduced by the following amounts determined on a per unit basis -

- (i) the amount of any commission;
- (ii) an amount for profit and general expenses, including all costs of marketing the goods based on sales in Tonga of goods of the same class or kind as the goods sold;
- (iii) the cost of transportation of the goods in Tonga (including loading, unloading, handling and other expenses associated with transportation) and insurance in relation to such transportation to the extent not deducted under paragraph (ii); and
- (iv) any amount referred to in section 44E(3)(c).

Computed  
value

## (3) If -

- (a) the imported goods, or identical or similar goods are not sold at the same or substantially the same time as the time of importation but are sold within 90 days after the time of importation; and

(b) subsections (2)(b) to (d) are satisfied,  
the deductive value of the imported goods is determined in accordance with subsection (2) by reference to such later sale.

(4) If -

(a) the imported goods, or identical or similar goods are not sold in Tonga at the time of importation or within 90 days after that time;

(b) the goods are sold in Tonga, after being assembled, packaged, or further processed, within 180 days after the time of importation; and

(c) subsections (2)(b) to (d) are satisfied,  
the deductive value of the imported goods is determined, at the request of the importer, in accordance with subsection (2) by reference to such sale and making a reduction on a per unit basis for the value added attributable to the assembly, packaging or further processing in Tonga.

(5) Subsection (4) shall not apply if the Chief Commissioner has insufficient information to determine the amount of the reduction for the value added attributable to the assembly, packaging or further processing in Tonga.

Computed  
value

44I. (1) If the customs value of imported goods cannot be determined under section 44E, 44F, 44G, or 44H, the customs value shall be the computed value of the goods.

(2) The computed value of imported goods is the sum of the following amounts -

(a) the cost or value of materials used in producing the goods;

(b) the cost of manufacture or processing to produce the goods;

(c) any costs referred to in subsections 44E(2)(c), (f) and (g);

(d) the value of any goods or services referred to in section 44E(2)(h); and

- (e) an amount for profit and general expenses equal to that generally applicable in sales of goods of the same class or kind as the imported goods, which are made by producers in the country of exportation.

Residual  
method of  
valuation

44J. If the customs value of imported goods cannot be determined under the preceding sections, the value shall be determined by the Chief Commissioner having regard to the methods for valuation specified in this Part and to any other information available to the Chief Commissioner but not including any of the following matters –

- (a) the selling price in Tonga of goods produced in Tonga;
- (b) any system that provides for the acceptance for valuation purposes of the higher of two alternative values;
- (c) the selling price of goods on the domestic market of the country of exportation of the imported goods;
- (d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with section 44I;
- (e) the price of the goods for export to a country other than Tonga;
- (f) a system of minimum customs values; or
- (g) arbitrary or fictitious values.

Importer  
advised of  
method of  
computation

44K. The Chief Commissioner shall, upon written request, advise the importer, by notice in writing, of the method used to determine the customs value of imported goods."

Passed in the Legislative Assembly this 4 day of September, 2003.

#### KE FAKATON

'OKU TU'UTU'UN  
Alea 'o e Pule'ang

1. (1) 'E ui 'a t  
mo e Tut
- (2) 'Oku ui 'a  
fakatonut
- (3) Kuo pau l  
'e he 'En
2. (1) 'Oku faka
- (2) Neongo 'i  
kimu'a 'i  
'i he kup
3. 'Oku fakatonu  
ko 'eni hili 'e

#### FAKAMA

Ngaue'aki

'Uhingai'lea