APPRAISING MANUAL
VOLUME I

Additional duty-Countervailing duty-Its concept and authority:

Whereas customs duty is chargeable in terms of section 12 of the Customs Act, 1962 as per rates specified in the First Schedule to the Customs Tariff Act, 1975, all imported goods are also leviable to an additional duty which is commonly known as 'countervailing duty and which is determined on the basis of excise duty leviable on like articles, produced or manufactured in India. The basic principle for such a levy is that when an indigenous product is subjected to an excise duty an equivalent levy on similar imported products, besides import duty will be justified so as to ensure that the protection provided by the import duty to domestic industry is not eroded.

Section 3 of the Customs Tariff Act, 1975 (51 of 1975) empowering such a levy is reproduced below, alongwith various clarifications issued on the subject.

(1) Any article which is imported into India, shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty, for the time being leviable on a like article, if produced or manufactured in India and, if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.

Explanation: In this section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.

(2) For the purpose of calculating under this section, the additional duty on any imported article, where such duty is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of-

(i) The value of the imported article determined under sub-section (1) of the said section 14 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(ii) Any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but not including the duty referred to in subsection(1).

(3) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article (whether on such article duty is leviable under sub-section (1) or not) such additional duty as would counter balance the excise duty leviable on any raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of such article, if may, by notification in the official gazette, direct that such imported article shall, in addition, be liable to an additional duty representing such portion of the excise duty leviable on such raw materials, components and ingredients as in either case, may be determined by rules made by the Central Government in this behalf.

(4) In making any rules for the purposes of sub-section (3), the Central Government shall have regard to the average quantum of the excise duty payable on the raw materials, components or ingredients used in the production or manufacture of such like article.

(5) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(6) The provisions of the Customs Act, 1962, and the rules and regulations made thereunder, including those relating to

drawbacks refunds and exemption from duties, shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act.

Interpretation of the term 'excise duty' in the levy of countervailing duty:

In providing for the levy of countervailing customs duties (additional duty), the following terminology has been used:- 'plus the excise duty for the time being leviable on like articles if produced or manufactured in India and where such duty is leviable at different rates, the highest duty'.

A question has been raised whether the terms 'excise duty' in the above mentioned terminology refers to the quantum of excise duty or the rate of excise duty. The Board is advised that the term 'excise duty' refers to the rate of excise duty and will not be the total amount of excise duty payable in respect of an article. Assessable values arrived at under section 4 of the Central Excise and Salt Act or the tariff values fixed for purposes of levy of central excise duty will not, therefore, affect the assessment of customs duty.
(M.F. (D.R.) F.no. 14/3/60-Cus-I, dated 23.4.1960)

Levy of special excise duty as countervailing duty:

A point has been raised regarding computation of countervailing duty including special excise duty introduced by clause 37 of the Finance Bill, 1978. The matter was referred by the Ministry of Finance (Department of Revenue) to the Ministry of Law regarding C.V. Duty on items where C.V. duty has been fixed by exemption notifications. The Ministry of Law has clarified that the maximum duty leviable under section 3 of the Customs Tariff Act, 1975 is limited by virtue of exemption notification to the amounts specified therein. No further amount can be charged as additional duty, not-withstanding levy of special duties of excise. In view of this, countervailing duties by

customs notifications cannot be increased by the amount of special excise duty.
(Telex F.no. S 14/78-TRU (Cus) dated 9.5.78 of the Ministry of Finance (Deptt. of Revenue)

Interpretation of term 'like articles' in the levy of countervailing duty:

It has been represented to the Board that the above provision has been interpreted as meaning that where several rates are specified under a single item in the Central Excise Tariff, covering a number of distinguishable articles, the countervailing duty to be charged on any of the said articles on import would be highest rate of duty shown against the central excise item.

In introducing the wording referred to above in para 2, the object was that where different rates of excise duty were chargeable on the same article (depending for instance on the output of manufacture). As in the case of paints, varnishes etc. the countervailing customs duty should be equal to the highest rate of excise duty chargeable on that article, which in practice would be the rate chargeable from the manufacturer with the highest output. It is only where different rates of excise duty are chargeable on like articles that the highest rate of duty should be taken into account. The Board is advised that this is also the correct legal interpretation of the clause. In the case of paper, the different varieties such as printing paper, pulp board, with board etc cannot be described as 'like articles'. The rate of countervailing customs duty leviable on each of these articles on import should therefore be equal to the excise duty applicable to that particular article.
(C.B.R. no. 22/16/55-Cus i Dt. 16.7.55)

Additional duty in the excise duty:

(i) The additional (countervailing) duty leviable under section 3 of the Customs Tariff Act, 1975 is the excise duty for the time being

leviable on goods manufactured or produced in India. It includes all elements of excise duty.
(Extracts from G.O.I. M.F. (D.R. & I.) Ltr. F. no. 15/28/67/Cus.i dated 3.6.1967 and tariff circular 112/67.

(ii) The Board agrees that the mere fact that any goods liable to central excise duty in India somehow escaped levy of such duty for sometime does not afford any immunity to imported goods of a like nature from countervailing duty if it is otherwise leviable.
(Board's no. 15/1/57-Cus. i Dt. 26.7.1957).

Leviability of, additional duty (countervailing duty) if the article or a like article is not actually manufactured in India at the time of importation of goods:

The question whether additional duty (countervailing duty) can be levied, on goods imported into India under section 2a of ITC, 1934 in respect of articles not actually manufactured or produced in India was raised and decided in a judgment of the High Court of Gujarat in the case of M/s Neomer Ltd, Baroda vs. Union of India (S C A 637 of 1978). the honorable High Court held that 'it is, thus, virtually impossible to argue that countervailing duty can be levied provided the article is manufactured or produced in India or that the manufacture or production of the article in question in India is a condition precedent to the valid levy of countervailing duty. Be it also realised that what is being imposed is not excise duty but an import duty named as countervailing duty at a rate equivalent to the rate at which excise is payable. It is only for the purposes of finding out measure of duty or the rate of duty that a reference has to be made to the relevant entry or item of the Excise Act. If a like article is actually produced or manufactured in India, duty would be leviable at a rate equivalent to the rate of excise duty for the time being leviable on a like article. If a like article is not so produced or manufactured then the duty would be leviable under the Excise Act on the class or description of articles to which the article belongs. In view of the explicit provision made by section 2a read with the explanation clause it is not possible for us to accept the contention that countervailing duty cannot be levied if the

article or a like article is not actually manufactured in India at the time of importation of the goods in question".
(Extracts of judgment as received from Collector of Customs & Central Excise, Ahmedabad vide legal/SCA-33/78 dt.19.2.81)

Additional (countervailing) duty on imported goods on the basis of state excise duties-Instruction Reg.:

A question had arisen whether goods which are liable to excise duties under the State excise laws should on import from abroad be subjected to additional duty in terms of section 3 of Customs Tariff Act, 1975 in order to afford protection to the indigenous industry. The Ministry of Law, who were consulted in regard to the legality of levy of additional duty on such goods, have advised that the term 'excise duty' referred to in section 3 of Customs Tariff Act, 1975 is not confined to the 'excise duty' leviable under the Central Excise Act and that it would equally apply to the levy under the various State enactments.

As the customs houses are aware, for the purpose of levy additional duty under section 3, where an article is liable to duty at different rates, the highest duty (not necessarily the highest duty prevalent in the importing State) has to be applied. As liquors constitute a very important item in the field of State excise levy, the rate of State excise duties in the different States on liquors have been ascertained and it has been decided to peg down the rate of additional duty on brandy, gin whisky and rum at Rs. 33.30 per litre and that on beer Rs. 2.00 per litre (without any test in regard to proof spirit) by way of notification no. 144-Cus dated 2.8.76. Other varieties of liquors, and goods other than liquors which are liable to excise duties under the State enactments would, in terms of the Law Ministry's advice, also attract levy of additional duty under section 3a of Customs Tariff Act, 1975.
(F.no. 3/3/67-Cus. i dated 7.10.1967.)

Produce Cess Act: Duty thereunder whether liable to duty under section 3 of the Tariff Act:

It has been decided in consultation with the Ministry of Law that imported cotton would not be liable to countervailing duty in terms of section 3 of the Custom Tariff Act, 1975 as the duties of excise under the Produce Cess Act, 1966, are leviable on consumption in mills in India and not when manufactured or produced in India. (Tariff circular no. 10/69, File S 4e1/69 page) It is further clarified that as the duties of excise on copra under the Produce Cess Act, 1966 are also leviable on their consumption by mills in India. On the other hand, as the duties of excise on oils extracted from oil seeds under the Produce Cess Act, are leviable on their production, corresponding countervailing duty is leviable on imports of such oils. However, in terms of notification no. 6, Customs (now 136, Cus/76 dated the 2nd January 1985) oils extracted from oil seeds have been exempted from the payment of countervailing duty on that account. In view of the position explained above, imported copra and vegetable oils are not liable to any countervailing duty on account of the provisions in the Produce Cess Act.
(F. 15/27/68-Cus. i (Pt) dt.7.1.69 Tariff cir.10/69 and F. no. 15/27/68-Cus. i dated 13.1.1969 Tariff cir. 14/69).

C.V. Duty on Agricultural Tractors in CKD Condition:

The Board wishes to emphasize that the most important point is to decide under which tariff item the article in question is assessable for the levy of the basic duty. This assessment would in most cases be subject to an authorised practice. In case of agricultural tractors in C.K.D. condition the question is whether such a C.K.D. is regarded as an agricultural tractor and assessed as such if so it will attract the countervailing duty leviable on agricultural tractors.
(M.F.D.R. no. 14//1/60. Cus. i, dated 11.4.1960).

Double levy of countervailing duty on certain articles- Avoidance of:

The Government of India has noted that the new provisions for the levy of countervailing duties have in certain cases resulted in the same article becoming liable to the countervailing duty twice over. It is not the intention of the Government of India that countervailing duty should be levied twice over on the same article. The custom houses should go by the above intention i.e. countervailing duty should not be charged twice over on any article. Cases where the same article has become liable to double levy of countervailing duty may be brought to the notice of the Government of India.
(M.F. (D.R.) no. 14/16/62-Cus.i, Dt. 8.5.1962).

Exemption from central excise duty- Question of applicability:

(a) The phrase 'excise duty for the time being leviable' means excise duty leviable after taking into account any exemption notification issued under Central Excise & Salt Act, 1944.
(M.F. (D.R.) 14/3/61-Cus. i dated 10.3.1961)

(b) Additional duty (countervailing) to reduce to the extent of exemption: The Ministry of Law has advised that if under rule 8(1) of the Central Excise Rules, 1944, there is an exemption notification issued by the Government, the duty for the time being leviable will be the duty reduced by the exemption notification and that is the additional duty under section 3 of Customs Tariff Act, 1975.
(Board's letter F.no.15/9/66 Cus dated 23.11.66; Tariff circular 182/66).

(c) Conditional exemption: There is nothing in the law that a conditional exemption on excise side cannot be applied on customs side. However, if the conditions prescribed in the notification are such that they cannot be satisfied by the imported goods, then that notification would not apply.
(F.no.15/13/67-Cus. i dated 8.7.1968)

(d) Concessional rate of duty prescribed by any notification is not binding upon the importers: The importers may opt to avail of the

benefits of the notification or may avail of the tariff rate if the same is lower than the rate prescribed by the notification.
(On the basis of F. no. B-21/32/69-Cx, i dated 15.4.1969)

Nepal origin excisable goods- Collection of additional duty:

Additional duty leviable under section 3 of Customs Tariff Act, 1975 on goods of Nepalese origin imported into India may be collected on a bill of entry which may be suitably modified and simplified to the extent necessary.
(G.O.I. M.F. Ltr. no. 80/1/166/L.C.I. dt.16.6.1967)

Impact of Customs Tariff Act, 1975 on the levy of countervailing duty:

The question before the conference was whether the introduction of Customs Tariff Act, 1975 made any change in the position regarding the levy of countervailing duty on imported articles. The conference observed that for purpose of levy of countervailing duty under section 3 of the Customs Tariff Act, the classification under Central Excise Tariff had to be adopted. The fact as to how the same article was classified under the First Schedule to the Customs Tariff Act was not material to the levy of countervailing duty as very often the basis adopted for the two classifications were different.

As regards individual cases where the question of classification of articles for the purpose of levy of C.V. duty has arisen at various custom houses, these have to be referred to zonal/commodity Collectors of Central Excise for discussion at their periodical conferences as instructed by the Board in this connection, the conference was of the view that such zonal C.E.T. conferences should also be attended by the respective Collectors of Customs in the zone to facilitate discussion on the aspect of countervailing duty on imported articles at such conference. If the question of countervailing duty was once raised by the C.R.A.D. the Director of Receipt Audit or his

representative could also be present. Similarly, the presence of the Chief Chemist and the representative of D.G.T.D. would also be useful. (Conference of collectors of customs on tariff held at Madras on 24th/25th March 1977)

Charges, discounts and allowances for exclusion from value:

(1) Discounts interpretation: In dealing with discounts shown in invoices section 30(b) of the Sea Customs Act must be interpreted as referring to the minimum cost at which goods can be delivered at the place of importation in ordinary course of business. if the net price, after the discounts have been deducted, represents the agreed amount for which the goods have been contracted to be bought and sold in an ordinary sale and purchase transaction without usual conditions between independent parties, then this net price is acceptable as evidence for assessing the real value according to section 30(b) of the Sea Customs Act. The essential condition regarding the admissibility of the discounts is that they have been granted by the seller without the imposition of any unusual condition of the buyer.
(C.B.R. 151-i Cus. of 16.2.1925)

(2) Service stocking discounts inadmissible: Discounts granted for "service" stocking purpose are inadmissible.
(Board’s R. Dis. no. 81-Cus. i/27 of 19.3.1927)

(3) Discount in kind: No abatement or deduction shall be allowed in respect of trade discount in kind when assessing goods under 30(b) of the Sea Customs Act (position will remain the same under section 14(1) of the Customs Act, 1962). Full duty will be charged on the extra quantity allowed as trade discount in kind.

(4) Discount for brokerage: No abatement for brokerage as trade discount is admissible for the purpose of computing the real value under section 30(b) of the Sea Customs Act (position will remain the same under section 14(1) of the Customs Act, 1962).

(5) Deferred and contractual discounts: - (a) Rebate of duty should be allowed on unconditional deferred discount on goods assessed either under section 30(a) or 30(b) of the Sea Customs Act, provided such discounts are proved, by documentary evidence, to have been included in the declared marked value or the invoice as the case may be.

(C.B.R. letter no. 1034, dated the 19th April, 1924).

(b) A deferred discount or bonus which is allowed unconditionally to all buyers may be deducted when calculating the "real value" of the goods concerned under section 30(b). Deferred freight rebate which is a rebate allowed by ship owners or agents to shippers with the object of confining shipments to particular "lines" and preventing 'rate cutting" for the intrusion of foreign lines, may be considered a normal discount in the ordinary run of business and admissible for deduction from the gross freight charges for customs assessment purposes if it is established before the goods leave customs control.

(C.B.R. Dis. no. 1165 Cus. /25 dated 23.11.1925)

(c) Deferred rebates on freight charges shown in invoices are admissible for deduction from CIF values for purposes of assessment except when they are special and conditional.

(Board's letter R. Dis. 162/Cus. i/28 dated the 29th August, 1928)

(6) Quantity discounts- (i) Quantity discounts are admissible for deduction under section 30(b) of the Sea Customs Act when such discount are proved, by documentary evidence, to have been actually earned by the importers and granted by the suppliers.

(ii) A case was noted in which certain quantity discount was earned by an importer by virtue of a consolidated order placed by him and a number of other importers together through a common indenting agent in order to make it acceptable to the supplier to give the aforesaid discount on the total quantity of the order placed. The discount was shown in all individual invoices, issued to the different importers for their sub order, on a pro rata basis. As there is nothing exceptional in the discount, the Board has decided that on the analogy of Board's ruling contained in letter no. 131-i-Cus. 25 dated 16.2.1925 (reproduced in paragraph 33(iii) (a) at page 39 of compilation of rulings) the quantity discount in question should be treated as

admissible under section 30(b) of the Sea Customs Act for the purpose of assessment.
(C.B.R. Ltr. no F. 3/29/60-Cus. VI of 14.6.61 C vii/583/61, and O. Ap. no. 71 of 2.9.1961)

(iii) In certain cases the suppliers agree to allow a rebate in respect of orders exceeding a minimum specified quantity of the goods bought. They suggest to the indenting agents that it is not necessary for the minimum quantity to be bought by individual importers for the grant of this rebate. What the suppliers are interested in, in securing an order, however made, for the minimum quantity and in that event they will be prepared to show the same rebate to all the suborders also which make up the total minimum quantity. There is nothing very special or abnormal in this kind of business and so long as the rebate has been actually passed on to all the individual orders, even if they are individually less than the minimum, the rebate will be admissible for purpose of arriving at the value. It should however, be verified that the supplier have in actual fact indicated the rebate on the invoice to all parties whose orders are included in the total quantity for which they have placed an indent with the suppliers.

(7) Bonus for purchases exceeding certain quantity: Discount of bonus allowed by shippers, when consignee contracts to import goods exceeding in value, a fixed amount in one year should be admitted.
(C.B.R.D. Dis. 858-Cus.i/36 of 8.5.36 R.Dis. 392/36)

(8) Special introductory discounts, compensation discount: Special introductory discount or introductory sales promotional discount is given by manufacturing and incentive necessary to introduce a new and untried produce in the market a forcibility like this is necessary during the introductory stage as the market reaction obtaining during the initial stages requires to be carefully watched and revision of prices effected whenever found to be so warranted. For a new specialty a policy of this kind to achieve a reasonable monetary target cannot be considered to be unusual in any way. Besides, this introductory discount would be available to any person interested in importing and marketing such goods. As such, this discount is in the

nature of a trade discount, and, therefore, admissible for computation of assessable value under section 308b of the Sea Customs Act.

Note- Compensation discount will be excluded provided it is proved that it could be obtained in the normal course of business.
(C.B.E. & C. letter F. no. 14(41)56-Cus. i/vi Dt. 26.11.1956)

(9) Cash Discounts- (a) Cash discounts are admissible in arriving at value when they are available equally to all importers.

(b) This includes cash discounts allowed for prompt payment in India on the arrival of the goods. It does not cover discounts allowed for payment before the goods have reached India. But cash discounts for payments, under a letter of credit, in the country of export, may be admitted in arriving at the assessable value. Normal cash discount on the invoices of a head office or buying agency at home should be admitted in calculating the assessable value.
(C.B.R. no. 5257 of 5.11.1924 CBR D. Dis. no. 646/i/35 of 10.9.1935, CBR R. Dis. 247-Cus/27 of 26.1.1928 and CBR D.O. 56-Cus i-29 F. Ap. x/1-43 Og 29.30, CBR 983-Cus i/35 of 10.9.1935)

(c) Cash discount given by suppliers to principals or agents of importers in India should be treated as ordinary trade discount and should accordingly be allowed unless it is clear that they are for prompt payment 'abroad' and has not been passed on to the importers. In determining value under section 30(b) of the Sea Customs Act the principle is that, in accordance with the ordinary commercial practice, the cost, of financing the goods up to the time of their import falls on the foreign seller and, is therefore, an element in the price and in the real value. Any discount allowed in consideration of the buyer paying for the goods before importation is accordingly inadmissible for customs purposes.
(G.O.I. F.D. (C.R.) Ltr. D.A. Dis. no. 539-Cus i/45 dated 3.10.1945)

(10) Sample discounts: In assessing the sample, any discount allowed other than the ordinary discount should not be taken into account for purposes of arriving at the real value under section 30(b) Sea Customs Act [or under 14(1) Customs Act, 1962], as the fact with the particular goods are samples does not alter either their

kind or their quality which is the same as that the goods which are not samples.
(G.O.I. orders on customs revision application no. 23 of 1930 D.Dis. 112-Cus. i/30)

(11) Late Shipment allowance: A late shipment discount is allowed for breach of term in a particular contract, i.e., the term as to the date of shipment. It is therefore, special to the parties and not normal in the ordinary way of business and should not be allowed in arriving at the real value for customs purposes.
(Orders on rev. appl. no. 46 of 1939 compilation of rulings of Sea Customs Act, p/35).

(12) Payment barter discount of compensation discount: The system detailed in short in this: "the Indian importer offers to the German manufacturer or the supplier of the goods, the price at which the respective goods can be sold in India. The German exporter makes the necessary compensation arrangement with the German importers of Indian produce. The invoice is made out at proportionately higher rates than actual prices in favour of the latter concern and a discount at the rate sanctioned by the German Government in respect of the goods is given to the importer. The discount varies according to the class of goods and represents the export bounty granted by Government controlled institutions in Germany, in connection with compensation against imports from India, and the loss due to the discount granted in respect of German exports is met by these institutions from the compensation obtained in respect of Indian imports. Since, however, the smaller value, viz., the gross value minus the discount is the one offered to purchasers in India irrespective of any condition and is admissible to all alike in the export market under this system, it is the value to be considered for the purpose of assessment under section 30(b), of the Sea Customs Act, as it represents the correct landed cost of delivery of the goods at an Indian port.

(13) Discount on account of loss by exchange: Discounts allowed by exchange banks with the concurrence of shippers on account of loss by exchange need not be included in the real value if it

is proved that the shippers on account of loss by exchange losses had been reached, and the letter announcing it, dispatched before the goods were cleared.
(G.O.I. F.D. Cus rev. appl. no. 45 of 1932)

(14) Breakage allowance: Breakage allowance, given by the suppliers as a trade discount in respect of consignments of bottles or other cargo of a fragile kind to compensate the consignees for possible breakage of such goods in transit should be regarded as an admissible abatement for the purposes of determining the value under section 30(b) of the Sea Customs Act provided it is available uniformly to all importers.

(15) Deferred payment scheme-Value determination of: (a) The Board considers that the interest charged to the importers by the foreign suppliers under deferred payment scheme (which is not deemed to be at par with the case of cash discounts) should be excluded for purposes of arriving at the assessable value under section 30(b) of the Sea Customs Act as the real value need not necessarily be dependent on the financial arrangement, provided that the transaction is bonafide and the goods are not charged on the invoice differently from goods of like kind and quality at the time and place of importation.

(b) Goods purchased on the deferred payment basis- Interest on- liability to customs duty-instructions reg.: The Government of India has decided that the interest charged by the suppliers in the case of goods imported under the deferred payment scheme should be excluded from the calculation of real value provided such interest charges are shown separately in the invoices.
(M.F.D.R. Ltr F 3/12/57-Cus. vi of 27.7.1957)

(16) Machinist Discount: Machinist discount allowed to the Indian manufacturing importers and to all co-manufacturers in the same line of trade is a normal trade discount and is admissible for purposes of assessment under the provisions of the section 14(1)(a) of the Customs Act, 1962.

(17) Settlement discount may be allowed if proved to be in the nature of and similar to trade discount.

(18) Primage charge: Primage charge means a charge levied by the steamer agent in addition to freight. When recovered from the importer, it should form part of value on which duty is chargeable, but if some proportion of primage charge is refunded to the shipper and if such refunds are passed on to the importing firm, they may be deducted.

MOTOR CARS AND OTHER MOTOR VEHICLES:

(1) Basis of valuation of motor cars: Motor cars whether new or old are assessable to duty on the basis of their list prices prevailing in the country of their manufacture. However, trade discount and depreciation on the value are deducted from the list price; but freight from the country of manufacture and insurance charges are added. The landing charges are also added to this to arrive at the final assessable value.

(2) Valuation of motor cars for personal use: Motor cars and motor cycles when imported by the owner personally and not in the ordinary way of invoiced cargo will be appraised in the following manner:

(a) The owner will be called upon to produce his bill, receipt or other evidence regarding date of purchase and the purchase price.

(b) In the case of a new car, the list price of the car prevailing in the country of manufacture should be ascertained and also the normal trade discount which is given by the manufacturer, irrespective of the fact, whether it is actually given by the manufacturer to a particular buyer or not. If the vehicle is bought second hand, the assessable value is to be computed with reference to the list price of the car in the country of manufacturer after deduction of trade discount and the depreciation in terms of the "scale of depreciation/trade discount" reproduced in sub paragraphs (3) to (5) below. However the average freight and insurance from the country of manufacture [and not from

the port of shipment] actual packing charges, if any, and the landing charges are also to be added to arrive at the assessable value.

(3) Scale of depreciation for purpose of assessment of used cars, motor cycles, scooters etc. imported into India:

Period of use	Depreciation allowed
For every quarter during 1st year . . .	4%
For every quarter during 2nd year . . .	3%
For every quarter during 3rd year . . .	2 1/2%
For every quarter during 4th year . . .	2%

If the car is more than 4 years old, the depreciation will have to be decided on the merits of each case and not on any schedule scale.

The above scale of depreciation will also be applied to motor cycles and scooters imported into India.

Note.-The amount of depreciation allowance on a car or motor cycle or scooter for the period of use exceeding 4 years will have to be decided on the merits of each case after physical examination of the vehicle by the Assistant Collector for completing of the assessment.

On the question as to how a part of a quarter of a year should be treated for computing the depreciation it has been decided that full depreciation as prescribed for a quarter should be allowed even where a car etc. has been used only for a part of a quarter. If the car has been registered in the country of export and used, depreciation allowance on quarterly basis will be admissible.

As regards the basis for determining the period of use of motor cars for computing depreciation, the Board considers that normally registration certificate date and bill of landing date should be the basis. But in the case of countries where cars are permitted to be used before registration, there should be no objection to consider other acceptable evidence. The practice of requiring the production of

passports leads to delay in clearance and should not be resorted to in ordinary cases.
(C.B.R. & C. F.no. 3/27/62-Cus. VI of 7.1.64 & 24.1.64 & Bd's letter F.no. 3/16/68-Cus VI Dt. 6.7.1968)

(4) Extent of trade discount on list price: The Board had occasion to consider whether for purpose of assessment of (owner) imported cars, it would be in order to allow a trade discount of 20% on the list price of the car, irrespective of the fact whether it was actually given or not by manufacturer to the buyers. It has now been decided that for purposes of valuation the custom houses should go by the wholesale price which would include the normal trade discount, whether or not it has been allowed to a particular buyer. As regards the question of discount to be allowed, it may be desirable that the discount applicable to the particular make of the car should be taken into account. However, if the range is a narrow one, such as 18% to 22% as reported by Bombay customs house, it would be convenient to adopt flat rate 20% (since brought down to 15% as revised by Bombay custom house in 1971 under circular 1/71 reproduced below) as is done at that custom house. This position would require to be reviewed periodically as is done for landing charges or rates of war risk insurance.
(Board of Ex. & Cus. letter F.no. 3/29/62-Cus vi dt.21.1.1964 para page 32, Tech. Bulletin, Jan-Mar, 64)

(5) Fixation and review of trade discount on cars for computing the assessable value: The Board has designated the Collector of Customs, Bombay as the coordinating custom house, to review the rates of trade discounts for computing the assessable value in respect of motor cars imported from abroad in accordance with the broad principles laid down by the Board. In this connection the Board has directed that the admissibility of trade discounts on cars imported into India, the custom house should go by the wholesale price of the manufacturer which would include the normal trade discount whether or not it is allowed to a particular buyer.

In accordance with the above orders the position has been reviewed, information has called for from overseas manufacturers as

well as their representatives/ distributors in India of the popular makes of cars regularly imported at this port by passengers, foreign nationals and diplomats with regard to the trade discounts allowed on the manufacturer's list prices on direct shipments of such cars to India. The custom house also maintains its own record of trade discounts allowed by such manufacturers from the import invoices of such manufactures presented to the custom house at the time of clearance of these imported cars.

From the above data collected by Bombay Custom house, it is seen that for different makes of American, English, German and Italian cars, the range of trade discounts allowed are as shown below:-

		AVERAGE.
AMERICAN CARS	12% TO 24%	18%
ENGLISH CARS	10% TO 17%	13.50%
GERMAN CARS	10% TO 13%	11.50%
ITALIAN CARS	10% TO 15%	12.50%

It is seen that the average rate of trade discount allowed by the manufacturers in respect of cars shipped by them from these four principal car manufacturing countries ranges from 12% to 18%. The Board in their letter F.no. 3/29/62-Cus. VI dated 21.1.1964 cited above, have directed that if the range of trade discounts is a narrow one, it would be convenient to adopt a flat rate. The present review has shown the range of trade discount to be 12% to 18%. It is therefore proposed to fix a flat rate of 15% trade discount to be allowed of the manufacturers' wholesale list price for purposes of arriving at the assessable value of cars imported from abroad under section 14 of the Customs Act, 1962.
(Misc. Circular 1/71 of Bombay C.H. on the basis of Board's authority in F.no. 3/23/62-Cus. VI dated 21.1.1964 and 3/4/64 Cus. VI dated 16.3.1965)

(6) Computation of period of use: "In computing the period of use for the purpose of allowing depreciation both the first day and the last day, determined in terms of the above order should be counted."
(C.B.R. Ltr.no. 70/110/52-Cus. i of 21.6.55 C. 1085/53)

(7) Depreciation allowed on mobile van: In regard to the grant of a depreciation allowance granted at the Bombay custom house on a mobile van which was objected to by the CRA on the ground that such allowance is admissible in respect of cars owned and imported by private individuals, the Central Board of Revenue have ruled that a vehicle which is imported by other than a private person and which has been in use abroad, before import, is bound to depreciate and to the same extent, as a vehicle imported by a private individual. The allowances were fixed as a rough and ready guide to prevent detailed examination in each case, but this did not mean that such depreciation allowances should not be given to other vehicles. It stands to reason that when a vehicle has been used abroad before import it is bound to depreciate to some extent in value and, therefore on import its value can not be at the same figure as that of a new vehicle.
(C.B.R. Ltr.no. 10/80/Cus. iv/54 of 25.4.1955)

(8) Valuation of cars imported by private individuals: Overhauling charges are included in running repairs and should not therefore be added to the assessable value of motor cars and cycles.

Motor cars and motor cycles of two different year's models cannot be regarded as being of 'like kind and quality'. When imported by private individuals, they should be assessed on the minimum landed cost in the year of their production subject to the usual depreciation allowance.

The make, horse-power and number of engine and chassis, number of cylinders should be recorded on the bill of entry for every car or cycle. Where the above method of assessment does not, for particular reasons, appear suitable, the case should be reported to the Assistant Collector for special orders.

In arriving at the value for assessment, the duty paid in a country other than that of manufacture shall not be taken into account.

The Board has ruled that the Customs Collector is competent to accept the trade price ascertained subsequently on a motor car imported by a private individual at a time when there was no import trade.

The assessment of used cars is made on a conventional basis and the method employed gives a reasonably correct value of the car. In the circumstances, in cases where the trade price quoted is ex-factory, it is not necessary in each case to ascertain the FOB price of the car. The ex-factory price, which is more readily ascertained, may be used as the basis for reducing the value of the used car.

The Board has decided that for purposes of assessment of motor cars, in the absence of satisfactory evidence regarding the actual amount of freight and insurance paid, the addition towards the same should be based on the best available estimates and not on a flat rate. Further, the Board considers that the average freight and insurance charges should be calculated from the country of manufacture and not from the port of shipment.
C.B.R. Ltr. no. F 3/25/60-Cus vi of 26.10.1960 C.no. 6166/60)

Valuation of Second Hand machinery - Instructions regarding:

The question of valuation of second-hand machinery has been examined with a view to laying down a suitable procedure to avoid delay in clearance. The value of the second-hand machinery depends upon various factors such as the year or manufacture, model, extent of use, wear and tear, repairs and reconditioning and availability, etc. presently, in support of the price paid, the importers are required to produce before the customs a chartered engineer's certificate mentioning the condition of goods, the expected valuation after examination of the goods. Even as per the requirement of the ITC hand-book, the importers are to furnish such a certificate and other details before the customs when required. At the time of determining such value under rule 8, while a suitable deprecations given on the value of the new machine with reference to its year of manufacture,

the cost of repairs and reconditioning, on the other hand, is added so as to form part of the value.

In the absence of suitable indicators or comparable data in respect of second hand machinery, generally a lot of difficulty is experienced in ascertaining the value and expediting clearance of such imports. Further, as invoice value is not easily verifiable, the assessing officers find it difficult to accept straightway the invoice value as representing the actual transaction value. The question is how to make sure that the invoice value is really the actual transaction value. To ensure suitable checks without involving delay in clearance, it has been suggested that registration of such imports should be done well in advance right after the customs clearance permit is issued by the Chief Controller of Imports & Exports and , in the case of open general Licence imports, after the orders are placed by the importers. Such advance registration, will enable the custom house to verify the value indicated in other customs clearance permits of comparable goods. In glaring cases it should also be possible to take the advice of other competent authorities or to ask for supporting document from the importers well in time. The importers should furnish all the documents (or copies thereof) on the basis of which CCP had been obtained and the information considered by them for placing orders, under O.G.L. or purposes of registration. Though in the case of such imports exact comparison will not be possible, still such registration will enable the custom house to have a few cases on record to make a firm assessment as to what extent the transaction value can be lower than the new replacement cost. With this procedure the custom house can verify and make sure that the price indicated in the cap bears some relation with the new replacement cost and this also bears comparison with the registered case. Once this is done, the custom house should go by the transaction value without unnecessarily raising queries which do not result in positive gains to revenue but delay clearance and also defeat the scheme of importation or second hand machinery. Attention has to be confined only to the assessment aspect and for this purpose this arrangement is considered sufficient to detect any possible frauds.

The procedure cited above is not in replacement of the existing procedures (as referred to at para 2 above) but is an additional requirement to facilitate the valuation of second had machinery. The method of checking the adequacy of declared value of second hand machines by taking the new price of the second hand machines (i.e. the price when they were manufactured new) and then allowing the depreciation for every year of use on reduced balance basis and then escalating the depreciated price by 1/3rd of the percentage by which the new machine has escalated in value over the specific period may serve as a guide to verify if the declared value is reasonable. For this purpose, calculation may be made, by allowing a depreciation of 15% for every year of use.

If the value so calculated does not differ much from the invoice value, invoice value should be accepted for the purpose of assessment without raising further queries. However, if the difference is very high the case may be probed further to find out if there is any fraud or malafide transaction. But if there is no fraud or malafide and the invoice value is found to be the actual transaction value, the same may be accepted for the purpose of assessment.
(Board's letter F.no. 493/39/80-Cus. VI Dt. 16.2.1983)

Unique articles:

The value of a unique article such as a family portrait shall be taken to be the cost of the article to the importer.

Valuation of Gold jewellery:

According to Board's letter F.no. 23(a) 55-Cus. i/vi dated 13.11.1956 on the above subject, jewellery imported by passengers as a part of their baggage should be valued on the basis of the price of gold in the country of manufacture and 20% should be added towards making charges. It was also laid down that stones, if any, set in a jewellery article should be valued on the basis of Indian market price thereof. It has now been brought to the notice of the Board that there

is some divergence in the practice followed in different custom houses for the valuation of gold jewellery.

Since it is not easy to verify the price of gold in the country of maintenance, the Board has decided that, the value of jewellery items, imported as baggage, should be determined on the basis of price of gold prevailing at London in case of passengers coming from the west and at Hong Kong in case of passengers arriving from the east. With a view to ensure uniformity in valuation of jewellery at different ports, the Board also desires that Bombay custom house should inform all other customs houses and Chandigarh and West Bengal Central Excise Collectorates by the 29th of every month the average of the last 4 weeks gold prices at London and Hong Kong. These prices should form the basis for valuing the gold content of jewellery from the 1st of the following month after adding 20% thereto towards making charges. In respect of studded jewellery the value of the stones determined on the basis of the Indian market price thereof should also be added.
(Central Board of Excise & Customs letter F.no. 495/52/75 Cus. VI dated the 31st January, 1978)

Woolen fabrics - Flag allowance admissibility of order reg.:

Pieces of woolen fabrics sometimes contain defects, the number and nature of the defects are such that the whole piece is not always condemned at second grade, but at places where the defects occur, strings attached handsome allowance either in terms of yardage or in terms of value, is allowed per string to the buyers. This is commonly known as the 'flag allowance' the question of treatment of this allowance for valuation purposes has had been under consideration of the Board for sometime.

It has been decided by the Board that the assessment of woolen fabrics should be made after taking into account for valuation purposes the actual flag allowance granted by the supplier subject to the usual maximum of 1/2 yard, where the allowance is given in terms of quantity, and to that of 1%, where it is given in terms of value.

In the case of levy of specific duties, however, there is no question of giving rebate for a flag allowance; the gross yardage has to be assessed to duty as the duty does not vary according to the quality.
(Board's F.no. 2(1)/56-Cus. vi of 31.8.1956 no. 4/Cus. vi/56)

Loading of invoice value and examination of books of accounts - Review instructions-Regarding:

(i) The various decisions taken on the examination of books of accounts of firms effecting importation from connected suppliers' abroad, incorporated in a separate Annexure as compiled from time to time by special section (valuation).
CBR Ltr. no. 25(192)-Cus. iii/56 of 9.11.1956)

(ii) The Board has ruled that where at the time of the first assessment the customs authorities have reason to believe that the value declared is less than the value i.e. the cases of loading of invoices, the proper course to adopt in such cases would be to have recourse to provisional assessment under section 18 of the Customs Act, 1962 the Board has ruled that we should avoid any approach to the problem which may appear to be unrealistic or too complicated. Adoption of complicated mathematical formula, basing of decisions on many assumption and fixation of criteria which might look arbitrary, and such other factors may be avoided. It is also imperative that the system of loading of invoices should not be resorted to indiscriminately but only where there is a strong justification for not accepting the invoice value.

There should be no question of keeping an assessment open for a year or so, in order that a complete year's accounts may be checked. In the case of importers whose books are being checked every year practice of applying a loading percentage based on the figures of the previous year to imports made during the current year. Where, however, any importer challenges this practice it should not be resorted to, but the import of the current year should serve as the basis. However, the assessments should be made under section 18

and should be finalised on the basis of two or three months' transaction, on the basis of the best judgment possible. It is again emphasised by the Board that on no account should finalisation of an assessment be kept pending for months or years on the ground that accounts have not been finalised.
(C.B.R. Ltr.no. 4/37/57-Cus. vi of 15.10.1960 C.no. viii/9/61)

(iii) Decisions in matters of examination of books of accounts of various firms except the following types of cases should be taken by the Assistant Collector of Customs for Appraisement in charge of the special section.

(1) Cases involving loading of raw material;

(2) Review cases where earlier decision is not confirmed even though there is no material change in the position; and

(3) Cases falling under Sl. no. (1) should be put up to Collector and that in Sl. (2) should be put up to Deputy Collector (and in his absence to Collector) for final orders. Tentative decisions shall first be communicated to the parties inviting written representation and personal hearing before final decisions are taken.
(Order of Collector of Customs, Calcutta, with reference to Board's letter F.no. 3/33/59-Cus. VI dated 4.10.1960)

Examination of books of accounts in connection with assessment of imported goods - Periodical gap - Observation of public account committee:

While considering an audit paragraph regarding loss of revenue due to wrong admission of agency commission the Public Accounts Committee has observed that the department should take steps to examine the books of account of the importers well within the period of 5 years so that any claim against them could be preferred before the time bar becomes operative. The observation of the Public Account Committee should be strictly followed hence forth to avoid any recurrence of such incidence.

(C. 1/178/70-Ministry's F. 3/12/70-Cus vi Dt. 20.6.1970)

Determination of value by the special valuation branch - Timely review of decision thereon and follow-up action by assessing groups - Orders regarding:

With a view to ensure compliance of the directives contained in the Ministry's letter F.no. 512/10/79-Cus. VI, dated 18th January, 1980, the following are issued for guidance of different sections in the custom house.

(1) A key advance reminder register in suitable proforma shall be maintained in the special valuation branch/section of the customs house.

(2) The review of investigation circular should be undertaking once in every three years and competed within a period of six months.

(3) Whenever a letter/order is issued by the special valuation branch to the party informing the results of the examination of the books of accounts, this letter/order should specifically instruct the party to make a declaration once in every 12 months regarding any changes in the basis of invoicing affecting the value of goods imported by him from a particular supplier and that this declaration should be addressed to the Assistant Collector, special valuation branch.

(4) It should further be added in the letter/order that the party should come forward for review of the order (of loading etc.) before the completion of three years form the date of special valuation branch order.

(5) The party should be asked within a month the date on which the declaration becomes due, to furnish such declaration.

(6) If no declaration is received from any party in time or if the declaration received, prima facie, indicate that there would be need for review of the earlier order, the special valuation branch should

immediately issue a letter to all the appraising groups (including IAD) advising them to resort to provisional assessment procedure in regard to imports made by that party, copies of the letter/order should also be sent to all other custom houses (in respect of the special valuation branch circulars which are already in vogue now, the special valuation branch/section should ensure by issue of a letter to the parties that the declaration is received in time.

(7) The special valuation branch should compile all circulars alphabetically and issue them to all appraising groups, audit and other concerned departments.

(8) The special valuation branch/section should compile and issue a quarterly catalogue of valuation circulars issued during the quarter. Copies of the catalogues should also be sent to all other custom houses so that they could check that they have not missed any of the circulars. Periodical corrections, if any, should also be issued and circulated.

(9) Copies of all valuation circulars and quarterly special valuation branch catalogues together with the correction lists, if any, should also be sent to the directorate of inspection for keeping a watch on the progress of review.

(10) In cases where it appears to valuation branch/sections that the review cannot be finalised within the stipulated period the special valuation branch should take prompt steps to have the import assessed provisionally under section 18(1) of the Customs Act, 1962. Provisional assessment under section 18(1) of the Customs Act, 1962 should also be ordered in cases where the special valuation branch apprehends that dilatory tactics are adopted by the importers/ exporters and also in cases where examination of books of account is likely to take a long time whether at the time of original study or review.

(11) Where the loading, if any, has increased and where it appears that such loading should have increased some time in the past, the change in the set-up, mode of invoicing, relationship etc. be

intimated to the customs house in time, the special valuation branch/section should monitor any less charge that may be due under section 28(1) of the Customs Act, 1962 and under proviso thereto. For this purpose, special valuation branch/section should maintain a register. Where details of such less charges as intimated to the concerned assessing groups are entered and the progress watched. This register should also be put up to Assistant Collector of the valuation branch/section every quarter.

(12) Each Appraising group should maintain a cardex, listing all the circulars together with the name of the concerned importers and the time upto which they are valid.

(13) All bills of entry received in an appraising group should be scrutinised with reference to the cardex by the appraisers.

(14) In the course of scrutiny of the bills of entry, the assessing officers in the group as well as the audit staff should take particular care to check the declaration signed by the importer/ clearing agents, specially the certificate at columns 4 and 5. If the columns are not properly filled in or if they are altogether struck off, he should investigate and should also bring this fact to the notice of the special valuation branch through his Assistant Collector.

(15) The assessing officers as well as audit staff should also carry out an intelligent scrutiny of the invoices, with special reference to the scale of discounts and codes mentioned therein and compare the same with those set out in the investigation circulars. If such scrutiny revealed any different pattern of invoicing it should immediately be brought to the notice of the special valuation branch/section through the Assistant Collector of the group, for necessary action. The Assistant Collector of the group should decide whether the assessment should be made provisionally in that case and the case of the same nature arising thereafter.

(16) As soon as intimation regarding the less charge due or likely to be due is received in the concerned assessing group, the said group should take prompt action to collect the necessary information

regarding the less charge due and issue a less charge demand as early as possible and in cases, where less charge is established to be due, take steps to enforce payment in time. The assessing groups should keep the special branch/section informed of the progress made in each stage.

(17) The valuation branch/section decisions, whether on original study or on review of an earlier decision, should be circulated to all assessing groups, audit, CRA etc. as well as other custom houses & central excise collectorates, which have customs units. This work should be handled by a specified unit in the custom house which should ensure that there is no undue delay in cyclostyling/distributing the copies of the valuation branch circulars. It will be the duty of the staff of valuation branch/section to ensure that necessary entries in the alphabetical registers are made.

(18) The staff of valuation branch/section should also ensure that the circulars issued by other custom houses/custom units are arranged serially and maintained up to date and the particulars entered in the alphabetical master register maintained in the valuation branch/section if any circular is found missing a prompt reference should be made to the custom house concerned and a copy thereof obtained without delay.
(Authority: Based on Ministry's letter F.no. 512/10/79-Cus. VI Dt. 18.1.1980 and Bombay SO 6737/80)

Other orders regarding valuations- Correspondence with other customs house:

The Board desires that in important matters, e.g. in case of interpretation of section 30 of the Sea Customs Act (now 14 of the Customs Act, 1962), correspondence amongst the custom houses/Collectorates should be on Collectors' level and not the Assistant Collectors' level.
(Board's no. 27/16/57-Cus.vi of 20.11.1957)

Goods imported from a country different from country of origin at a price lower than the price of comparable goods imported direct from the country of origin-Acceptance of:

In recent cases, it was noticed by the Board that an importer got goods of French origin from Hong Kong at a price lower than that of similar goods directly imported, in which case lower price should be accepted as the real value. There can be several genuine reasons why the price at Hong Kong was lower than that in France. For instance, the particular goods may be of deteriorated quality or the sale might have been of a job lot or again the market conditions of Hong Kong may be different from the market conditions in France. Whether the lower price for import from Hong Kong is actually due to one of these reasons is a matter that has to be determined with reference to the facts of each particular case.

The Board desires that the greatest circumspection is necessary in deciding such cases and prima facie such low values should be regarded as suspect. Normally, the price prevailing in Hong Kong has to be at least equal to that of the cost price in France and the transport charges. In those cases where it is conclusively established that the lower price obtainable from Hong Kong in a particular case was on account of some special reason as stated above and not on account of special relationship between the importer and the exporter, the invoice price should be accepted for purposes of determining the value under section 30(b) of the Sea Customs Act (now 14(1) of the Customs Act, 1962). In other cases where the reason for the lower price cannot be satisfactorily established, it will have to be disallowed and value will have to be calculated on the basis of the price of goods of the like kind and quality imported form France directly to India. The basis for this action would be that it is the only way of determining satisfactorily the price at which goods of the like kind and quality can be imported into India.
(Board's no. 3/7/57-Cus. vi of 24.8.1957 Inst. no. 28/real value Cus. vi/57).

Invoices - Acceptance of:

(i) As a general rule invoice values are not to be accepted as the sole guide except in the case of small personal importation where the good faith of the importer may reasonably be assumed.
(G.O.I. Circular no. 124-C of 1.5.1878).

Note: there is no obligation on the part of the Customs Collector to accept invoices even if genuine as proof of real value. The main idea underlying the sub-section is that the value should be fixed not in accordance with the cost to the importer but with reference to the average landed cost of goods of like kind and quality.
(G.O.I. C. & I. no. D.O. 2881 of 6.6.1922).

Acceptance of invoice values for the purpose of assessment with an allowance for variation due to some valid consideration:

The Estimates Committee (Sixth Lok Sabha) in its 33rd report has made the following recommendations on the question of acceptability of invoice value for the purpose of assessment.

"the customs authorities should consider the question of correctness of invoice values with reference to the sources of import, quality of goods and commercial practices prevailing in different countries and make an allowance for variation of import price if justified on these and other valid considerations. The committee also feels that a reasonable differential in price between the bulk and retail buying should also be allowed as it is a normal commercial practice that bulk or long term buyer generally gets some price concession". The above recommendations are accepted by Government.
(Authority: Ministry of Finance Deptt. of Revenue, Government of India's letter F.no. 520/27/79- Cus. vi dated 10.1.1980.)

Production of the bank attested invoice before finalisation of the bill of entry - Instruction reg.:

Consequent on the acceptance of the recommendation of the study team on leakage of foreign exchanges through invoice manipulation, it has been decided to adopt the following measures with immediate effect and as such, assessing officers and all others concerned should ensure that the instructions laid down hereunder are followed scrupulously-

(i) Assessing officers while processing the bills of entry should insist on production of the bank attested invoices before finalising the bills of entry.

(ii) There may be occasions when for one reason or another importers may not be able to furnish a bank-attested invoice. In order that this does not become a point of unnecessary dispute and delay, the importers should be asked to subscribe to a declaration on all the copies of the bills of entry including the exchange control copy signifying their inability to secure and produce an invoice attested by the bank. On the importer making such a declaration the assessing officer should proceed with the scrutiny of value and other aspects in the normal course on the basis of the unattested invoice produced.

(iii) If any case of disparity between the value of the goods and the amount of remittance made or to be made is noticed, the assessing officers should immediately report the same to higher officers so that the Reserve Bank and the Enforcement Directorate are informed about it.
(Ref: Board's letter F.no.S 14/1/76-Cus VI dated 23.1.1976)

Rubber stamp signatures on documents or Photostat copies - Question of acceptance:

The Government of India consider that copies made by mechanical process from the master copy of the invoice are only secondary evidence of the original and as there is no means of verifying that they are exact reproductions of the original it may be difficult to hold the importers responsible for misdeclaration in instances in which preferential assessment is claimed on the basis of

such certificates which are found to be incorrect. Besides, it would detract greatly from the solemnity of the certificates which are found issued in the manner as a matter of routine. The Government of India has decided that such documents should not be accepted for revenue purposes.
(Ref: M.F.D.R. Ltr. no. F. 70237/53 Cus. i dated 25.3.54. File C.no. 551/54.

RENEOTYPED INVOICES OF M/S YARDLEY & CO LTD ACCEPTANCE OF:

It has been decided by the Board that reneotyped invoices of Messrs. Yardley & Co. London may be accepted provided:-

(a) That the invoices contain particulars of quantity description and value to enable assessment being made without difficulty;

(b) That value and other particulars are shown separately for perfumed spirits and other toilet preparations containing spirit; and

(c) That the invoices are signed and subscribed by hand by the supplier or the sender.
C.B.R. Ltr.no. D.Dis. no.1577-Cus.i/46 of 31.12.1946 F.no.C/61/47)

Reason to record for non-acceptance:

The Board has decided that Appraiser should, while rejecting invoices or other documentary evidence of value submitted by importers invariably record on the relative files their reasons for doing so. The appraiser's note recording such reasons must be submitted to the Assistant Collector of the group for approval.
(C.B.R. letter no. 25/134/52 Cus. i of 26.6.1952)

Valid grounds for rejecting invoice value:

It has been brought to the notice of Government that where the invoice value is not accepted by the customs appraisers' proper care is not taken to ensure that the rejection is justified. Board desires to instruct all officers to ensure that while rejecting the declared

invoice price, care should be taken to ensure that there are valid grounds for rejecting the declared value and evidence exists of the actual value being higher. The details of such cases where invoice values have been enhanced should be reported to the Board every quarter.
(Authority: M.F.D.R. letter F.no.520/37/85-Cus.vi dated 8.10.1985)

Suppliers invoices in dollar - Payment in sterling - Real value:

Where the American suppliers' invoices and drafts are in dollars but payment is arranged by a London bank in sterling the value under section 30(b) of the Sea Customs Act (now section 14(i) of the Customs Act, 1962) in such cases should be calculated on the basis of the dollar value converted into rupees at the rate of exchange current on the date of presentation of the bill of entry. The relevant date will be determined in terms of section 37 of the Sea Customs Act (now section 14 read with section 46 Customs Act, 1962).

Locally made invoices:

Reference is invited to the instructions contained in Central Board of Revenue's letter no.18/3/54-Cus.i/vi dated the 6th November,1956 on the above subject in terms of which the facility of clearing goods on the basis of locally prepared invoices was confined to goods imported under open general Licence only. Recently the Government of India had occasion to review the matter and have decided that the concession of accepting locally prepared invoices for any purpose whatsoever should be withdrawn forthwith.
(M.F. (D.R.) no. 3/2/65-Cus. vi dated 21.4.1965)

Freight-basis of computation for inclusion in value:

When the value shown in the invoice is FOB and the freight and insurance charges are not available, 20 1/4% of the FOB (in case the goods are coming from middle eastern ports) or 20 1/2% of FOB

(in case the goods are coming from Cyprus) or 20 1/8% of the FOB (in case the goods are coming from other ports), as the case may be, should be added to the FOB value towards freight and insurance charges (inclusive of war-risk insurance) unless there is evidence to show that the aforesaid addition to FOB value (major part of which includes freight element) may not cover the actual freight. In this regard the list of commodities referred to in para 50(3) below, for which the aforesaid addition is not considered adequate, may also be referred to. In such cases the actual freight should be ascertained and taken into consideration for arriving at the assessable value in terms of provisions of section 14 of the Customs Act, 1962.

In case where FOB value and freight are separately available and the insurance memo cannot be produced 1 1/4% of FOB (in case the goods are coming from middle eastern posts), 1 1/2% of FOB (in case the goods are coming from Cyprus) or 1.1/8% of FOB (in case the goods are coming from other ports) should be taken as insurance element. When the invoice value is C & F and insurance is not shown separately 1 1/4% (in case the goods are coming from Cyprus) or 1 1/8% (in case the goods are coming from other ports) should be added to the invoice C & F value towards insurance charges. The above instructions will equally apply for imports by sea or air. However in case of imports by air, Board's instructions in F.no.3/14/64-Cus-vi dated 2.8.1964 at para 50(6) of this part of appraising manual should be kept in mind and wherever acceptable evidence of freight and other charges ordinarily paid when the articles are imported by sea is forthcoming from the importer that may form as basis for arriving at the assessable value.
[Based upon Ministry's/Board's instructions as summarized in S.O. (Apprg)-2/81 (Cal) issued from File s 60(vii) 71/81a]

Freight charges by air:

As the freight and insurance charges for articles imported by air (which is not the ordinary means of importing such goods) are higher than those of the same articles, imported, through ordinary trade channels, the value under section 14(1) of the Customs Act,

1962 of the articles imported by air should be calculated on the basis of the freight and other charges ordinarily paid when such articles are imported through ordinary channels. Where however it is known that the air freight is lower than the sea freight, air freight should be taken into account in computing the value under section 14(1) of the Customs Act, 1962.

(b) The value, under section 14(1) of the Customs Act, 1962 of articles imported by air, should be calculated on the basis of the freight and other charges ordinarily paid, when the articles are imported by sea.

(C.B.R. L.R.Dis.no. 1561-Customs 1/36 of 4-2-1937 Board's F.no. 8/14/64-Cus. VI of 2-8-1964)

Landing charges:

The Board has had under consideration the basis and method of calculating the landing charges that should be added to the invoice value of imported goods to arrive at their assessable value. The following decisions have been taken in this connection.

(a) The rates of landing charges should be reviewed once, every three years, or at shorter intervals, if substantial changes in the rates prescribed by the port trust authorities or other factors such as devaluation, warrant the same. For this purpose, review should be initiated four to six months prior to the due date, so that it is completed and finalised within three years.

(b) In computing the flat rate of landing charges, coastal cargo and free goods which do not attract the port trust landing charges, or attract only a very low rate, should be excluded wherever possible.

(Board’s F.no.3/1/63-Cus.vi dated 29-11-1963 as amended by C.B.E.C. F.no.512/7/72-Cus vi dated 13-7-1972)

No landing charges for air cargo:

In view of the fact that nothing comparable to landing charges is incurred actually in respect of air cargo, it has been decided that no

addition on account of freight and others is made on actual sea freight basis or on an ad hoc basis of 20 1/2% or more as the case may be.
(C.B.E.C. letter no. 17(18)-56-Cus. i/vi of 17-12-1956)

Marine insurance charges:

Marine insurance charges should also be taken into account, whether they are actually incurred or not.
(Ind. C & I no. 6074-116 of 10-5-15 Ben.Fin.no.990-S.R.of 18-5-15/F.X./1-1 of 1915-16)

Inclusion of freight and insurance charges where proper relevant memos are not produced acceptance of certificates from steamer agents and insurance companies:

The certificates of steamer agents and the insurance companies regarding these charges should be acceptable where regular memos are not forthcoming.
(F.no. 3/16/69-Cus. vi Govt. of India, Ministry of Finance, Department of Revenue & Insurance, New Delhi, the 16th May, 1969)

Semi-finished goods - Criterion for arriving at value:

Rule 4, makes it clear that in determining the value of imported goods, the proper officer shall make such adjustments as appear to him reasonable, taking into consideration all relevant factors. The rule mentions in particular under cause (3) "stage of manufacture" it may, therefore, be observed that the customs officers will be well within their rights to determine the value of semi-finished imported goods from the value of finished goods, by making suitable allowance for post-importation processes. There is nothing common between this method and the old reduced value method, where under, the starting point was the market price of finished goods in India from

which an arbitrary margin of profit was deducted and then further deduction for post-importation manufacture was allowed.

Under the valuation rules, the starting point is the assessable value of finished goods and not their market price. The rules thus steer clear of the need to apply an arbitrary margin of profit, which was the real target of attack by the Bombay High Court.
(D.O. no. 14 SCA/Amdt/Bill/62-Car dated 22.5.1963- M.F. (D.R.) F.no. 3/23/63-Cus.vi Dt. 1.6.63 para 4, page 207, Technical Bulletin volume ix, no.2)

C.K.D. PACK VALUATION:

It is incorrect to compare the price of a complete machine with the total of the prices of individual component parts, similarly it will be incorrect to compute the value of a CKD pack (whether complete or incomplete) by totaling the value of the components parts if sold individually. The CKD packs (complete or incomplete) are for pricing purposes of different goods, rather than the component parts.
(D.O. no. 14SCA/Amdt/Bill/62-Car, dated 25.5.63 G.O.I. M.F. (D.R.) F.no. 3/23/63-Cus. vi of 1.6.1963)

Component parts and parts in CKD conditions - Distinction in valuation thereof:

Several concerns in India have entered into collaboration agreements (also called manufacturing or consultancy or technical aid agreements) with foreign manufactures, whereby the latter's products, which were imported into India in the past in un-finalized condition, are to be progressively manufactured in India. The foreign manufacturer supplies the technical know-how and other requisite information data and secret and patented formula to the Indian collaborator and grants him also the Licence to use his registered trade marks or names on the Indian manufactured goods and receives royalty or consultancy and Licence-fees in return. These agreements

are contracted with the approval of the government of India under the Indian industries (development and protection) act. The scheme envisages the submission by the Indian concern to the government of India, for approval, a program or schedule showing how the progressive and complete manufacture of the products in question is to be achieved over a span of a few years.

Thus, during the initial period of the manufacturing program, the Indian firm has necessarily to import from the foreign collaborator, several components, to enable him to complete the manufacture of the particular product, and the very same components are also imported simultaneously into India for resale as spare parts or replacements. These imports of identical components as above for the different but specific uses are found to be invoiced not at the same prices but at different prices. The issue therefore arose whether both the sets of prices though different, could be admitted under section 14 of the Customs Act, 1962 for purposes of assessment.

In this connection, it was urged by one of the Indian manufacturing concerns that a well recognised practice and trade usage prevailed in the manufacturing circles, all over the world, whereby a manufacturer supplied components to his products to a co-manufacturer (who buys the components for use in further manufacturing process) at price lower than what he charges to his distributors or dealers who buy the components for resale as spare parts or replacements, that this well established trade usage should be recognized in principle by the custom department and that the lower invoice prices charged by a foreign manufacturer to the Indian collaborator who imports the components solely for assembly purposes should accordingly be admitted. On careful inquiries made in the matter, it is understood that the commercial practice or usage referred to above, is fairly well established and in existence for a long time in western countries. It has accordingly been decided that the lower and preferential prices charged by a manufacturer to a co-manufacturer or collaborator in India for components imported by the latter for assembly purposes be admitted provided (a) that the lower prices in question are reasonable and not unduly and deliberately lower than what they would be and (b) that the said prices are

inclusive of the various elements which go to make the value under section 14 of the Customs Act, 1962, viz. factory, cost (cost of material and labour), factory overhead administration or commercial overheads and a reasonable margin of profit for the original manufacturer. The above decision has the approval of the Central Board of Revenue and the same may be adopted mutates mutants if and when similar cases arise.
(Ref: Board's Ltr.no.3/26/57-Cus.vi of 30-10-1957)

(ii) A question arose, as to whether, for purpose of valuation, replacements of CKD components spoilt or damaged in manufacturing processes, could be assessed at the lower prices chargeable for CKD parts. The Board has observed in this connection that once the complete pack is cleared out of customs charge, the cause of damage cannot normally be ascertained. Replacements of CKD components spoilt or damaged in manufacturing process after importation can, obviously, not be admitted to lower assessment. if, however, at the point of import any defective part is noticed during customs examination of the goods, there may be no objection to the substitutes being passed at lower prices meant for CKD parts, provided, (i) these defective parts are surrendered to customs or destroyed under customs supervision, and (ii) the replacements have been supplied either free of charge or at the CKD price.
(CBR Ltr.no.F.3/21/64-Cus.vi of 1-6-1964)

Acceptability of different discounts:

Having regard to the nature of business, if it is found that different rates of discounts are quoted to different purchasers, according to their bargaining ability, the quantity ordered out etc., the custom house cannot ensure a uniform real value to all importers in these types of cases. They should also not endeavour to force the higher discounts on an importer who does not get it, but are content to assess the goods imported by him on value, declared by him which is based on the lower discounts. Further, the considerations should be different where the relationship between the supplier and the importer varies and a common set of discounts to be applicable in every case.

(C.B.R. Ltr.no.C.no.70/18/54-Cus. i dated 8-9-1955)

Quantity discounts - Acceptability regarding:

The Board has decided that bonafide quantity discounts are admissible deductions, for purposes of computation of the value in accordance with the GATT definition of real value, as a reduction in the price offered by the suppliers, in bonafide consideration of a comparatively large quantity ordered, is not an exceptional feature of the trade.
(C.B.R. Ltr. no. 23(2)55-Cus. i dated 27.7.1955 c. 2027/55)

Subsequent reduction in price - Non acceptance of:

(i) Where the prices shown in the invoices are the correct ruling prices at the time of shipment and represent the correct landed cost under section 14(1) of the Customs Act, 1962 any subsequent reduction allowed by the suppliers in the nature of a special concession should not be taken into account in determining the correct assessable value under section 14(1) of the Customs Act, 1962.

Central Board of Revenue letter no. 4(105) 54-Cus. II dated 23.3.1955 on the above subject is reproduced below for the information and guidance of the custom house staff concerned. "A Bombay firm imported a consignment of wood screws of Belgian origin through a firm of supplying agents in the U.K. On scrutinising the invoice, it was noticed that the prices shown therein where the prices in the manufacturer's price list less 5% discount. It was also found that identical goods supplied from the same period were invoiced at the same C.I.F. rates but without any discount.

The importers produced correspondence from their suppliers which showed that the manufacturers had effected a price reduction a day after an order had been placed with them for the goods in question. The makers agreed to give the benefit of the reduction to the order already booked and the supplying agents passed on the discount

to the Indian importers, in view of the long business relations between the two asking them at the same time to keep the matter confidential to prevent claims by other importers.

The custom house considered the discount to be a special reduction as it was not available to others and disallowed it for purposes of assessment. This reduction was confirmed in appeal.

On the matter coming before the Government of India in revision the refund was admitted. The Government of India observed that there was no reason to believe that the suppliers' letter was not genuine and that if it was regarded as genuine the reduced price should be accepted.

The Government of India desires that in similar marginal cases, the custom house should take a liberal view if the reduction appears to be a genuine one, and refer them to the Board for orders. In certain appeals before the Board the cases related to refunds of duty assessed under section 30(b) Sea Customs Act 1878, which were claimed on the ground of a reduction in price which took place after shipment of the goods in question, but which was made applicable to these goods. The question for decision was whether in such a case the reduced price even though made applicable to the goods, could be accepted for assessment purposes. The Board in its letter C.no. 351-Cus. i/29 dated 1.6.1929 (appearing at page 74 of the compilation of ruling and also under sub para (c) of para 2 of this chapter) has admitted that it was theoretically arguable that by the introduction of the words " goods of the like kind and quality" the legislature intended that value under section 30(b) Sea Customs Act should be assessed in accordance with the cost of goods contracted for at the normal rate at which they would be of importation, and not contracted for at any other time. Formerly it was not necessary to apply this condition strictly because the possibility of the importers getting registered invoices, even before the goods which had arrived by the surface mail being entered at the custom house, was remote. The problem however assumed greater significance now-a-days owing to the fact that air mails are much faster than sea mails and it is therefore possible to send revised invoices to catch up with the goods before their arrival.

(ii) Reduction in prices of goods effected after the shipment of the goods may also be admitted in computing real value provided the reductions generally available to all importers, and such reduced price was in force prospectively in the date of importation the importer should claim such reduction either at the time of clearing the goods or later, but not later than the time allowed by section 40 of the Sea Customs Act (now section 27 of the Customs Act, 1962). He should also be put to the strict proof of his claim where the claim is made by the importer after the goods have been removed from the custom house, the provisions of section 36 Sea Customs Act 1878 (now section 149 of the Customs Act, 1962) may be waived if reassessment can be made without re-examination of the goods. The date of importation mentioned above should be taken as the date on which the bill of entry is presented in the import department.
(Ref. C.B.R. Ltr. no. F. 23(18)55-Cus ii dt.7.9.1955 amended by Bd's no. 3(6)/56-Cus. VI of 10.1.1957 no. 1/Real value/ Customs vi/57).

Depreciation to be allowed for used motor vehicles imported into India- Instructions - Review of- Regarding:

(1) The question of prescribing of fixed scale of depreciation to be allowed for valuation of imported second-hand motor vehicles has been under consideration of the Board. This was considered necessary so as to avoid disputes in the valuation of imported second-hand motor vehicles and subsequent delays in their clearance.

(2) As per the existing instructions the scale of depreciation for old and used cars is as under:

(i) For every quarter during the 1st year -4%
(ii) For every quarter during the 2nd year -3%
(iii) For every quarter during the 3rd year -2.50%
(iv) For every quarter during the 4th year -2%

If the motor vehicles are more than 4 years old, depreciation is allowed on merit after inspection of the motor vehicles, subject to a maximum limit of 70%.

(3) In order to avoid possible disputes on the depreciation allowed on motor vehicles which are more than 4 years old, it has been decided by the Board that the scale of depreciation on used motor vehicles henceforth will be on the same basis as for the imported second-hand machinery. As such the scale of depreciation for valuation of imported second-hand motor vehicles will be as under:

(i) For every quarter during 1st year -4%
(ii) For every quarter during 2nd year -3%
(iii) For every quarter during 3rd year -2.50%
(iv) For every quarter during 4th year -2% and thereafter subject to an overall limit of 70%

(4) The above instructions may be brought to the notice of all assessing officers. The instructions would take effect from the date of their issue and apply to all pending assessment.
F.no.495/16/93-Cus.vi, dt.26-5-1993.