



Ottawa, November 25, 2003

MEMORANDUM D13-3-14

In Brief

QUOTA PAYMENTS (CUSTOMS ACT, SECTIONS 48 TO 53)

1. This memorandum has been amended to reflect changes to CCRA policy arising as a consequence of judicial and CITT decisions addressing payment made for quota allocation in a particular sequence of commercial events. Specifically, new interpretations respecting the identification of a quota payment as an element of the price paid or payable of imported goods under the transaction value method and the transaction value of identical or similar goods methods are included in the amended memorandum.
2. The amended memorandum includes a Legislation, Regulations and Jurisprudence section, as well as an Additional Information section that provides relevant telephone and internet contacts.
3. An appendix has been included with the revised memorandum and provides examples of situations in which a payment for quota would or would not be identified as an element of the price paid or payable of imported goods.
4. This memorandum replaces the March 28, 2001 version of D13-3-14.



Ottawa, November 25, 2003

MEMORANDUM D13-3-14

QUOTA PAYMENTS (CUSTOMS ACT, SECTION 48 TO 53)

This Memorandum provides guidance on the treatment of payments made for export quota when determining the value for duty of imported goods under sections 48 to 53 of the *Customs Act*.

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LEGISLATION, REGULATIONS AND JURISPRUDENCE

Legislation

The legislative excerpts below are included in Part III of the *Customs Act*.

45.(1) In this section and sections 46 to 55

“price paid or payable”, in respect of the sale of goods for export to Canada, means the aggregate of all payments made or to be made, directly or indirectly, in respect of the goods by the purchaser to or for the benefit of the vendor;

48.(1) Subject to subsections (6) and (7), the value for duty of goods is the transaction value of the goods if the goods are sold for export to Canada to a purchaser in Canada and the price paid or payable for the goods can be determined...

All references to legislative provisions in this memorandum are references to the provisions of the *Customs Act* (March 2002).

Key Jurisprudence

The Canadian International Trade Tribunal (CITT) and Federal Court of Appeal of Canada (FC) have both ruled on the interpretation of “price paid or payable” with consideration to the treatment of quota payments. Appeals by importers *Charley Originals Ltd.* and *Mr. Jump Inc. Division of Algo Group* were addressed by the CITT, which rendered decisions AP-95-261 and AP-95-263 in favour of the appellants April 29, 1997. FC decision A-528-97, rendered May 15, 2000, supported the CITT decisions.

The importers had purchased quota from unrelated third parties and then provided the quota to the vendors of goods that were imported from Hong Kong. The FC ruled that the contract between the importers and the manufacturer was unaffected by the importers’ acquisition of the quota from the unrelated third parties. The FC found that quota payments made by the importers were not to be included in the price paid or payable of the imported goods when they are not paid to or for the benefit of the vendor of the goods.

GUIDELINES AND GENERAL INFORMATION

1. The term “quota” in respect of imported goods and for the purposes of this Memorandum, refers to a right granted in an exporting country to an allocation of a specified quantity of certain goods for export to Canada. The goods identified in the quota allocation will be under some form of export restraint negotiated by the appropriate authorities in Canada and the country of export. The total quantity of the goods which may be exported to Canada is usually allocated by the authority in the country of export, free of charge, among manufacturers who have a history of exporting to Canada. Each manufacturer may then use their quota allocation to obtain the necessary export licence authorizing the export of a specified quantity of their goods to Canada.

2. When the quota holder is permitted by its domestic government to transfer part or all of its allocation to another exporter, the initial quota holder may receive payment for the transferred quota allocation. The new quota holder may then obtain an export licence in respect of the goods it seeks to ship to Canada. It is the payment or charge for the transfer of the quota allocation (the “quota payment”) which is addressed in this Memorandum.

3. Ordinarily, a quota allocation is obtained in one of the following four scenarios:

- (a) a manufacturer is allocated quota by their domestic government and manufactures goods for export sale;
- (b) the initial quota holder sells the quota to a vendor who intends to sell goods for export;
- (c) the initial quota holder sells the quota to a broker or “middle man” who in turn sells the quota to a vendor who intends to sell goods for export; or
- (d) an agent in the country of export, acting on behalf of the purchaser, purchases the quota from a quota holder or quota broker to effect a sale between a vendor in the country of export and the purchaser.

In scenario (a) above, the vendor in the sale of goods for export to Canada is the manufacturer. In scenarios (b), (c) and (d) above, the *vendor* can either manufacture the goods subject to quota allocation, or can acquire them in the domestic market of the country of export.

Quota Payments and the Transaction Value Method

4. In the scenario provided in paragraph 3(a) of this Memorandum, any amount invoiced by the exporter for the quota whether or not invoiced separately from the goods, will be considered to be a payment made or to be made, in respect of the goods, directly to the vendor in accordance with subsection 48(1), and will form part of the price paid or payable for determining the value for duty of the imported goods.

5. Where the vendor of the goods has purchased the quota, as described in paragraphs 3(b) and 3(c) of this Memorandum, and either sells the goods to a purchaser in Canada at a price which includes both the selling price of the goods and the cost incurred by the vendor for the quota, or invoices the purchaser in Canada separately for the two charges, the total amount to be paid by the purchaser is to be included in the price paid or payable for the goods, regardless of whether or not the vendor was aware that there was a purchaser for the goods when the quota was obtained. The payment for the quota is made in respect of the goods, directly to the vendor in accordance with subsection 48(1).

6. In the scenario provided in paragraph 3(d) of this Memorandum the purchaser through their agent, acquires and pays for the quota and provides it to the vendor, who exports the goods from the country of manufacture. The payment made for the quota by the agent on behalf of the purchaser is not to be included in the price paid or payable of the goods imported to Canada. The fact that the payment for the quota was necessary to effect the export of the goods does not of itself constitute a benefit to the vendor, as required by section 45(1).

7. If a vendor/exporter derives a financial benefit from the payment for quota made to a third party quota holder by or on behalf of a purchaser, then any portion of the quota payment made to the vendor may be considered to be for the vendor’s benefit and included as part of the payment made in respect of the goods by the purchaser to the vendor.

8. The treatment of quota payments under the transaction value method is addressed in the situations and policy interpretations included in the Appendix to this Memorandum.

9. Memorandum D13-4-3 *Customs Valuation: Price Paid or Payable (Customs Act, section 48)* outlines and explains the types of payments included as part of the price paid or payable for the purpose of determining transaction value.

Quota Payments and the Transaction Value of Identical Goods and Similar Goods Methods

10. Goods that are deemed “identical” to the goods for which a quota has been obtained will ordinarily have been subject to quota as well. Goods that are deemed “similar” may or may not have been exported subject to quota. If either the transaction value of identical or similar goods methods is used to value goods subject to quota, the transaction value of the “identical” or “similar” goods is an acceptable basis for the calculation of value for duty, regardless of whether or not an amount paid for quota is required to be included in their price paid or payable (as indicated in paragraphs 4 to 6 of this Memorandum).

11. Memorandum D13-5-1 *Application of Sections 49 and 50 of the Customs Act* explains the methods for determining value for duty based on the transaction value of identical or similar goods.

Quota Payments and the Deductive Value Method

12. If the deductive value method is used to value imported goods subject to quota, any amount that an importer has paid to obtain a quota allocation is an expense related to the purchase of the goods abroad. As such, this expense is not considered to be “in connection with sales in Canada” and cannot be included in the amount of deduction for profit and general expenses in the calculation of value for duty under this method.

13. Memorandum D13-7-3 *Deductions From the Price per Unit (Customs Act, Section 51)* explains the deductions to be made from the price per unit in determining the deductive value.

Quota Payments and the Computed Value Method

14. If the computed value method is used to determine the value for duty of imported goods which are subject to quota, the amount to be included in the value for duty calculation for “profit and general expenses” shall reflect the profit and general expenses of producers in the country of export who manufacture and sell for export to Canada the narrowest group or range of goods of the same class or kind as the goods being appraised. “Of the same class or kind”, in this context, refers to goods which are subject to a quota allocation of the same category, group or class as the goods being appraised.

15. Memorandum D13-8-1, “*Computed Value*” Method (*Customs Act, Section 52*) explains the requirements for the calculation of value for duty under this method. Memorandum D13-1-1 contains the Value for Duty Regulations respecting the determination of value for duty under the *Customs Act* and provides information on establishing an amount for profit and general expenses under the Computed Value Method.

Application of Residual Basis of Appraisal Method (Section 53 of the *Customs Act*)

16. If the residual method is used to determine the value for duty of imported goods which are subject to quota allocation, the flexible application of a previously rejected method cannot exclude an amount paid for quota that would have been included if the provisions of that method were used to determine value for duty.

17. Memorandum D13-9-1, *Residual Basis of Appraisal Method (Customs Act, Section 53)* outlines and explains the application of this method.

Additional Information

18. The Appendix to this Memorandum includes examples that illustrate the treatment of quota payments in the determination of value for duty under the transaction value method.

19. For more information on the treatment of quota payments, telephone the CCRA’s Automated Customs Information Services at 1-800-461-9999 for service in English or 1-800-959-2036 for service in French. Alternatively, access the CCRA’s Small and Medium-size Enterprises Info Centre at www.ccra.gc.ca/sme.

20. This memorandum and all other D13-series Memoranda are available at no charge from internet site www.ccra.gc.ca/customs/business/importing/methods-e.html.

21. Federal Court of Appeal decision A-528-97 can be reviewed at internet site <http://decisions.fct-cf.gc.ca/fct/2000/a-528-97.html>.

22. Canadian International Trade Tribunal decisions AP-95-261 and AP-95-263 can be reviewed at internet site http://www.citt.gc.ca/appeals/decision/ap95261_e.asp

Copies of decisions can be obtained by contacting the CITT at facsimile no. (613) 990-2439 and quoting the appeal number, or by post at the following address:

Records and Mail
Canadian International Trade Tribunal
15th floor
333 Laurier Avenue West
Ottawa ON K1R 1G7

Telephone: (613) 990-2444 or (613) 990-2446

APPENDIX

EXAMPLES OF QUOTA PAYMENTS AND THEIR TREATMENT UNDER THE TRANSACTION VALUE METHOD

This appendix includes two situations involving payments for quota. Two examples, each with a corresponding solution that illustrates the interpretation of policy included in this Memorandum, are provided for each situation.

In situation 1, quota may have been obtained by the vendor (exporter) in the circumstances outlined in scenarios (a)(b) and (c) of paragraph three of this Memorandum. In situation 2, quota is obtained by the vendor (exporter) in the circumstances outlined in scenario (d) of paragraph three of this Memorandum.

SITUATION 1.

Where a purchaser in Canada buys goods from a vendor who is either a manufacturer or a re-seller and the vendor has paid an amount to obtain a quota, the amount paid for the quota will usually be included in the price paid or payable for the goods. If the amount paid for the quota is not already included in the price paid or payable for the goods and is separately invoiced by the vendor, the amount paid for the quota must be added to the price paid or payable for the goods by the purchaser. The quota payment is made directly for the benefit of the vendor.

Example #1 to Situation 1

ABC Co. of Toronto, Ontario enters into a contract of sale with a foreign manufacturer for the sale for export to Canada of men's suits for which an export license is required. The manufacturer has the necessary quota needed to obtain the export license. ABC Co. is charged by the manufacturer a price for the suits which includes the manufacturer's cost incurred in the purchase of the quota.

Solution to Example #1 of Situation 1

The manufacturer's expense in purchasing the quota is a cost and is factored into the price of the goods. The total price paid for the goods, inclusive of the quota cost, forms the basis for the determination of the transaction value.

Example #2 to Situation 1

ABC Co. enters into a contract of sale with a foreign manufacturer for the sale for export to Canada of men's suits for which an export license is required. The manufacturer does not own the necessary quota and must purchase it from an independent quota broker. Instead of factoring the cost of the quota into the manufacturing cost

of the suits, the manufacturer generates separate invoices to ABC Co. for the quota charge and for the price of the goods.

Solution to Example #2 of Situation 1

The payment made for the quota by ABC Co. to the manufacturer forms part of the price paid or payable notwithstanding the fact that it was invoiced separately from the invoice for the imported suits. The payment made by the purchaser for the quota is considered to be a payment made in respect of the goods directly to the benefit of the vendor

SITUATION 2.

Where a purchaser in Canada buys goods from a vendor who is either a manufacturer or a re-seller and the purchaser in Canada had to purchase quota from a third-party quota holder, then the price paid for the quota will not usually be included in the price paid or payable by the purchaser for the goods. A payment for quota that is not made for the benefit of the vendor is not an element of the price paid or payable for the goods.

If a vendor benefits directly or indirectly from the payment for quota made to a third-party quota holder, then any portion of the quota payment identified as "for the vendor's benefit" must be included as part of the price paid or payable for the goods.

Example #1 to Situation 2

ABC Co. enters into a contract of sale with a foreign manufacturer for the sale for export to Canada of men's suits for which an export license is required. However, ABC Co., believing that they can negotiate a better price for the required quota on their own, purchases quota from an independent quota broker and supplies the quota they have purchased to the manufacturer free of charge in order to expedite the manufacture and sale for export of the goods.

Solution to Example #1 of Situation 2

The amount paid for the quota by purchaser ABC Co. does not form part of price paid or payable for the imported suits. Although the quota was acquired on behalf of, and supplied to the vendor, the payment is not considered to form part of the price paid or payable for the imported goods. The contract of sale between ABC Co. and the manufacturer was for the manufacture and sale of men's suits. The quota was purchased on the account of ABC Co. and was not an element of the contract of sale between the purchaser ABC Co. and the vendor (the manufacturer).

Example #2 to Situation 2

ABC Co. engages an overseas agent to enter into a contract of sale with a foreign manufacturer for the sale for export to Canada of men's suits for which an export license is required. Acting on ABC Co.'s instructions, the agent purchases quota in the foreign manufacturer's country and provides it without charge to the manufacturer to expedite the manufacture and sale for export of the goods. The agent then invoices ABC Co. for the quota at the agent's cost of acquisition.

Solution to Example #2 to Situation 2

The quota obtained by the agent was purchased on the account of ABC Co. and was not an element of the contract of sale between the purchaser (ABC Co.) and the vendor (the manufacturer). The contract of sale between the purchaser and vendor was for the sale of men's suits and the payment made for the quota does not form part of the price paid or payable for the imported suits.

If the buying agent was related to the vendor of the goods, or had earned a profit on the charge to their principal (the purchaser) for the quota acquired on the principal's behalf, the bona fides of the buying agent/purchaser relationship may be examined to determine if any commission paid to the agent should be included in the value for duty of the imported goods. Memorandum D13-4-12 Commissions and Brokerage (Customs Act, Section 48) provides additional information on the treatment of commissions in calculating value for duty under the transaction value method.

REFERENCES

<p>ISSUING OFFICE –</p> <p>Origin and Valuation Division Trade Policy and Interpretation Directorate</p>	<p>HEADQUARTERS FILE –</p> <p>79070-4-3</p>
<p>LEGISLATIVE REFERENCES –</p> <p><i>Customs Act</i>, sections 45 and 48 to 53</p>	<p>OTHER REFERENCES –</p> <p>D13-4-3, D13-4-12, D13-5-1, D13-7-3, D13-8-1, D13-9-1</p>
<p>SUPERSEDED MEMORANDA “D” –</p> <p>D13-3-14, March 28, 2001</p>	

Services provided by the Canada Customs and Revenue Agency are available in both official languages.

This Memorandum is issued under the authority of the Commissioner of Customs and Revenue.

