

Locator Code: 496B

Memorandum D13-1-1

In Brief

Ottawa, March 3, 2000

SUBJECT

VALUATION FOR DUTY REGULATIONS

1. This Memorandum has been updated to reflect changes made in recent years to the *Valuation for Duty Regulations*.
2. Please consult Memorandum D13-1-3, *Customs Valuation – Purchaser in Canada Regulations (Customs Act, Section 48)*, which provides policy guidelines with respect to the amended *Valuation for Duty Regulations* that define “purchaser in Canada.”

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SUBJECT

**VALUATION FOR
DUTY REGULATIONS**

This Memorandum contains the Regulations respecting the determination of the value for duty of imported goods under the valuation sections of the *Customs Act*.

Regulations

REGULATIONS RESPECTING THE
DETERMINATION OF THE VALUE FOR
DUTY OF IMPORTED GOODS

Short Title

1. These Regulations may be cited as the *Valuation for Duty Regulations*.

Interpretation

2. The definitions in this section apply in these Regulations.

“Act” means the *Customs Act*. (*Loi*)

“permanent establishment”, in respect of a person, means a fixed place of business of the person and includes a place of management, a branch, an office, a factory or a workshop through which the person carries on business. (*établissement stable*)

“resident” means

- (a) an individual who ordinarily resides in Canada;
- (b) a corporation that carries on business in Canada and of which the management and control is in Canada; and
- (c) a partnership or other unincorporated organization that carries on business in Canada, if the member that has the management and control of the partnership or organization, or a majority of such members, resides in Canada. (*résident*)

Meaning of “Purchaser in Canada”

2.1 For the purposes of subsection 45(1) of the Act, “purchaser in Canada” means

- (a) a resident;
- (b) a person who is not a resident in Canada but who has a permanent establishment in Canada; or

(c) a person who neither is a resident nor has a permanent establishment in Canada, and who imports the goods, for which the value for duty is being determined,

(i) for consumption, use or enjoyment by the person in Canada, but not for sale, or

(ii) for sale by the person in Canada, if, before the purchase of the goods, the person has not entered into an agreement to sell the goods to a resident.

Determination of the Value for Duty of Imported Goods

3. For the purposes of subsection 48(3) of the Act, in determining whether the transaction value of goods being appraised closely approximates another value referred to in that subsection, there shall be taken into consideration

(a) the following factors, namely,

(i) the nature of the goods being appraised,

(ii) the nature of the industry that produces the goods being appraised,

(iii) the season in which the goods being appraised are imported, and

(iv) whether a difference in values is commercially significant; and

(b) any difference in respect of the sales being compared, determined on the basis of sufficient information and relating to

(i) the trade levels at which the sales take place,

(ii) the quantity levels of the sales,

(iii) any of the amounts referred to in subsection 48(5) of the Act, and

(iv) the costs, charges or expenses that are incurred by a vendor when selling to a purchaser to whom he is not related, but are not incurred when a vendor sells to a purchaser to whom he is related.

4. (1) For the purposes of subparagraph 48(5)(a)(iii) of the Act, the value of any goods referred to in clauses 48(5)(a)(iii)(A) to (C) of the Act that are supplied, directly or indirectly, by the purchaser of the imported goods referred to in that subparagraph shall be determined, in relation to the goods that are supplied,

(a) by ascertaining

(i) their cost of acquisition or lease incurred by the purchaser, if they are acquired or leased from a person who is not related to the purchaser at the time of the acquisition or lease,

(ii) their cost of acquisition or lease incurred by the person from whom the purchaser acquires or leases them, if that person does not produce the goods and is related to the purchaser at the time of the purchaser's acquisition or lease, or

(iii) their cost of production, if they are produced by the purchaser or by a person related to the purchaser at the time of production;

(b) by adding thereto

(i) their cost of transportation to the place where they are used in the production of the imported goods, and

(ii) the value added to them by any repairs or modifications made after their acquisition, lease or production, as the case may be; and

(c) by deducting therefrom an amount to account for any use made of them after their acquisition, lease or production, as the case may be, and before their use in the production of the imported goods.

(2) For the purposes of subparagraph 48(5)(a)(iii) of the Act, the value of any work, plans or sketches referred to in clause 48(5)(a)(iii)(D) of the Act that are supplied, directly or indirectly, by the purchaser of the imported goods referred to in that subparagraph shall be determined by ascertaining, in relation to the work, plans or sketches,

- (a) their cost of acquisition or lease incurred by the purchaser, if they
 - (i) are not available generally to the public, and
 - (ii) are acquired or leased from a person who is not related to the purchaser at the time of the acquisition or lease;
- (b) their cost of acquisition or lease incurred by the person from whom the purchaser acquires or leases them, if
 - (i) that person does not produce the work, plans or sketches, and is related to the purchaser at the time of the purchaser's acquisition or lease, and
 - (ii) the work, plans or sketches are not available generally to the public;
- (c) the cost to the public of obtaining copies of them, if they are available generally to the public; or
- (d) their cost of production, if they are produced by the purchaser or a person related to him at the time of production.

4.1 Before making a determination under subsection 48(7) of the Act, an officer shall

- (a) notify the person who accounted for the goods under section 32 of the Act of the grounds for the officer's belief that the information submitted in support of the transaction value of the goods is inaccurate;
- (b) request in writing that the person submit to the officer, within 30 days after the request, additional information in support of the transaction value of the goods;
- (c) review any additional information received in response to the request referred to in paragraph (b);
- (d) where no additional information is received or following the review of the additional information, if the officer continues to believe on reasonable grounds that the information submitted is inaccurate, at least 30 days before making the determination, give written notice to the person of the grounds for the officer's belief that the information submitted is inaccurate.

4.2 Where an officer makes a determination under subsection 48(7) of the Act, the officer shall give written notice of the determination and the reasons for making it to the person referred to in paragraph 4.1(a).

5. (1) For the purposes of paragraph 51(4)(a) of the Act, an amount equal to the amount of commission or the amount for profit and general expenses, as referred to therein in respect of the appraisal of imported goods, shall be calculated on a percentage basis and determined from sufficient information that is prepared in a manner consistent with generally accepted accounting principles and, subject to subsection (2), is supplied by or on behalf of the importer of the goods being appraised.

(2) Where the amount determined from sufficient information supplied by or on behalf of an importer pursuant to subsection (1) is not consistent with the amount generally earned or reflected in connection with sales in Canada by importers who deal with vendors in a manner consistent with that of persons who are not related to each other, the sufficient information shall be based on an examination of sales in Canada.

- (a) of the narrowest group or range of goods of the same class or kind as the goods being appraised, including the goods being appraised;
- (b) by importers dealing with vendors in a manner consistent with that of persons who are not related to each other; and
- (c) from which sufficient information can be obtained.

6. (1) For the purposes of paragraph 52(2)(a) of the Act, the costs, charges and expenses, or the value, referred to therein in respect of goods being appraised shall be determined on the basis of the following accounts or information supplied by or on behalf of the producer of the goods and prepared in a manner consistent with generally accepted accounting principles of the country of production of the goods being appraised:

- (a) the commercial accounts of the producer of the goods being appraised; or
- (b) other sufficient information relating to the production of the goods being appraised.

(2) For the purposes of paragraph 52(2)(b) of the Act, the amount for profit and general expenses referred to therein in respect of goods being appraised shall be calculated on a percentage basis and determined from sufficient information that is prepared in a manner consistent with generally accepted accounting principles of the country of production of the goods being appraised and, subject to subsection (3), is supplied by or on behalf of the producer of the goods being appraised.

(3) Where the amount determined from sufficient information supplied by or on behalf of a producer pursuant to subsection (2) is not consistent with the amount generally reflected in sales for export to Canada by producers of goods of the same class or kind who deal with importers in a manner consistent with that of persons who are not related, the sufficient information shall be based on an examination of sales for export to Canada

- (a) of the narrowest group or range of goods of the same class or kind as the goods being appraised, including the goods being appraised;
 - (b) by producers dealing with importers in a manner consistent with that of persons who are not related; and
 - (c) from which sufficient information can be obtained.
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REFERENCES

ISSUING OFFICE –

Origin and Valuation Policy Division

LEGISLATIVE REFERENCES –

Customs Act, sections 44 to 56

HEADQUARTERS FILE –

N/A

SUPERSEDED MEMORANDA “D” –

D13-1-1, June 1, 1986

OTHER REFERENCES –

N/A

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.