

MEMORANDUM D13-5-1

Ottawa, April 20, 2001

SUBJECT

APPLICATION OF SECTIONS 49 AND 50 OF THE *CUSTOMS ACT*

This Memorandum outlines and explains the method of determining the value for duty based on the transaction value of identical goods or similar goods as set out in sections 49 and 50 of the *Customs Act*.

TABLE OF CONTENTS

	Page
Guidelines and General Information	1
Requirements	2
Time Element	2
Differences in Trade Level and Quantity	3
Differences in Transportation and Associated Costs	4
Lowest of Two or More Transaction Values	5

GUIDELINES AND GENERAL INFORMATION

1. For the purpose of this Memorandum, explanations referring to the method for determining the value for duty under sections 49 and 50 are discussed together. In determining the value for duty, sections 49 and 50 are applied separately and sequentially.
2. Under sections 49 and 50, value for duty is based on the transaction value of identical or similar goods, respectively, adjusted as appropriate to account for relevant differences in transportation and associated costs, and where appropriate, in trade level of purchaser and quantities sold.

Requirements

3. Three requirements must be met for the value for duty to be based on the transaction value of identical or similar goods:
 - (a) the transaction value of the identical or similar goods must be the value for duty of the goods to which it relates;
 - (b) the identical or similar goods must be exported at the same or substantially the same time as the goods being appraised; and
 - (c) the identical or similar goods must be sold to a purchaser at the same or substantially the same trade level and sold in the same or substantially the same quantities as the goods being appraised (see paragraph 7).

Time Element

4. The date of export is the date on which the goods are shipped from the country of export directly to Canada (see Memorandum D13-3-4, *Place of Direct Shipment (Customs Act, Sections 48 to 54)*). A difference between the date of export of the identical or similar goods and the goods being appraised could lead to a distortion of the value for duty under sections 49 and 50. Under subsections 49(1) and 50(1), the identical or similar goods must be exported at the same or substantially the same time as the goods being appraised.
5. Generally, the expression “at the same or substantially the same time” will be taken to mean a period extending 30 days prior to and 30 days following the exportation of the goods being appraised.
6. If the market or manufacturing conditions are such that the price of the goods in question remains relatively stable over a longer period of time than described above, the transaction value of goods exported outside that period may be considered for use as the basis of value for duty under sections 49 and 50. Conversely, if market or manufacturing conditions result in frequent changes in the price of identical or similar goods, a shorter period of time may be more appropriate.

Differences in Trade Level and Quantity

7. If the identical or similar goods are not sold at the same or substantially the same trade level as the purchaser of the goods being appraised or are not sold in the same or substantially the same quantities as the goods being appraised, then sales at different trade levels and/or in different quantities can be used. In these cases, the transaction value of identical or similar goods would be adjusted, under subsections 49(3) and 50(2), to account for differences in trade level and/or quantity.
8. In ascertaining if identical or similar goods are sold at the same or substantially the same trade levels, customs will examine the services offered by the vendor to the purchaser of the goods in question. If the services offered are the same or if any differences are such that an adjustment to the price paid or payable is not required, then the trade levels can be considered the same or substantially the same.
9. A condition for adjustment due to different trade levels and/or different quantities is that such adjustments be based on sufficient information. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller’s price list and using that price applicable to a sale of 10 units. This does not require a sale to have been made in the quantity of 10 as long as the price list had been established as being “bona fide” through sales at other quantities. In the absence of such objective and quantifiable information, the determination of the value for duty under sections 49 and 50 would not be appropriate.

Differences in Transportation and Associated Costs

10. In calculating the value for duty under sections 49 and 50, adjustments may be made to the transaction value of identical or similar goods to account for differences between the transportation and associated costs incurred prior to the place of direct shipment in respect of those goods and the goods being appraised. It should be noted that adjustments are to be made only for differences arising from differences in the mode of transport and in the distance the goods are shipped. Therefore, differences in transportation costs resulting from, for example, differences in the quantities shipped will not be adjusted for under paragraph 49(3)(a) or subsection 50(2).
11. Adjustments resulting from differences in distances or modes of travel must be based on sufficient information as referred to in subsections 49(4) and 50(2), for example, freight invoices.

Lowest of Two or More Transaction Values

12. In relation to the goods being appraised, when there are two or more transaction values of identical or similar goods which do not require adjustment for trade level and/or quantity, then under subsections 49(5) and 50(2), the lowest of the values would be used as the basis of the value for duty.

13. When a transaction value of identical or similar goods which does not require adjustment cannot be found, but there are two or more transaction values of identical or similar goods which do require adjustment for differences in trade level and/or quantities as outlined in subsections 49(3) and 50(2), then the lowest of these adjusted transaction values would be used as the basis of the value for duty.

REFERENCES

ISSUING OFFICE –

Origin and Valuation Policy Division
Trade Policy and Interpretation Directorate

LEGISLATIVE REFERENCES –

Customs Act, sections 49 and 50

HEADQUARTERS FILE –

7034-5-10

SUPERSEDED MEMORANDA “D” –

D13-5-1, June 1, 1986

OTHER REFERENCES –

D13-3-4

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.