

MEMORANDUM D13-3-2

Ottawa, March 9, 2001

SUBJECT

RELATED PERSONS (CUSTOMS ACT, SECTIONS 45 TO 53)

This Memorandum reflects amendments to sub-section 45(3) of the *Customs Act* contained in Bill C-23 which received Royal Assent on June 29, 2000, and outlines the effect upon the application of various methods of valuation of provisions in the *Customs Act* pertaining to related persons.

GUIDELINES AND GENERAL INFORMATION

1. Under subsection 45(3), persons are related to each other if:
 - (a) they are individuals connected by blood relationship, marriage, common-law partnership or adoption within the meaning of subsection 251(6) of the *Income Tax Act*;
 - (b) one is an officer or director of the other;
 - (c) each such person is an officer or director of the same two corporations, associations, partnerships or other organizations;
 - (d) they are partners;
 - (e) one is the employer of the other;
 - (f) they directly or indirectly control or are controlled by the same person;
 - (g) one directly or indirectly controls or is controlled by the other;
 - (h) any other person directly or indirectly owns, holds or controls five per cent or more of the outstanding voting stock or shares of each such person; or
 - (i) one directly or indirectly owns, holds or controls five per cent or more of the outstanding voting stock or shares of the other.
 2. The existence of a relationship is relevant to the determination of the value for duty in the following situations:
 - (a) under paragraph 48(1)(d), the transaction value determined in a sale between related persons cannot be used as the value for duty unless the requirements of that paragraph are met (see Memorandum D13-4-5, *Transaction Value Method for Related Persons (Customs Act, Section 48)*);
 - (b) under paragraph 48(3)(a), when establishing the acceptability of the transaction value in a sale between related persons using the test values, the transaction value of identical or similar goods, which are likewise sold to a related person, cannot be used (see Memorandum D13-4-5); and
 - (c) under paragraph 51(3)(a), a sale between related persons cannot be used to determine the “price per unit” when valuing goods using the deductive value method (see Memorandum D13-7-1, *Determination of the Price Per Unit (Customs Act, Section 51)*).
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REFERENCES

ISSUING OFFICE –

Origin and Valuation Policy Division
Trade Policy and Interpretation Directorate

LEGISLATIVE REFERENCES –

Customs Act, sections 45, 48 to 53
Income Tax Act, subsection 251(6)

HEADQUARTERS FILE –

7034-5-25

SUPERSEDED MEMORANDA “D” –

D13-3-2, June 1, 1986

OTHER REFERENCES –

D13-4-5, D13-7-1

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.