MEMORANDUM D13-3-11

Ottawa, April 17, 2001

SUBJECT

VALUATION OF GOODS IMPORTED INTO CANADA TO BE USED IN THE ASSEMBLY, CONSTRUCTION, OR FABRICATION OF A FACILITY OR A MACHINE SOLD ON AN INSTALLED CONTRACT BASIS

This Memorandum outlines and explains the application of the valuation section of the *Customs Act* to importations of the subject goods.

GUIDELINES AND GENERAL INFORMATION

1. The approach to be used in valuing the subject goods will depend on who, under the terms of the sale contract, the owner of the goods is at the time of importation. Experience has shown that installed facility or machine contracts fall into two basic categories:

   (a) A Canadian resident buyer of the installed facility or machine is a principal in the transaction which causes the goods to be imported and is the owner and importer of the goods at the time of importation, but the vendor must perform some tasks in Canada (e.g., setting up an imported machine on a foundation, performing pre- operational testing, etc.) in order to fulfill the terms of the contract.

   (b) A Canadian company agrees to purchase a fully assembled facility or machine located in Canada from an international contractor. The contractor will purchase items necessary for the construction of the facility or machine from foreign and domestic vendors, and will import the foreign sourced items prior to the actual sale of the facility or machine. Completion will usually require a considerable amount of work to be performed in Canada (e.g., site clearance, foundation pouring, construction, erection, testing, etc.).

2. In order to determine which sale is the appropriate "sale for export to Canada" it will be necessary to determine into which of the categories above the importation falls.

3. It is a common occurrence for importations of goods used in the construction of an installation to be imported in several, or many, separate shipments over an extended period of time. The valuation implications of such split shipments are addressed in Memorandum D13-3-10, *Goods Imported in Split Shipments*.

4. Any deduction referred to in this Memorandum must be reasonable and based on sufficient information that can be supported by documentary evidence.

Application of the transaction value method (section 48 of the *Customs Act*)

5. Whether or not the transaction value method (section 48) can be used to value the subject goods will depend on the circumstances of the particular transaction resulting in the importation. For the purpose of illustrating the principles involved, the examples given in this Memorandum presume that there are no circumstances, other than those stated in each example, which would prevent the goods from being appraised under section 48.

6. *(a)* Contract sales described in paragraph 1*(a)* of this Memorandum can be conveniently described as "package deals" because the importer is paying a single price for a package consisting of the imported goods and various services connected with the installation. The package can be valued under section 48. This subject is addressed in greater detail in Memorandum D13-3-9, *Package Deals*.

   (b) Installations contemplated in paragraph 1*(a)* of this Memorandum will sometimes require engineering, development work, art work, design work, plans and sketches to be undertaken. Where this work is paid for by the importer, is necessary for the production of the imported goods, is undertaken elsewhere than in Canada, and is supplied to the producer of the goods, directly or indirectly, free of charge or at a reduced cost, the value thereof is to be added to the price paid or payable for the imported goods pursuant to clause 48(5)(*a*)(iii)(D). Where the work performed pertains to more than one item, the amount is to be apportioned to all the imported goods to which it applies. The subject of apportionment is addressed in Memorandum D13-4-8, *Assists (Customs Act, Section 48).*

   (c) Any cost, charge or expense included in the contract price of the package that is in respect of the construction, erection, assembly or maintenance of, or technical assistance provided in Canada in respect of the goods may be deducted from the total price paid or payable for the package pursuant to clause 48(5)*(b)*(iii)(A). The amount for these activities must be identified in the contract separately from the price for the goods.

   (d) Where the contract price of the package includes amounts for the other items specified in paragraph 48(5)*(b)* (e.g., transportation and insurance from the place of direct shipment, Canadian duties and taxes), the amounts actually paid by the vendor may also be deducted from the price paid or payable for the package.

7. Importations for installations described in paragraph 1*(b)* of this Memorandum present some special problems in valuation. Although the contractor is supplying a fully completed installation in Canada (e.g., an oil refinery) it is not the completed installation, as such, that the contractor is importing. Therefore, it is not appropriate to value the importations in the same way as the "package deal" concept used in paragraph 6 of this Memorandum. The contractor is, in fact, acquiring and importing the various items that go into the construction or erection of the installation, and it is these individual items that must be valued for customs purposes.

8. Goods that the contractor/importer has purchased from a supplier abroad which were sold for export to Canada may be valued under section 48 (see Memorandum D13-4-2, *Customs Valuation: Sold for Export to Canada (Customs Act, Section 48)*).

9. Goods, especially industrial equipment, will sometimes be partially fabricated by one manufacturer and passed to one or more other manufacturers for further fabrication before being exported to Canada. Where this occurs, the value of the goods and services provided by any previous manufacturers (including transportation costs between the different points of manufacture) is to be added to the price paid or payable to the final manufacturer in accordance with subparagraph 48(5)*(a)*(iii).

10. The value of engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Canada and necessary for the production of the imported goods (an "assist") will require careful attention; subsection 4(2) of the *Valuation for Duty Regulations* specifies the way in which the value of this work is to be determined. Where, for example, the work is performed by the contractor/importer, the value will be the cost of production thereof pursuant to paragraph 4(2)*(d)* of the Regulations. Subparagraph 48(5)*(a)*(iii) of the *Customs Act* specifies that the value is to be apportioned to the imported goods in a "reasonable manner and in accordance with generally accepted accounting principles." It is probable that not all of the engineering work, etc., performed will be necessary for the production of imported goods as some of this work may well apply to the construction activity performed in Canada, and not all of the imported goods will benefit from the engineering work in their production. As an example, while items such as standard design electric motors, standard measurement steel beams not further fabricated than as normally stocked, and nuts and bolts may be identified in the detailed plans of the installation, no part of the cost of the engineering work, etc., will have to be added to the cost of these items as the engineering work was not necessary for the production of these "shelf" or stock items (see Memorandum D13-3-7, *Engineering, Development Work, Etc., Undertaken Elsewhere Than in Canada (Customs Act, Sections 48 to 53)*).

11. Goods that contractors/importers manufacture abroad, either wholly or partially, and import into Canada on their own behalf may not be valued under section 48 of the *Customs Act* because they have not been "sold" for export to Canada, i.e., there has been no transfer of ownership, and there has thus been no sale for export to Canada.

Application of other methods of valuation (sections 49 to 53 of the *Customs Act*)

12. The goods described in paragraph 11 of this Memorandum that have been manufactured abroad by contractors/importers will most probably not be able to be valued under either section 49 (transaction value of identical goods method) or section 50 (transaction value of similar goods method) due to the unique nature of most of these fabrications. Section 51 (deductive value method) will not be appropriate because the imported items will probably not be sold in Canada in a form which allows identification of the selling price of the individual imported items. The most appropriate valuation approach will likely be section 52 (see Memorandum D13-8-1, *"Computed Value" Method (Customs Act, Section 52)*). If, for some reason, it is not possible to use this valuation method, the contractor will have to resort to section 53 (see Memorandum D13-9-1, *"Residual Basis of Appraisal" Method (Customs Act, Section 53)*).

13. If the value for duty of self-manufactured goods must be determined under the computed value method, the contractors/importers should ensure that the value of engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Canada (as identified in clause 48(5)*(a)*(iii)(D)) as well as the value of such work undertaken in Canada (as identified in paragraph 52(3)*(c)*) is included in the value for duty if the work was necessary for the production of the self-manufactured item.

REFERENCES

ISSUING OFFICE –

Origin and Valuation Policy Division
Trade Policy and Interpretation Directorate

LEGISLATIVE REFERENCES –

Customs Act, sections 48 to 53

HEADQUARTERS FILE –

7034-5-22, 7034-5-32

SUPERSEDED MEMORANDA "D" –

D13-3-11, September 27, 1991

OTHER REFERENCES –

D13-3-7, D13-3-9, D13-3-10, D13-4-2, D13-4-8
D13-8-1, D13-9-1

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