



Ottawa, February 25, 2014

# Memorandum D13-5-1

## Application of Sections 49 and 50 of the *Customs Act*

### In Brief

1. This memorandum has been updated to reflect the amendments to sections 49 and 50 of the [Customs Act](#) that came into effect on June 11, 2009.
2. The amendments to these legislative provisions do not change the current valuation policy.

This memorandum outlines and explains the method of determining the value for duty based upon the transaction value of identical or similar goods, as set out in sections 49 and 50 of the [Customs Act](#).

### Legislation

Sections 48, 49, and 50 of the [Customs Act](#).

### 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 of the [Customs Act](#) (the Act) are discussed together. However, sections 49 and 50 of the Act are applied separately and sequentially when determining the value for duty.
2. Under sections 49 and 50 of [the Act](#), value for duty is based on the transaction value of identical or similar goods, respectively, adjusted as appropriate to account for relevant differences in the transportation and associated costs, and where appropriate, in the trade level and the quantities sold.

### Requirements

3. Three requirements must be met for the value for duty to be based upon the transaction value of identical or similar goods:
  - (a) the transaction value of the identical or similar goods must be the value for duty previously established according to the provisions of the transaction value method (section 48 of [the Act](#));
  - (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 at the same or substantially the same trade level and sold in the same or substantially the same quantities as the goods being appraised.

### Time Element

4. The date of export is the date on which the goods are shipped from the country of export directly to Canada. For more information, refer to [Memorandum D13-3-4, Place of Direct Shipment](#). 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 of [the Act](#). Under subsections 49(1) and 50(1) of the Act, 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 of that period may be considered for use as the basis for the value for duty under sections 49 and 50 of [the Act](#). 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 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 may be used as the basis for a calculation of value for duty. In these cases, the transaction value of identical or similar goods would be adjusted, under subsections 49(3) and 50(2) of [the Act](#) respectively, to account for differences in the trade level and/or the quantity with the goods being appraised.

8. In ascertaining whether identical or similar goods are sold at the same or substantially the same trade level, the Canada Border Services Agency 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 to be the same or substantially the same.

9. Subsections 49(4) and 50(2) of [the Act](#) require that an adjustment to a transaction value due to differences in trade level and/or quantity between goods accounted for under section 48 of the Act and the goods being appraised under section 49 or 50 of the Act be based on sufficient information. For example, 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 the 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 of other quantities. In the absence of such objective and quantifiable information, the determination of the value for duty under sections 49 and 50 of the Act is not appropriate.

### **Differences in Transportation and Associated Costs**

10. In calculating the value for duty under sections 49 and 50 of [the Act](#), adjustments must be made to the transaction value of identical or similar goods in order 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. In accordance with paragraph 49(3)(a) and subsection 50(2) of the Act, adjustments are to be made only for differences in distance and mode of transportation. No adjustments can be made for differences in transportation costs for other reasons, for example differences in the quantities shipped.

11. Adjustments resulting from differences in distances or modes of transportation must be based upon sufficient information as referred to in subsections 49(4) and 50(2) of [the Act](#). For example, freight invoices.

### **Lowest of Two or More Transaction Values**

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

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

### **Additional Information**

14. For more information, within Canada call the Border Information Service at **1-800-461-9999**. From outside Canada call 204-983-3500 or 506-636-5064. Long distance charges will apply. Agents are available Monday to Friday (08:00 – 16:00 local time/except holidays). TTY is also available within Canada: **1-866-335-3237**.

| <b>References</b>              |                                    |
|--------------------------------|------------------------------------|
| <b>Issuing Office</b>          | Trade Programs Directorate         |
| <b>Headquarters File</b>       | 79070-4-9                          |
| <b>Legislative References</b>  | <a href="#"><i>Customs Act</i></a> |
| <b>Other References</b>        | <a href="#">D13-3-4</a>            |
| <b>Superseded Memorandum D</b> | D13-5-1 dated April 20, 2001       |