



Ottawa, March 31, 2015

Memorandum D13-4-13

Post-importation Payments or Fees (Subsequent Proceeds)

In Brief

This memorandum has been reviewed to provide additional information on the treatment of amounts paid for research and development, and for marketing and promotional fees.

This memorandum explains how payments made after goods are imported into Canada are treated within the transaction value provisions of the [Customs Act](#) with particular emphasis on the types of post-importation payments generally called “subsequent proceeds”. As well, the treatment of management or administration fees is explored and reference is provided to explain how other types of post-importation payments may be treated. Examples of various types of post-importation payments or fees and their treatment for valuation purposes by the Canada Border Services Agency (CBSA) are provided in the appendices.

Legislation

Sections 45 and 48 of the [Customs Act](#)
[Income Tax Act](#)

Guidelines and General Information

General Policy

1. Under the transaction value method, payments made in respect of goods that can be identified at their time of importation should be included in the price paid or payable as outlined in subsection 48(1) of the [Customs Act](#) (the Act). Post-importation payments are included in the value for duty of imported goods either as elements of the price paid or payable (subsection 45(1) of the Act), or as “subsequent proceeds” (subparagraph 48(5)(a)(v) of the Act). As well, certain payments for financial transactions, such as dividends, may be excluded in a calculation of value for duty.

Post-importation Payments or Fees

2. The expressions “post-importation payments or fees” and “subsequent proceeds” do not appear in [the Act](#). These expressions address any type of payment made by a purchaser after the importation of goods into Canada. Payments made after the importation of goods that are remitted to the vendor of the goods or to a third party may have to be included in the value for duty of the imported goods.

3. To establish the value for duty of imported goods under the transaction value method, there are several kinds of post-importation payments that must be examined:

- (a) any payments based on the resale of the goods that cannot be related by the importer to services received;
- (b) management or administration fees, as addressed further in this memorandum, and subject to the exceptions outlined;
- (c) contributions to research and development (refer to Appendix A);

- (d) contributions for marketing or promotion (refer to Appendix B);
- (e) overhead expenses related to the manufacturing of the goods but not captured in the selling price and recovered after the importation of goods (refer to [Memorandum D13-4-3, Customs Valuation: Price Paid or Payable](#));
- (f) interest on deferred payments (refer to [Memorandum D13-3-13, Customs Valuation: Interest Charges for Deferred Payment for Imported Goods](#)); and
- (g) other payments made after importation (refer to [Memorandum D13-4-7, Adjustments to the Price Paid or Payable](#)).

4. It is important to determine the nature of each payment to apply the appropriate valuation provisions of [the Act](#).

Subsequent Proceeds

Definition of Subsequent Proceeds

5. The expression “subsequent proceeds” is a practical term used to simplify the phrase: “the value of any part of the proceeds of any subsequent resale, disposal or use of the goods by the purchaser thereof that accrues or is to accrue, directly or indirectly, to the vendor” found in subparagraph 48(5)(a)(v) of [the Act](#).

Guidelines

- 6. Subsequent proceeds must be added to the price paid or payable and form part of the transaction value of goods as required by subparagraph 48(5)(a)(v) of [the Act](#).
- 7. Subsequent proceeds are a type of post-importation payment. They are subject to two conditions:
 - (a) the payments accrue directly or indirectly to the vendor of the goods (in this instance the use of the word “accrue” means to increase the amount you have by adding to it); and,
 - (b) the payments are based on, or a result of, the resale, disposal or use of the goods in Canada:
 - (i) for valuation purposes, a resale means the further sale of imported goods by the purchaser to someone else.
 - (ii) “disposal or use” means the sale, pledge, giving away, utilization, consumption or any other disposition of a good.
- 8. The terms of the payments, whether based on a percentage of the resale price of the goods, fixed on a per-unit amount, lump sum payments, or by any other agreed to formula, are often negotiated under a separate contract, and the payments themselves remitted separately from the payment for the goods. Whether or not a formula exists for the terms of the subsequent proceed, the fact that payments are sent by a purchaser to a vendor means these amounts (subject to certain conditions outlined in this memorandum) must be added to the price paid or payable to establish the value for duty.
- 9. [The Act](#) anticipates that some payments made to or for the benefit of the vendor after the importation of goods may not be included in the invoice price for the goods, and it ensures, through the transaction value method under section 48 of the Act, that they are added to the price paid or payable.
- 10. Subsequent proceeds usually occur in situations where the purchaser is related to the vendor, but they could also happen in unrelated party transactions. Since payments made after importation are generally remitted separately from the payment for the goods themselves, importers often do not include them in the value for duty. However, the fact that such payments exist requires that they be added to the price paid or payable.
- 11. For example, a purchaser in Canada pays \$100 for pens in a sale for export to Canada. Under a separate agreement, the purchaser agrees to pay 10% of the resale price of the pens to the vendor. The purchaser resells the pens in Canada for \$200. The part of the proceeds of the subsequent resale that must be added to the value for duty is 10% of \$200, or \$20. The \$20 represents the part of the proceeds of the subsequent resale of the goods and must be added to the price paid or payable.

Management or Administrative Fees

12. Management and/or administration fees are one type of payment that should be examined to determine whether they are subsequent proceeds or exclusions to the additions to the price paid or payable. Management and/or administration fees are not defined in [the Act](#) as such, there is no legislative basis for their exclusion as an addition to the price paid or payable. The CBSA allows the exclusion of management fees and/or administrative services as a discretionary administrative policy based on CBSA's definition of management fees and/or administrative services. The definition generally includes the functions of planning, direction, control, coordination, systems or other functions at a managerial level. These functions may involve services for various departments of a business relating to management and/or administration (for example, accounting, financial, legal, electronic data processing, employee relations, management consultation, labour negotiations, taxation).

13. Sometimes, in addition to selling goods, vendors will offer management and/or administration services to their purchasers. This is common between related parties, particularly in multinational groups where one member will provide services to other members within the group.

14. To illustrate, a Canadian importer purchases goods from its parent company located in the United States. The related parties have determined that their affairs are best organized by centralising some or all of the management functions. Both parties enter into an agreement where the vendor performs these activities for the importer for a fee. The payments for these services are made separately from any payments related to the purchase of goods.

15. Payments made for management and/or administration services may meet the criteria to be subsequent proceeds, since the payments are remitted to the vendor after the importation of goods and they are often based on the resale, disposal, or use of the goods in Canada. However, in certain circumstances, the CBSA allows some payments made for management or administration services to be excluded from the subsequent proceeds provisions of [the Act](#).

16. To determine whether they can be excluded, the three following elements are examined:

- (a) the services must have been rendered for the operation of the business in Canada;
- (b) the amount of the charge must be in accordance with an arm's length charge; and
- (c) the services provided are justified for the operation of the business in Canada.

Services Rendered

17. The question of whether a payment was made in respect of identifiable management and/or administration services depends on the nature of the service provided and whether the services were actually performed. A foreign related party company may charge a management fee amount to its subsidiary for a number of services including, for example, a management consultation when in fact the specific service may not have happened. Furthermore, there might not be an agreement to specifically charge for such an amount and the specific billing for the exact service may not have been submitted. In such circumstances this charge would not meet the requirements of the CBSA's administrative policy on excluding a recognized management fee from the value for duty and would be added to the price paid or payable.

18. The importer is responsible for keeping sufficient and appropriate evidence, which establishes the nature of the services and proves that they were truly provided for the operation of the business in Canada. The basis used must be available for examination by the CBSA. For instance, a management fee charged by a USA parent company to its Canadian subsidiary that is based on a percentage of sales in Canada may not bear any relation to the actual value of the services rendered.

19. Amounts charged for management and administrative services that are already performed by the purchaser are not excludable and would be added to the price paid or payable.

Amount of the Charge

20. Management and/or administration services are often centralized to share the costs between numbers of related companies. In cases where costs of services are distributed among various departments, branches, or subsidiary corporations, (including the purchaser in Canada), not only must the amounts themselves be comparable to the

price that would be charged by an unrelated party, but also the method of allocation of these costs must be reasonable and appropriate to the circumstances of the importer's business.

21. The fees charged must be comparable to the price that would be charged in Canada by an unrelated party engaged in a similar transaction. For example, if a purchaser pays a fee for bookkeeping services to a parent vendor of the goods, the amount charged for the services must be consistent with fees that would be charged by independent parties providing similar services.

Note: The CBSA does not arbitrarily set benchmark values for individual services; the burden of proof lies with the importer to substantiate that the amount in question is an arm's length charge.

22. To determine whether the amount charged for management fees and/or administrative services is reasonable, consideration is given to the amount of the fee in relation to the services performed by the vendor and the benefit derived by the purchaser in Canada. A parent company may provide services that are not part of its principal business but the charge should not exceed industry standards. Note that industry standard charges of unrelated service providers contain an element of profit and the CBSA recognizes the same might be true for related party management and/or administrative service fees. However, note also that an excess amount of profits claimed on such services might be challenged by the CBSA.

23. The apportionment of management fees and /or administrative services costs between related parties should be based on a comprehensive review of the expenses; this process should be carried out in advance of determining the share allocated to the Canadian importer. The basis of allocation should result in costs being shared in proportion to the benefits received, for example, the allocation of costs of a centralized department based on an estimate of time spent on duties performed for each entity (branch, subsidiary, etc.). Note that management fees and/or administrative services costs determined after the fact are more likely to be challenged by the CBSA. In all cases the basis used for charging a fee must be available for examination by the CBSA.

Justified Services

24. The allowable management and/or administration fees excluded from the amount of subsequent proceeds added to the price paid or payable does not include amounts for services not related to the Canadian operation. For that reason, in order to be considered a legitimate fee for management and/or administration services, an importer must establish that the specific activity performed by their related party is a service for which a charge is justified. In an arm's length relationship, the unrelated Canadian business would be willing to pay for management and/or administrative services only to the extent that the service is needed and delivers some kind of benefit.

25. Determining whether or not a charge is for a justified activity involves the following question: Would the importer for whom the management and/or administrative services is being carried out either have been willing to pay for the activity if performed by an unrelated service provider or have performed the activity itself? Where it would not have been reasonable to expect the importer to either pay an unrelated service provider for the activity or to perform it itself, it is unlikely that any charge for the activity would be justified. For example, an arm's length corporation would not bear the costs of a shareholders meeting of another corporation; therefore, a subsidiary would not bear any costs of a parent's shareholders meeting or it would not pay fees for a promotional service that did not take place in Canada for a product not sold in Canada.

26. If a parent company provides services that are not part of its principal business and charges an amount for the services that is not representative of industry standards, the importer may be challenged by the CBSA to provide information in support of the reasonability of the amount charged.

Common Methods of Charging for Management and/or Administrative Fees

27. Various methods can be employed to calculate the amount a vendor may charge a purchaser for management and/or administrative services. The most common of these are:

(a) The total cost incurred by the vendor is distributed amongst all the recipients of the services based on their usage. For example, the recipient with the largest volume of operations is charged the largest percentage of the total cost.

(b) The amount charged to a recipient is a percentage of its net sales of the vendor's goods. For example, 10% of the recipient's net sales are remitted to the vendor for the services provided.

28. The method described in (a) is a legitimate approach that reflects the costs of management and/or administration a purchaser would otherwise incur. The method described in (b) will not necessarily reflect real management and/or administration costs. Sufficient information remains to be provided that demonstrates that the amount of the charge reflects costs the purchaser would have otherwise incurred in respect of the services provided.

29. At times, amounts paid are casually described as payments for management or administration services, but they are in substance amounts for something else. For example, in related party transactions, there is some flexibility between the parties to debundle (break down or segment) the price, meaning that certain overhead expenses are excluded from the selling price. Vendors sometimes attempt to recover manufacturing overhead expenses later by charging them to the purchaser as management or administration fees. However, since no identifiable management or administration services have been rendered, the amounts paid would have to be added to the price paid or payable for the imported goods.

Other Post-importation Considerations

Unsupported Amounts / Sufficient Information

30. Subsection 45(1) of [the Act](#) defines "sufficient information" to be the objective and quantifiable information that establishes the accuracy of the amount, difference or adjustment. The decision as to whether a sufficient quantity of evidence has been obtained will be influenced by its quality. Although the CBSA will consider evidence that is persuasive, this may not preclude the corroboration by more conclusive evidence in the importer's books and records. Occasionally, importers may be unable to provide the necessary information proving that a payment, or a portion of a payment, relates to an identifiable service for the Canadian operations, or that it is in accordance with the arm's length principle. In such cases, where the cost of the service was based on the disposal, resale, or use of the goods, the unsupported amount will have to be included in the value for duty as a subsequent proceed.

31. Importers must be able to provide sufficient information to justify exclusion of service fee payment from the value for duty. This information must demonstrate that the fees are in accordance with the arm's length principle and relate to justifiable services that were actually rendered for the Canadian operation.

32. Sufficient information will describe:

- (a) the nature of the service for which payment is made;
- (b) the basis on which it is paid; and
- (c) the proof that actual services are being provided and paid for.

33. These documents might include commercial invoices, agreements, and/or other proof of payment, depending on the circumstances.

34. Where it is known at time of importation that the subsequent proceed is calculated based on a percentage of sales or similar criteria, importers must calculate the future payment based on the percentage and previous years' data.

Year-end Adjustments

35. Year-end adjustments made payable to the vendor of the goods are post-importation payments and must be included in the value for duty. [Memorandum D11-6-6, "Reason to Believe" and Self-adjustments to Declarations of Origin, Tariff Classification, and Value for Duty](#), outlines the policy on self-adjustment of accounting information relating to the value for duty. For more information on the treatment of upward and downward transfer price adjustments, refer to [Memorandum D13-3-6, Income Tax Transfer Pricing and Customs Valuation](#).

Financial Transactions

36. Dividends are not subsequent proceeds and, therefore, are not to be included in the value for duty. This distinction has been recognized in the [international customs valuation agreement](#) of the World Trade Organization (WTO) which states that, “The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.”

37. The term “dividends or other payments” refers to financial transactions rather than proceeds related to the purchase and resale of goods. Proceeds are profits made on the resale of imported goods and are, therefore, related to the goods. Dividends are also profits, but they are shared by stockholders or shareholders and relate to a firm’s overall business, not just to the purchase or resale of the imported goods. Canadian Tax Law definitions and requirements determine whether or not an amount is a dividend or another kind of payment that might be included in the price paid or payable. Excludable payments of dividends to related party foreign vendors must meet the non-resident Part XIII tax requirements of the [Income Tax Act](#). The Canada Revenue Agency (CRA) dividend payment forms demonstrate that the payment to a non-resident (related or non-related) is a dividend.

38. “Other payments” that are not to be included in the value for duty, are usually financial instruments of some type and include:

- (a) the issue, assumption, redemption, and repayment of a debt;
- (b) the issue, redemption, and acquisition of share capital; and
- (c) any other financing activities.

Time Element

39. A payment is to be added to the price paid or payable, even if the actual amount that is remitted to the vendor may not be known until after the goods are imported. The timing of a payment whether it is at the time of importation, at the time of the sale of the goods, or sometimes after importation, is irrelevant. These payments must be included in the value for duty.

Reporting of Subsequent Proceeds

40. At the time of importation, it may be difficult for importers to determine the value of subsequent proceeds and, consequently, the amount to be added to the price paid or payable. This is especially true for payments that are based on a percentage of future sales, the resale, disposal, or use of the goods in Canada.

41. Importers should estimate the amount of a subsequent proceed at time of accounting and add it to the price paid or payable for goods. Information such as previous years’ data or sales forecasts can be used to support the estimate. If the finalized subsequent proceed amount is different from the estimate, a self-correction of value for duty may be necessary (refer to [Memorandum D11-6-6](#)).

Additional Information

42. Appendix A contains information on how to interpret research and development fees within the context of subsequent proceeds.

43. Appendix B contains information on how to interpret marketing and promotional fees within the context of subsequent proceeds.

44. Appendix C contains examples that illustrate various types of post-importation payments or fees and their treatment for valuation purposes.

45. 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**.

Appendix A

Research and Development Fees

This appendix defines the payments and fees that will be considered as research and development, which are to be added to the price paid or payable.

Research and Development

1. “Research and development” (R&D) is not specifically mentioned in the [Customs Act](#) (the Act). According to Decision 5.1 of the World Trade Organization (WTO) Committee on Customs Valuation, the term “development” is understood to exclude “research”.
2. Development work that is provided by the purchaser to the vendor for a reduced cost or free of charge, and undertaken elsewhere than in Canada, must form part of the value for duty as per clause 48(5)(a)(iii)(D) of [the Act](#) (assists). Assists are not to be confused with payments for development work made directly or indirectly to the vendor after importation or where these costs are already included in the price paid or payable. Development work, in the context of this memorandum, is a cost incurred by the vendor that is passed on to the purchaser and recovered separately from the amount invoiced for the goods.
3. In general, post-importation payments for R&D occur between related parties whereby the parent company charges its affiliates. Charges for R&D are usually accounted for separately in their financial books and records. These payments are considered to be an addition to the price paid or payable, and are to be included in the value for duty of imported goods. However, if an importer can substantiate that a portion of the payment pertains exclusively to research unrelated to existing goods, only the portion for development is to be added to the price paid or payable.

Research

4. The term “research” refers to planned study undertaken with the hope of gaining new scientific or technical knowledge and understanding. Such studies may or may not be directed towards a specific practical aim or application.
5. The following are examples of activities that typically would be included in research:
 - (a) laboratory research aimed at the discovery of new knowledge;
 - (b) searching for commercial applications of new research findings; and
 - (c) conceptual formulation and design of possible product or process alternatives.

Development

6. The term “development” refers to the translation of research findings or other knowledge into a plan or design for new or substantially improved materials, devices, products, processes, systems or services prior to the commencement of commercial production or use.
7. The following are activities that typically would be included in development:
 - (a) testing in search for, or evaluation of, product or process alternatives;
 - (b) design, construction and testing of pre-production prototypes and models; and
 - (c) design of tools, jigs, moulds and dies involving new technology.
8. There may be economies of scale and scope in centralizing R&D facilities and resources. The Organization for Economic Co-operation and Development (OECD), Transfer Pricing Guidelines for Multinational Enterprises (MNE) and Tax Administrations recommends a benefit-cost approach whereby R&D expenditures are charged out to affiliates based on their actual and expected benefits. Noting, however, that affiliates should not be double charged for work they carry on themselves.
9. Generally, payments to the vendor of goods by the purchaser in a sale for export to Canada for R&D are to be included in the value for duty. These would include all expenditures that can be regarded as part of a continuing

activity required to maintain an enterprise's business and its competitive position and development activities normally undertaken with a reasonable expectation of commercial success and future benefit arising from increased revenue or from reduced costs.

10. Payments may be excluded from the value for duty when the foreign vendor is contracted to do research for the Canadian importer where all costs and risk of failure are born by the Canadian company, and ownership of research accrues to the Canadian company. The Canadian company owns all the intangibles developed through the research and therefore owns the profits that may result from the research.

Appendix B

Marketing and Promotional Fees

This appendix defines the payments and fees considered as marketing and promotional that may not be added to the price paid or payable.

Marketing and Promotion

1. Amounts paid for activities undertaken by the purchaser on its own account, other than those for which an adjustment is provided in subsection 48(5) of the *Customs Act*, are not considered to be an indirect payment to the vendor, even though these activities might be regarded as of benefit to the vendor. Therefore, the costs of marketing activities shall not be added to the price paid or payable. However, when already included in the price paid or payable, such costs cannot be deducted.
2. To determine if marketing or promotional fees paid after importation to the vendor or to a third party are not to be included in the value for duty, the purchaser of the goods will be required to substantiate the receipt of justified services relevant to the payments.

Justified Services

3. The CBSA recognizes that marketing and promotional operations are often conducted on a global basis by Multi-National Enterprises. A corporate head office or one party of a multinational group may purchase advertising or conduct promotion for a particular product which is imported into Canada as well as distributed internationally. The advertisement may be shown throughout the world where the product is distributed. If the costs are then billed back to the Canadian importer of the goods on a prorated basis the payment would be excluded from the value for duty. The importer of the goods must be prepared to substantiate that the costs have been allocated in an equitable manner and maintain objective and quantifiable data, which supports the manner and amount allocated.
4. Alternately, a corporate head office may also provide marketing and promotional services for a vast array of products which are distributed through subsidiaries worldwide, each marketing specific, unrelated products, unique to their locations. The Canadian subsidiary may be required to contribute a lump sum or percentage of the earnings on imported goods, which were sold in Canada, to the marketing branch of the corporate head office. If the marketing fee charged cannot be related to the specific product(s), which are imported and sold in Canada, then the fees cannot be identified as legitimate services the Canadian subsidiary received. Accordingly, this type of marketing or promotional fees would be found to be an addition to the price paid or payable.
5. The following examples illustrate various types of marketing and promotional fee scenarios and their treatment for valuation purposes under the transaction value method. These examples are by no means exclusive or exhaustive.
 - (a) A USA based international company procured international television advertising for a product line, which is sold internationally including Canada. The corporate head office charges a marketing fee of \$93,750.00 to the Canadian subsidiary. The international net sales of the product line amount to \$9,500,000.00 of which Canadian sales account for \$1,425,000.00 (15%) The advertising costs incurred by the corporate head office was \$625,000.00 The fee charged Canada of \$93,750.00 (which is 15% of the \$625,000.00 cost) is a reasonable allocation based on the Canadian sales representing 15% of the total sales. Accordingly, the fee would be a valid exclusion and not be added to the price paid or payable.

(b) A similar USA based international company incurred \$500,000.00 marketing and promotional expenses on international sales, however they did not provide any assistance to the Canadian subsidiary in promoting the product in Canada. The sales figures are the same as in example (a), with the Canadian subsidiary providing a payment of \$75,000.00 (which is 15% of the \$500,000.00 cost) to the parent company. As there were no services provided to the Canadian subsidiary, the amount must be added to the price paid or payable.

(c) Another Canadian subsidiary imports and sells one product, of many unrelated products that the USA parent markets in the USA through four other subsidiary retailers. Total USA and Canadian sales amount to \$10,000,000.00 of which Canadian sales account for \$1,500,000.00 (15%). Corporate marketing and promotional costs are \$2,000,000.00 annually which is split among the subsidiaries on an equal 1/5th basis of \$400,000.00 each. If the importer can provide sufficient information that the costs were apportioned among the subsidiaries based on their usage of the services, the \$400,000.00 charged to the Canadian subsidiary is not an addition to the price paid or payable. If the importer can only demonstrate that a portion of the costs charged relates to actual services provided for the product that is sold in Canada, only the remainder of the costs is added to the price paid or payable. Otherwise, the entire amount is added to the price paid or payable of the imported good.

Appendix C

Examples of Post-importation Payments or Fees and Their Treatment Under the Transaction Value Method

This appendix contains various business scenarios involving post-importation payments or fees. An explanation of the reasoning for the determination of whether or not the payments or fees are included in the value for duty is provided below each example. These examples are for illustration only, as there are many other situations.

Situation A – At the end of the financial year, a Canadian importer remits 75% of net profits made over the year to its foreign parent vendor as dividends paid from after-tax earnings.

Conclusion A – The payment the importer made to the parent company is not the type intended by subparagraph 48(5)(a)(v) of the *Customs Act* (the Act) since it is a dividend distribution. Dividends are profits shared by stockholders and relate to a firm's overall business. Therefore, the 75% of net profits remitted to the parent vendor should not be added to the price paid or payable. It should be noted that importers must be able to substantiate all amounts reported as dividends through their financial statements and income tax returns specifically through the use of the income tax dividend payments to non-residents system.

Situation B – An importer buys goods from its parent company and sells them domestically in Canada making a profit. Part of the profit is returned to the parent company as a dividend and reported as such both on the importer's financial statements and to Canada Revenue Agency (CRA). This dividend is excluded from being added to the price paid or payable. Part of the remaining Canadian profit is returned to the parent company in a second account. When questioned concerning this account, the importer could not provide sufficient information explaining why this amount should be excluded from the value for duty.

Conclusion B – Given this situation, the importer must add the amount returned to the parent company in the second account to the price paid or payable.

Situation C – A parent company located in the United States owns a subsidiary in Canada. The Canadian subsidiary operates in accordance with the parent's corporate policies. The Canadian subsidiary imports goods purchased from its parent and pays 10% of the gross profits resulting from the total annual sales. The importer demonstrates that this payment is made in accordance with corporate policy to reimburse the parent for loans or other financial services provided. The amount paid is considered reasonable for these types of services.

Conclusion C – Like the dividends in Situation A, amounts paid to a vendor in the form of financial instruments are not to be included in the value for duty.

Situation D – An importer purchases goods from its foreign parent company. In exchange for management services provided by the parent, the importer remits 5% of the net sales of goods purchased from the parent at the

end of each year. The management fees are paid under a contract that defines the services and specifies an estimate of the annual cost. The total costs for the year is estimated in the contract at \$250,000. During the course of a review, it is disclosed that the importer's net sales of goods purchased from the parent are \$5,000,000. Through a review of the importer's books and records, it is substantiated that the entire \$250,000 post-importation fees paid under the management/service contract are attributable to the actual services rendered according to the terms of the contract. In addition, the importer provides information confirming that this amount is consistent with amounts paid over the past three years for the same services rendered.

Conclusion D – In this example, there is no addition made to the price paid or payable under subparagraph 48(5)(a)(v) of [the Act](#) as the importer was able to present objective and quantifiable information establishing that the additional fees were paid for genuine services rendered pursuant to an agreement separate from the sale of goods and not simply further payment for the goods (unlike situation B where no such information was made available). The importer was also able to demonstrate that the fees paid for these services did not differ significantly from fees paid previously for the same services provided. However, this example reflects situations where sales and prices are stable or flat year after year. It is difficult to imagine management or service costs being directly proportionate at a set percentage year after year by agreement when sales are rapidly expanding. For example, the launch of a new product may increase service costs for one year. A windfall or one-time large sales contract could abnormally raise sales revenue for one year and not unduly raise service costs. In such cases, the CBSA may require that these fees to be substantiated.

Situation E – As in situation D, an importer purchases goods from its parent company. Under a service fee contract, the importer agrees to remit to the parent 5% of its net sales of goods purchased from the parent at the end of the year for services rendered. This contract contains no estimate of the amount of the service fees payable, but clearly specifies the nature of the services undertaken.

At the end of the year, the importer has net sales of goods purchased from the foreign parent in the amount of \$10,000,000. The importer remits 5% (\$500,000) to the vendor in accordance with the terms of the contract. A review indicates that only \$100,000 of the \$500,000 made as post importation payments can be traced to actual services rendered under the contract. Additional information from the importer's past performance indicates that the importer paid approximately \$100,000 to the vendor for the previous five consecutive years for the same services received.

Conclusion E – In this situation, \$400,000 must be added to the price paid or payable to form part of the value for duty, as this amount is considered to be further payment for the goods. Barring extenuating circumstances, it should be noted that if the importer paid the vendor five times the amounts paid previously for the same services, this indicates strongly that the amount of fees paid is not reasonable for services provided according to the service fee contract. Regarding the remaining \$100,000, as sufficient information was made available substantiating that this amount was paid for identifiable services rendered pursuant to the terms of the service fee contract, no adjustment is required for this amount.

Situation F – A Canadian subsidiary of a USA company is starting up. As a result, it requires assistance from its parent company. A three-year management fee agreement, which is separate from the agreement to buy goods, is undertaken requiring the subsidiary to pay to the parent company 10% of its net sales as a management fee. The services covered by this agreement are clearly documented. During the Canadian subsidiary's first year of operation, sales of \$100,000 are realized and, accordingly, a management fee of \$10,000 is paid. However, the true cost to the parent company in assisting their subsidiary in negotiating leases, incorporating the business, acquiring and installing computer systems totals \$100,000.

In the second year, the Canadian subsidiary has net sales of \$750,000 and, accordingly, pays a management fee of \$75,000. The assistance received from their parent company in year two amounts to \$50,000. In the third year, net sales are \$750,000 and a fee of \$75,000 is paid. The value of the actual services provided by the parent company totals \$10,000.

After three years of operation, the Canadian subsidiary had net sales of \$1,600,000 and paid \$160,000 in management fees (10% of net sales) and the actual cost of services provided by the parent company totaled \$160,000.

Conclusion F – Even though the cost to the parent of providing the identifiable services does not equal the amount received by the subsidiary in any individual year, at the end of the three years, the total services received by the Canadian subsidiary equal the total fee paid to the parent. Under this start-up scenario, it is appropriate to consider more than one year’s services in establishing that the payment or fee for the services provided is reasonable.

Situation G – An importer purchases equipment, including installation at the importer’s premises, at a cost of \$100,000 from a foreign vendor. The importation document reflects a value of \$85,000 for the imported equipment. Later, the vendor sends technical staff to the importer’s premises to install the equipment and provide training to the Canadian staff. The vendor invoices the importer \$15,000 for “setup and service charges.”

Conclusion G – The type of additional payment described in this situation would not form part of the value for duty regardless of when it is made. Since the payment represents a charge incurred for specified services after the importation of the goods, it is not included in the value for duty pursuant to clause 48(5)(b)(ii)(A) of [the Act](#). Any reasonable payments made after importation for expenses incurred for construction, erection, assembly, or maintenance, or technical assistance provided in respect of the goods, are specifically excluded from the transaction value by clause 48(5)(b)(ii)(A) of the Act. Subsequent proceeds envisaged under subparagraph 48(5)(a)(v) of the Act must not be confused with that type of payments. Therefore, the value for duty is \$85,000 (\$100,000 - \$15,000).

Situation H – A Canadian importer purchases goods from its foreign parent company (the vendor). In exchange for management services, the purchaser agrees to pay the vendor 3% of the net sales of the goods. The importer’s net sales for the year are \$10,000,000. Under the terms of the agreement, the importer remits \$300,000 to the vendor for services rendered. However, the agreement does not specify any estimates of the costs for services. As well, the importer is unable to demonstrate the manner in which the \$300,000 was allocated to the services allegedly performed on its behalf.

Conclusion H – Given these limited facts, the proceeds paid by the importer represent an addition to the price paid or payable under subparagraph 48(5)(a)(v) of [the Act](#).

References	
Issuing Office	Trade and Anti-dumping Programs Directorate
Headquarters File	79070-4-4
Legislative References	Customs Act Income Tax Act
Other References	D11-6-6 , D13-3-6 , D13-3-13 , D13-4-3 , D13-4-7 International customs valuation agreement
Superseded Memorandum D	D13-4-13 dated July 8, 2009