



# Memorandum D13-4-5

Ottawa, December 6, 2021

## Transaction Value Method for Related Persons

### In Brief

This memorandum has been reviewed to clarify and provide more information on the Canada Border Services Agency's determination of whether the relationship influenced the price. The structure and sequence of ideas presented in this memorandum, have also been amended.

This memorandum explains the treatment of sales between related persons by the Canada Border Services Agency (CBSA) in determining the value for duty of imported goods under the transaction value method (section 48 of the *Customs Act*).

### Legislation

[Customs Act](#)

[Valuation for Duty Regulations](#)

[Imported Goods Records Regulations](#)

## Guidelines and General Information

1. The definition of “related persons” is contained in subsection 45(3) of the *Customs Act* (the Act). For more information, refer to Memorandum D13-3-2, Related Persons.
2. The primary method of valuation for imported goods is the transaction value method (refer to Memorandum D13-4-1, Transaction Value Method of Valuation). In order to apply the transaction value method, the goods must have been sold for export to Canada to a purchaser in Canada, and the price paid or payable can be determined. The Act also provides for prescribed additions and deductions to the price paid or payable.
3. In accordance with paragraph 48(1)(d) of the Act, the transaction value method can only be used where the purchaser and the vendor of the goods are not related or, if they are related, where the importer clearly demonstrates one of two things:
  - (a) that the relationship did not influence the price paid or payable for the goods, i.e. subparagraph 48(1)(d)(i) of the Act, by providing substantiating evidence related to the circumstances surrounding the sale or
  - (b) that the price closely approximates a “test value”, i.e. subparagraph 48(1)(d)(ii) and further specified in subsection 48(3) of the Act
4. In other words, the importer must be able to demonstrate to the CBSA, if requested, that the relationship between the vendor and the purchaser had no effect on the selling price of the goods. To do so, the importer must be able to demonstrate how the price was determined between the related parties and maintain sufficient information to support their decision to use the transaction value method. Therefore, before using the transaction value method, the importer should conduct a self-examination to establish whether or not the selling price is influenced.

5. The importer who believes that the price is not influenced and uses a transfer price as the basis for establishing the value for duty under the transaction value method must retain on file the information justifying their conclusion and the calculation of the transfer price. This information may be examined by the CBSA at any time in accordance with the *Imported Goods Records Regulations*.

6. If the CBSA performs a review and believes that the relationship has influenced the price paid or payable for the goods, the importer will, in all cases, be notified in writing of the grounds for such belief in accordance with subsection 48(2) of the Act. The importer will be given an opportunity to respond to the CBSA's conclusion and submit additional information in support of the original declaration regarding the acceptability of the purchase price.

7. If the importer is unable to demonstrate that all of the requirements of the transaction value method have been met, and in particular the requirements of paragraph 48(1)(d) of the Act, the CBSA will determine that the goods are precluded from customs valuation under this method. In such instances, the goods must be appraised under an alternative method in accordance with the provisions of sections 49 to 53 of the Act, which are applied in sequential order. For assistance in identifying the appropriate customs valuation method, refer to Memorandum D13-3-1, *Methods of Determining Value for Duty or the Customs Valuation Handbook*.

**Circumstances surrounding the sale (subparagraph 48(1)(d)(i) of the Act)**

8. The customs valuation provisions of the Act and the *Valuation for Duty Regulations* (Regulations) are based on the provisions and principles established in the international Customs Valuation Agreement (CVA) adopted by the World Trade Organization (WTO). Neither the Act, the Regulations or the CVA detail the information to be used in establishing that a relationship has not influenced the price in a sale of goods for export. However, Annex I of the CVA provides some guidance on how an importer may be able to demonstrate that the price has not been influenced by the relationship, such as substantiating that the price has been settled in a manner consistent with the normal pricing practices of the industry, pricing practices with unrelated purchasers, or establishing that the price is adequate to ensure recovery of all costs plus a profit.

9. The following provides a list of ways that importers may be able to establish that the price for the imported goods is not influenced by the relationship between the vendor and the purchaser:

(a) Where the vendor has sales to unrelated customers in Canada who purchase under the same or similar conditions as the related purchaser, a comparison with those sales may demonstrate that the price is uninfluenced. If the sales are made under different conditions, any differences in price may be justified by these differences in conditions. In examining the effect of any differences in conditions of sale, an importer should take into consideration the factors set out in section 3 of the Regulations. For instance, the following scenario provides an example of differences in conditions that might explain a difference in price:

(i) The related purchaser may be at the distributor level of trade, but the unrelated Canadian customers are at the retail level and buy in smaller quantities than the related purchaser. In this example, the importer could provide evidence to show that, although the vendor's price to the retailers is higher, the difference is accounted for by economies realized by the vendor in transportation and associated costs, larger production runs, selling costs, overhead costs, etc. Note, it would likely be necessary for the importer to obtain this evidence from the vendor.

(b) Where the importer is able to demonstrate that the price has been settled in a manner consistent with the normal pricing practices of the industry in question, for example:

(i) Where the goods sold have recognized prices established by the free market economy, e.g., commodities such as copper, zinc or sugar, the importer should be able to demonstrate that the price is uninfluenced based on published prices.

(ii) Where the price is established on the basis of a transfer price agreement prepared for taxation purposes that also satisfies the requirements of the Act and demonstrates an uninfluenced price for customs valuation purposes. Refer to the Transfer Price Agreements section below for further details.

(c) Where the importer is able to demonstrate that the price is adequate to ensure recovery of all costs plus a profit, which is representative of the related vendor's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind.

#### **Test values (subparagraph 48(1)(d)(ii) of the Act)**

10. The Act provides for a second approach that establishes the acceptability of a transaction value in a sale between related persons. In this approach, described fully in subsection 48(3) of the Act and section 3 of the Regulations, the importer has an opportunity to demonstrate that the price closely approximates one of the following test values:

(a) the transaction value of identical goods or similar goods in a sale of those goods for export to Canada between a vendor and a purchaser who are not related to each other at the time of the sale;

(b) the deductive value of identical goods or similar goods; or

(c) the computed value of identical goods or similar goods.

11. In order to use one of the values referred to in subsection 48(3) of the Act as a test, that value must meet two criteria:

(a) the goods to which the test value relates must be exported at the same or substantially the same time as the goods being appraised; and

(b) the test value used must be the value for duty of the goods to which it relates.

12. Generally, the expression "exported at the same or substantially the same time" will be taken to mean a period beginning 30 days prior to and extending to 30 days following the date of export of the goods being appraised. However, for certain transactions, such as seasonal fruit or vegetables where values fluctuate frequently, it may be appropriate to narrow the time period mentioned above. On the other hand, for certain types of goods, such as machinery or durable goods, the period of time may need to be extended.

13. The decision as to whether a difference between the transaction value of the goods being appraised and the test value is commercially significant will be made after all other relevant factors and differences, including those set out in section 3 of the Regulations, have been taken into account. An assessment of the commercial significance of a difference in values would take into account that market conditions and pricing practices may vary from industry to industry.

14. A minor difference in value need not preclude the acceptance of a transaction value provided the importer can demonstrate that such a difference is not commercially significant.

15. When an importer successfully demonstrates that the transaction value closely approximates a test value previously accepted by the CBSA in another importation, it is not necessary to examine the circumstances surrounding the sale of the goods being appraised.

#### **Transfer price agreements**

16. A transfer price, i.e. a price charged for the goods by the related entity established for tax purposes, may be an acceptable starting point for determining the value for duty of imported goods for customs purposes under the transaction value method, if it is supported by a transfer price agreement submitted by the importer that contains relevant information about the circumstances surrounding the sale of the imported goods.

**Note:** All elements of the price paid or payable as defined under subsection 45(1) of the Act and all adjustments to the price paid or payable under subsection 48(5) of the Act likewise need to be considered before determining the final value for duty pursuant to the transaction value method.

17. The Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations set out several transfer pricing methodologies with a view to setting and testing the intercompany transfer prices for goods, services and assets (including intellectual property) bought and sold between related parties. These transfer pricing methodologies are ultimately international guidelines established for corporate income taxation purposes, which may include analyses and conclusions based on elements, factors, principles or industry comparators that are not necessarily reflective of or relevant to the

customs valuation requirements and provisions established under domestic or international law, as provided for in the Act or the CVA. Consequently, a transfer price based on an OECD methodology may or may not be adequate in supporting the uninfluenced nature of a price paid or payable for customs valuation purposes.

18. An OECD traditional transaction method, such as the Comparable Uncontrolled Price Method (i.e. a methodology that resembles the customs valuation methodologies of the transaction value of identical or similar goods), may better help support an uninfluenced price paid or payable that is acceptable for customs valuation purposes, whereas an OECD transactional profit method, such as the Transactional Net Margin method (TNMM), may not. Regardless of the method used, the importer is required to provide information to support the transaction value declared for customs valuation purposes when so requested. An importer can expect that when an OECD transactional profit method is used to determine the transfer price, the CBSA is likely to require supporting information on the prices of the imported goods that is more directly related to the specific importations and transactional nature of the customs valuation requirements. For further reference, consult the examples or guidance provided above.

19. There are various kinds of agreements between related parties (e.g. transfer price agreements, transfer price studies, and advance pricing arrangements (APA)). As a result of such agreements, there are different types of adjustments that may be made to a transfer price and will impact the value for duty. For example, a compensating adjustment occurs when the actual transfer price is adjusted in order to be compliant with the terms and conditions of the agreement. This involves the price being recorded in the accounts of the importer and a debit or credit note being issued to the importer depending on whether the adjustment is upward or downward. This may occur throughout the year, at year end, or after year end.

20. Corrections to the declared value for duty must be submitted to the CBSA when the net total of upward and downward transfer price adjustments occurring in a fiscal period is identified. It is at that moment that an importer has specific information giving reason to believe that corrections to declarations of value for duty are necessary.

21. If the net total result is an upward price adjustment, the importer must submit a correction under the authority of section 32.2 of the Act whether or not the imported goods are subject to duties.

22. If the net total result is a downward price adjustment, the importer must only submit a correction under the authority of section 32.2 of the Act if the correction would be revenue neutral. If the imported goods are subject to duties, a request for refund under the authority of section 74 of the Act is voluntary.

23. For example, the transfer price of goods purchased by a Canadian subsidiary from its foreign parent in a fiscal period was adjusted as follows:

- (a) January to March (Q1), upward adjustment of \$10,000 (payment from the Canadian importer to the foreign parent company);
- (b) April to June (Q2), upward adjustment of \$20,000;
- (c) July to September (Q3), downward adjustment of \$10,000 (credit note received from the parent company);
- (d) October to December (Q4), upward adjustment of \$30,000;
- (e) Last adjustment to close the fiscal period (“Q5”), downward adjustment of \$10,000; and
- (f) Net total of upward and downward adjustments:  $(10,000+20,000+30,000)-(10,000+10,000) = +\$40,000$ .

**Note:** The net total amount (\$40,000) must be included in the value for duty. If any other adjustments to the price paid or payable were made after importation (for example, selling commissions, design fees, etc.), these amounts must also be included in the value for duty of those goods. For more information on importer adjustment obligations, refer to Memorandum D11-6-6, “Reason to Believe” and Self-adjustments to Declarations of Origin, Tariff Classification, and Value for Duty.

24. Paragraph 48(5)(c) of the Act precludes a decrease in the price paid or payable when a price reduction is effected after importation. Therefore, such post-importation price reductions cannot serve to lower the value for duty determined under the transaction value method. However, paragraph 48(5)(c) of the Act does not apply to any adjustment to a transfer price that occurs after importation but that results from an agreement that is in writing and

in effect at the time the goods are imported to Canada. In such cases, the downward transfer price adjustment may be accepted.

25. Nevertheless, greater scrutiny will be applied by the CBSA to refund requests pursuant to downward price adjustments, particularly those based on an OECD transactional profit method, such as TNMM. For any such refund requests, the importer will first be required to demonstrate that the result of applying the downward price adjustment achieves the arm's length range for the profit indicator range identified in the related companies' transfer pricing documentation. The importer will also be required to demonstrate that the downward price adjustment involved an actual transfer of funds related to the transaction, and was included in its business income tax filings with the Canada Revenue Agency (CRA).

26. Having demonstrated the above, the CBSA will request additional information, of the kind referenced in the "Circumstances surrounding the sale" or "Test values" sections in this document, to substantiate that the downward price adjustment also results in an uninfluenced price for customs valuation purposes.

27. The CBSA will also examine any payment made directly or indirectly by the purchaser to or for the benefit of the vendor (i.e. subsection 45(1) of the Act), or any payment based on subsequent resale, disposal, or use of imported goods that accrues to the vendor (i.e. subparagraph 48(5)(a)(v) of the Act), to verify whether the payment relates to reasonable identifiable services and whether it would normally be included in the selling price of a transaction between unrelated parties. All amounts not relating to reasonable identifiable services will be included in the value for duty of the goods. For more information on the treatment of payments or fees made after importation, refer to Memorandum D13-4-3, Customs Valuation: Price Paid or Payable, and Memorandum D13-4-13, Post-importation Payments or Fees (Subsequent Proceeds).

#### **Additional information**

28. For more information on transfer pricing for income tax purposes, contact the CRA.

29. For more information, call the [CBSA Border Information Service \(BIS\)](#):

Calls within Canada & the United States (toll free): **1-800-461-9999**

Calls outside Canada & the United States (long distance charges apply): 1-204-983-3500 or 1-506-636-5064

TTY: 1-866-335-3237

Email: [contact@cbsa-asfc.gc.ca](mailto:contact@cbsa-asfc.gc.ca)

[Contact Us](#) at the CBSA website may also be accessed for information.

<b>References</b>	
<b>Issuing Office</b>	Trade and Anti-dumping Programs Directorate
<b>Headquarters File</b>	
<b>Legislative References</b>	<u><i>Customs Act</i></u> <u><i>Valuation for Duty Regulations</i></u> <u><i>Imported Goods Records Regulations</i></u>
<b>Other References</b>	<u>D11-6-6, D13-3-1, D13-3-2, D13-4-1, D13-4-3, D13-4-13,</u> <u>Customs Valuation Handbook</u> <u>International Customs Valuation Agreement</u> <u>OECD Transfer Pricing Guidelines for Multinational</u> <u>Enterprises and Tax Administrations 2017</u>
<b>Superseded Memorandum D</b>	D13-4-5 dated September 17, 2015