



Ottawa, July 17, 2009

# CUSTOMS NOTICE 09-017

## Amendments to the Valuation Provisions of the *Customs Act*

1. This notice explains the amendments made to Part III of the *Customs Act*, Sections 48, 49 and 50.

### Background

2. Bill S-2, was submitted to the Senate on January 29, 2009 and received Royal Assent on June 11, 2009. This bill amends the provisions of the *Customs Act* that establish the value for duty as provided for in paragraphs 48(1)(c), 49(1)(a) and (b), 49(2)(a) to (c), 49(3)(b), 50(1)(a) and (b) and subsections 49(1) and 50(1) of the *Customs Act*.

### Legal provisions

#### Paragraph 48(1)(c) of the Act is replaced by the following:

(c) when any part of the proceeds of any subsequent resale, disposal or use of the goods by the purchaser is to accrue, directly or indirectly, to the vendor, the price paid or payable for the goods includes the value of that part of the proceeds or the price is adjusted in accordance with paragraph (5)(a); and

#### The portion of subsection 49(1) of the French version of the Act before paragraph (a) is replaced by the following:

49. (1) Sous réserve des paragraphes (2) à (5), la valeur en douane des marchandises, dans les cas où elle n'est pas déterminée par application de l'article 48, est, si elle est déterminable, la valeur transactionnelle de marchandises identiques vendues pour exportation au Canada et exportées au même moment ou à peu près au même moment que les marchandises à apprécier, pourvu que cette valeur transactionnelle soit la valeur en douane des marchandises identiques vendues :

#### Paragraph 49(1)(a) of the Act is replaced by the following:

(a) at the same or substantially the same trade level as the goods being appraised; and

#### Paragraph 49(1)(b) of the French version of the Act is replaced by the following:

b) en une quantité égale ou sensiblement égale à celle des marchandises à apprécier.

#### Paragraphs 49(2)(a) to (c) of the English version of the Act are replaced by the following

(a) at the same or substantially the same trade level as the goods being appraised but in different quantities;

(b) at a trade level different from that of the goods being appraised but in the same or substantially the same quantities; or

(c) at a trade level different from that of the goods being appraised and in different quantities

#### Paragraph 49(3)(b) of the English version of the Act is replaced by the following:

(b) if the transaction value is in respect of identical goods sold under the conditions described in any of paragraphs (2)(a) to (c), differences in the trade levels of the identical goods and the goods being appraised or the quantities in which the identical goods were sold and the goods being appraised were imported or both, as the case may be.

#### The portion of subsection 50(1) of the French version of the Act before paragraph (a) is replaced by the following:

50. (1) Sous réserve des paragraphes (2) et 49(2) à (5), la valeur en douane des marchandises, dans les cas où elle n'est pas déterminée par application de l'article 48 ou 49, est, si elle est déterminable, la valeur transactionnelle de marchandises semblables vendues pour exportation au Canada et exportées au même moment ou à peu près au même moment que les marchandises à apprécier, pourvu que cette valeur transactionnelle soit la valeur en douane des marchandises semblables vendues :

#### Paragraph 50(1)(a) of the Act is replaced by the following:

(a) at the same or substantially the same trade level as the goods being appraised; and

#### Paragraph 50(1)(b) of the French version of the Act is replaced by the following:

b) en une quantité égale ou sensiblement égale à celle des marchandises à apprécier

### Effective date

3. The valuation provisions of Bill S-2 came into force: June 11th 2009.

## Policy administration and guidelines

4. Section 48 of the *Customs Act* is the primary basis of determining the value for duty of imported goods. In order to use Section 48, the transaction value method, certain requirements and conditions must be met. One such condition is contained in paragraph 48(1)(c). Under this provision, if the value of any part of the proceeds of any subsequent resale, disposal or use of the goods cannot be included in the price paid or payable for the goods, then the goods cannot be valued under section 48 unless an adjustment to the price paid or payable can be made under paragraph 48(5)(a). Paragraph 48(1)(c) has been modified to refer to the broader provisions of paragraph 48 (5)(a) rather than the more restrictive subparagraph 48(5)(a)(v).

5. Sections 49 and 50 of the *Customs Act* provide alternate means to determine the value for duty of imported goods when they cannot be valued under the transaction value method. In such cases, the value for duty can be determined on the basis of the transactional value of identical or similar goods sold for which a value for duty is being determined providing some conditions are met. The previous wording required that the goods being valued under the identical or similar methods be “sold or purchased” in Canada. This requirement restricted the use of these alternate methods of valuation and did not reflect the intent of the Customs Valuation Agreement. The French version of subsections 49(1) and 50(1) and paragraphs, 49(1)(a) and (b), 50(1)(a) and (b) have been amended in order to eliminate this concept of “sold or purchased” and in the English version, subsections 49(2)(a) to (c) and 49(3)(b) have also been amended to eliminate this concept of “sold or purchased”.

6. The amendments made to the *Customs Act* will be taken into account in the Department’s administrative policy, which is set out in Memorandum D13-5-1, *Application of Sections 49 and 50 of the Customs Act*, as soon as possible.

7. These amendments to the legislation on the determination of the value for duty do not change the current valuation administrative policy.

## General information

8. Any questions concerning this notice should be directed to the Border Information Service (BIS). The BIS telephone service is available during regular business hours, Monday to Friday (except holidays), from 8:00 a.m. to 4:00 p.m., local time (Press 0 to speak to an agent).

For service in English, from within Canada call:  
**1-800-461-9999** (toll free)

For service in French, from with Canada call:  
**1-800-959-2036** (toll free)

For service in English, from outside Canada, call:  
204-983-3500 or 506-636-5064 (long-distance charges apply)

For service in French, from outside Canada, call:  
204-983-3700 or 506-636-5067 (long-distance charges apply)

