



Ottawa, August 9, 2013

MEMORANDUM D13-2-4

In Brief

VALUATION OF GOODS IMPORTED INTO CANADA THAT ARE NOT IN ACCORDANCE WITH THE CONTRACT

This memorandum has been reviewed to provide additional information concerning the determination of the value for duty of imported goods when a shipment includes a greater or lesser quantity of goods than the quantity ordered.





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This memorandum outlines and explains the application of the valuation provisions of the *Customs Act* to imported goods that are not in accordance with the contract.

Legislation

Sections 48 to 53 of the *Customs Act*:
<http://laws-lois.justice.gc.ca/eng/acts/C-52.6/index.html>.

GUIDELINES AND GENERAL INFORMATION

1. Goods not in accordance with the contract are goods that:
 - (a) have been damaged in transit;
 - (b) are of an inferior quality;
 - (c) are defective;
 - (d) are not of the class or description of the goods ordered;
 - (e) are of a quantity in excess of the goods ordered; or
 - (f) are of a quantity less than the goods ordered.
2. Different results may occur when goods not in accordance with the contract are received by an importer, including:
 - (a) the goods are retained by the importer and the purchaser subsequently receives a refund or credit for a portion of the original price;
 - (b) the goods are exported from Canada or disposed of in a manner acceptable to the Minister (e.g., destroyed under Canada Border Services Agency (CBSA) supervision);
 - (c) an overage occurs and the purchaser pays an additional amount for the quantity of over-shipped goods, or alternatively, the vendor demands no additional payment.
3. Regardless of the circumstances of an importation, the value for duty of the imported goods must be determined in accordance with one of the methods of valuation specified in sections 48 to 53 of the *Customs Act*, based on the value of the goods as if they were in accordance with the contract.

4. The possibility of a refund of duties resulting from a refund or credit given to a purchaser, by a vendor, because the goods are not in accordance with the contract is addressed in Memorandum D6-2-3, *Refund of Duties*.

Valuation of Replacement Goods

5. The value for duty of replacement goods is the value for duty of the originally-shipped goods, provided that:
 - (a) the importer supplies sufficient evidence to demonstrate that the replacement goods are identical in all respects to the goods that should have been shipped under the terms of the original contract; and
 - (b) the terms and conditions of the new contract are identical with the terms and conditions of the original contract.
6. The replacement goods can be imported free of any additional assessment of duties, if no refund of duties has been claimed for the original shipment.

Treatment of Overages and Shortages

7. An overage occurs when more goods have been received than were ordered. In such circumstances, a value for duty must be established for the overage, and the quantity of goods over-shipped must be accounted for to the CBSA. Refer to Memorandum D17-1-10, *Coding of Customs Accounting Documents* for information concerning accounting for goods on an H-type commercial entry. If the vendor charges the purchaser an additional amount for the over-shipped goods, this amount is the basis for calculating their value for duty. If the vendor makes no additional charge, effectively providing the goods for “free”, the value for duty of the goods over-shipped is based on the transaction value of the goods for which payment was or will be made.
8. A shortage occurs when fewer goods were received than were ordered. In such circumstances, the value for duty of the imported goods is based on the price paid or payable demanded by the vendor for the shipment. In the event a shortage is identified after importation, the purchaser and vendor may agree to reduce the price paid or payable for the goods actually received. Alternatively, the vendor may provide the purchaser with a credit note applicable to a subsequent purchase. However, in accordance with paragraph 48(5)(c) of the *Customs Act*, the price paid or payable for the goods cannot be reduced after importation. In addition, a credit note cannot be used to reduce the price paid or payable of a subsequent shipment.

9. In the event additional goods are shipped to address the shortage and provide the purchaser with the quantity of goods ordered and no refund has been claimed, refer to Memorandum D17-1-4, *Release of Commercial Goods* for information concerning “value included” customs entries.

Additional Information

10. 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**.

REFERENCES

ISSUING OFFICE – Trade Programs Directorate	HEADQUARTERS FILE – 79070-4-2
LEGISLATIVE REFERENCES – <i>Customs Act</i>	OTHER REFERENCES – D6-2-3, D17-1-4, D17-1-10
SUPERSEDED MEMORANDA “D” – D13-2-4, March 20, 2001	

Services provided by the Canada Border Services Agency
are available in both official languages.

