



Ottawa, November 24, 2014

# Memorandum D13-4-12

## Commissions and Brokerage

### In Brief

The editing revisions made in this memorandum do not affect or change any existing policies or procedures.

This memorandum explains the treatment of commissions and brokerage in a calculation of value for duty made under the transaction value method.

### Legislation

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

### Guidelines and General Information

1. Subparagraph 48(5)(a)(i) of the [Customs Act](#) (the Act) indicates that the price paid or payable in the sale of goods for export to Canada, to a purchaser in Canada, will be adjusted by adding amounts for commissions and brokerage for the goods incurred by the purchaser, except when the amounts are paid or payable to an agent to represent the purchaser abroad in the purchase of the imported goods. These excepted amounts are usually referred to as buying commissions, and if they are invoiced or identified separately from the goods, they do not need to be added to the price paid or payable for the goods.
2. An agent is a person in a commercial relationship with a principal. An agent acts on a principal's behalf and ordinarily is a separate business entity. An agent can buy or sell goods, possibly in his or her own name, but always for the account of his or her principal. An agent can act on behalf of either a purchaser or vendor in concluding a contract of sale for goods. An agent's remuneration generally takes the form of a commission, usually expressed as a percentage of the selling price of the goods. To determine whether a payment to an agent is to be added to the price paid or payable, it is necessary to determine whether the agent is a selling agent acting on behalf of a vendor, a buying agent acting on behalf of a purchaser or a broker.
3. A selling agent is a person who acts for the account of a vendor. The agent looks for customers and collects orders on behalf of the vendor and, in some cases, may arrange for storage and delivery of goods. A payment made to a selling agent for services rendered in the conclusion of a contract is generally called a selling commission. Usually, goods sold through a selling agent cannot be bought without payment of the selling agent's commission. This payment can be made in one of the following two ways:
  - (a) Foreign suppliers who deliver their goods for orders placed through a selling agent pay for the agent's services themselves and quote prices to their customers that include the agent's commission. In such cases, the invoice price is not to be adjusted to exclude the amount for the agent's services; or
  - (b) The terms of the sale require the purchaser to pay an amount other than the price paid or payable for the goods, either through the vendor or separately, for the agent's services. This amount must be added to the price paid or payable when determining the value for duty.
4. A buying agent is a person who acts for the account of a purchaser. The buying agent performs its activities using funds provided by the purchaser. A buying agent's activities include finding suppliers, informing the vendor of the desires of the purchaser, placing orders, collecting samples, inspecting goods and, in some cases, arranging

for the insurance, transport, storage or delivery of the goods. A payment made by a purchaser to an agent to represent the purchaser abroad in buying imported goods is usually referred to as a buying commission and is not added to the price paid or payable for the imported goods if it is invoiced or identified separately from the price for the goods. However, if the invoiced price for the goods includes such an amount, it cannot be deducted from the price paid or payable.

5. A broker is generally a third party that does not act on its own account, but rather acts for both the vendor and the purchaser together and usually has no role other than to put both parties in touch with each other. The broker's remuneration is called brokerage and is usually calculated as a percentage of the selling price of the goods. The percentage amount earned by brokers reflects their limited risks and responsibilities in a transaction.

6. "Brokerage" does not mean amounts charged by a customs broker for services rendered to clear goods through customs. Brokerage is a payment made to an intermediary for its participation in concluding a contract of sale.

7. If the brokerage is paid by the vendor of the goods, it will usually be included in the invoice price charged to the purchaser. In such cases, it will be represented in the calculation of value for duty as part of the price paid or payable. In cases where the brokerage is paid by the vendor and charged separately to the purchaser, it must be added to the price paid or payable. Alternatively, the purchaser and vendor may each pay part of the brokerage charge, or the purchaser alone may pay the charge. In these cases, if not already included in the invoice price, the amount of the brokerage charge incurred by the purchaser must be added to the price paid or payable for the imported goods.

### **Fiduciary responsibility of agent to purchaser**

8. The buying agent has a fiduciary responsibility to his or her principal, the purchaser. This responsibility means that the agent must act in the interest of the purchaser. The purchaser is entitled to complete disclosure from the agent regarding:

- (a) transactions initiated by the agent for the purchaser;
- (b) relationships or activities occurring between the agent and the vendor of the goods; and
- (c) parties controlled by, related to or engaged in business with the agent or the vendor of the goods.

9. If the agent makes a complete disclosure to the purchaser, and the purchaser contracts to engage the agent, then the agent's fiduciary responsibility has been satisfied, and the agent is deemed to be acting in the best interest of the purchaser. An agency agreement alone is not sufficient evidence that a principal-agent relationship exists in which an agent has met its fiduciary responsibility to a purchaser.

10. The Canada Border Services Agency (CBSA) may request that an importer provide documentation, such as contracts, invoices, letters of credit and correspondence, which establishes the nature of the arrangement between the purchaser and the agent or identifies any relationship between the agent and a stranger to the agent-purchaser agreement. The importer may be requested to obtain information from the agent identifying all activities in which the agent has an interest in respect of the imported goods before the agent can be deemed to have met its fiduciary responsibility to its principal (the purchaser). If the information provided to the CBSA indicates that full disclosure of an agent's activities was not made to its principal, a payment made by a purchaser to its agent may be identified as:

- (a) an addition to the price paid or payable of the goods under subparagraph 48(5)(a)(i) of [the Act](#); or alternatively
- (b) an element of the price paid or payable as required by subsection 45(1) of the Act.

11. In the event that an agent does not meet its fiduciary responsibility to its purchaser, the amount of the payment made to the agent will be included in the calculation of the value for duty of the imported goods.

### **Treatment of bundled payments**

12. A purchaser may enter into an agreement with an agent to pay an amount for more than the service of representing the purchaser abroad in respect of a sale. If charges or amounts payable to an agent other than an agent's commission are identified but are itemized separately, then the individual charges or amounts may be:

(a) an addition to the price paid or payable of the goods under an alternative provision of subparagraph 48(5)(a) of [the Act](#); or

(b) an element of the price paid or payable as required by subsection 45(1) of the Act.

13. If sufficient information cannot be provided, either to support the necessary apportionment of a payment made to a buying agent, or to identify the amount of a payment made to a selling agent or a broker, valuation under the transaction value method is precluded. In accordance with the authority of subsection 48(6) of [the Act](#), the value for duty must be calculated using one of the alternate valuation methods.

### 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 and Anti-dumping Programs Directorate
<b>Headquarters File</b>	79070-4-4
<b>Legislative References</b>	<a href="#">Customs Act</a>
<b>Other References</b>	
<b>Superseded Memorandum D</b>	D13-4-12 dated June 13, 2008