CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, August 15, 1996

Appeal Nos. AP-95-090 and AP-95-166

IN THE MATTER OF appeals heard on December 12 and 13, 1995, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue dated June 27, 1995, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

TOYOTA CANADA INC. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeals are allowed.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

Raynald Guay
Raynald Guay
Member

Lyle M. Russell
Lyle M. Russell
Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal Nos. AP-95-090 and AP-95-166

TOYOTA CANADA INC. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

These are appeals under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue under subsection 63(3) of the *Customs Act*, affirming the re-appraisal of the value for duty of vehicles imported by the appellant on September 8, 1991, and September 27, 1992. The value for duty at the time of importation was based on the invoice price. Subsequently, the invoice price was adjusted, and the appellant requested a re-appraisal of the value for duty under section 60 of the *Customs Act* to take into account the price changes. The respondent confirmed the original appraisals of the value for duty in decisions dated June 27, 1995. The respondent found that reductions in the final negotiated price issued after the importation of the goods in issue should be disregarded in accordance with paragraph 48(5)(*c*) of the *Customs Act* for purposes of determining the value for duty of the goods in issue. The issue in this appeal is whether the respondent's determination was correct.

HELD: The appeals are allowed. According to subsections 48(1) and (5) of the *Customs Act*, the value for duty of imported goods is their transaction value or, more precisely, the price paid or payable adjusted by adding and deducting different amounts and, pursuant to paragraph 48(5)(*c*) of the *Customs Act*, "by disregarding any rebate of, or other decrease in, the price paid or payable for the goods that is effected after the goods are imported." The evidence clearly shows that there existed an understanding between the parties that the price stipulated on the Canada Customs Invoice was a provisional price estimated for purposes of calculating the value for duty and that the final selling price of the vehicles would only be known at the conclusion of the negotiations between the parties. Consequently, the Tribunal is of the view that the credit note given by Mitsui & Co., Ltd. to the appellant does not constitute a rebate of, or other decrease in, the price paid or payable for the goods in issue within the meaning of paragraph 48(5)(*c*) of the *Customs Act*. The purpose of the credit note was not to give the appellant a rebate nor to decrease the price paid or payable for the vehicles, but simply to reflect the actual selling price of the goods in issue.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	December 12 and 13, 1995
Date of Decision:	August 15, 1996
Tribunal Members:	Robert C. Coates, Q.C., Presiding Member Raynald Guay, Member Lyle M. Russell, Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Brenda C. Swick-Martin, Erica Schumacher and Kenneth H. Sorensen, for the appellant Frederick B. Woyiwada, for the respondent

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CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal Nos. AP-95-090 and AP-95-166

TOYOTA CANADA INC. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
RAYNALD GUAY, Member
LYLE M. RUSSELL, Member

REASONS FOR DECISION

These are appeals under section 67 of the *Customs Act*[1] (the Act) from decisions of the Deputy Minister of National Revenue under subsection 63(3) of the Act, affirming the re-appraisal of the value for duty of vehicles imported by the appellant on September 8, 1991, and September 27, 1992. The value for duty at the time of importation was based on the invoice price. Subsequently, the invoice price was adjusted, and the appellant requested a re-appraisal of the value for duty under section 60 of the Act to take into account the price changes. The respondent confirmed the original appraisals of the value for duty in decisions dated June 27, 1995. The respondent found that reductions in the final negotiated price issued after the importation of the goods in issue should be disregarded in accordance with paragraph 48(5)(*c*) of the Act for purposes of determining the value for duty of the goods in issue. The issue in this appeal is whether the respondent's determination was correct.

At the hearing, four witnesses, all employees of Toyota Canada Inc., appeared on behalf of the appellant: (1) Mr. J. H. (Jim) Scherer, National Manager, Industrial Equipment Division; (2) Mr. J. Pierre Millette, General Counsel; (3) Mr. Ken Fairhead, Manager of Logistics, Vehicle Planning & Distribution; and (4) Mr. Cyril A. Dimitris, Manager of Accounting Operations, Finance and Accounting Department.

Mr. Scherer explained that the appellant is an importer and the sole distributor of motor vehicles and parts manufactured by Toyota Motor Corporation (TMC) of Japan. The motor vehicles are sold by TMC to Mitsui & Co., Ltd. (Mitsui), which then sells the vehicles to the appellant and exports them to Canada. Mr. Millette explained that the appellant is a joint venture. TMC and Mitsui each own 50 percent of the appellant. Mr. Millette explained that the relationship between the three companies is governed by a "Distributor Agreement" (the Agreement) entered into on October 3, 1990.

Mr. Scherer testified that, in order to meet precise release times, the appellant imports the vehicles and distributes them to its dealers well in advance of the necessary data being available to permit the three companies to determine the actual final price of the vehicles. A tentative price is, therefore, used by Mitsui in preparing customs documentation when exporting the vehicles from Japan. Mr. Scherer explained that Mitsui must use a provisional price to satisfy the requirement of the Department of National Revenue (Revenue Canada) that a value for duty be provided at the time of importation into Canada. He testified that,

1. R.S.C. 1985, c. 1 (2nd Supp.).

at that time, the three companies were still negotiating the final price. In most cases, price negotiations start several months before exportation and end after importation. The appellant, TMC and Mitsui agree that the price used at the time of exportation which appears on Canada Customs documents and on the initial invoices between the appellant and Mitsui is a provisional price, which is subject to change once the negotiations are completed and the three companies are in a position to determine the final selling price.

Mr. Scherer explained that the appellant does not know how the provisional price is set. He did say, however, that there is no direct relationship between the provisional price and the final negotiated price. He also explained how the three companies agree and acknowledge that they are contractually bound to adhere to the final selling price and that they cannot enforce the provisional invoice price against one another. The final selling price paid for the vehicles cannot be unilaterally changed by the appellant, TMC or Mitsui. Rather, it is the result of a consistently applied pricing negotiation practice which depends on a number of factors, such as the costs of production of the vehicles and other factors in the market which can only be ascertained after the time of exportation and, often, after the time of importation. Mr. Scherer explained that, sometimes, the final price is lower than the provisional price, sometimes it is higher, and sometimes it remains the same. In the event that the final price is higher than the provisional price, the appellant pays the difference to Mitsui. If the final price is lower than the provisional price, Mitsui issues a credit note to the appellant for the difference. Mr. Scherer testified that the appellant never seeks nor receives any reduction in the final price in the form of a rebate or a discount.

Mr. Millette testified that he was involved in the negotiation of the Agreement between the appellant, TMC and Mitsui. He explained that the phrase “an effective individual sales contract” in paragraph 16(b) of the Agreement refers to the documentation that is intended to reflect the final price of the vehicles. He also explained that the Agreement provides for some flexibility to deal with the different factors that can affect the establishment of the final selling price of the vehicles. Article 16 of the Agreement contemplates that there must be some negotiations to establish a final price since the price will change. According to Mr. Millette, the provisional price is not contemplated by the Agreement because it is an artificial price which is set to allow the vehicles to come into the country in time to meet release dates. Furthermore, the provisional price does not have any bearing on the final negotiated price. Mr. Millette explained that Article 16 of the Agreement provides that no changes can be made to the final selling price except by written agreement between Mitsui and the appellant. In cross-examination, Mr. Millette acknowledged that the term “provisional price” is not used anywhere in the text of the Agreement.

Mr. Fairhead, the appellant’s third witness, was responsible for any customs issues that involved the entry of vehicles into Canada. He explained the sequence of events relating to the two transactions at issue. The first transaction involved vehicles that were imported into Canada on September 8, 1991. The shipment included vehicles that were produced in Japan in August 1991 for the 1992 model year. Mr. Fairhead explained that discussions with respect to the 1992 model year began in January 1989 and continued into 1990. During this time, the appellant conducted market analyses to determine product needs within the Canadian market. Final model specifications were set in late February 1991 and sent to TMC. Those selections were confirmed by TMC, without a price, in early April 1991. In mid-April 1991, there was a meeting between TMC and the appellant to discuss pricing. Mr. Fairhead testified that this was the beginning of the pricing negotiations.

In May 1991, the appellant placed a pre-order for the August 1991 production of new models, again without specifying a price. In June 1991, a further meeting regarding pricing was held between the appellant and TMC. At this meeting, the appellant put forward its price proposals to TMC. On July 5, 1991, Mitsui issued a sales contract to the appellant for the total August 1991 production month at a provisional, not a final, price. At approximately the same time, the appellant placed its final order for the August 1991 production. The order was placed without a final price having been set. On July 12, 1991, the appellant sent a pricing proposal to TMC. On July 31, 1991, a tentative price proposal was received by the appellant from TMC. On August 8, 1991, a second meeting regarding pricing was held between the appellant, TMC and Mitsui. Shipments of the vehicles to Canada from Japan under this transaction commenced on August 27, 1991. A Canada Customs Invoice was provided by Mitsui stipulating a provisional price.

Mr. Fairhead testified that it is only on August 28, 1991, after exportation of the vehicles from Japan, but prior to their importation into Canada, that a final price was received by the appellant from TMC. On September 6, 1991, the appellant paid the provisional price listed on the initial invoice. On September 8, 1991, the vehicles arrived in Canada and were transported to distribution centres. On September 18, 1991, a price was announced to the dealers, and the vehicles were subsequently shipped to them. On September 24, 1991, the revised and final Mitsui sales contract at the final price was issued. On November 7, 1991, a credit note for the difference between the final and the provisional price was issued by Mitsui to the appellant. A revised Canada Customs Invoice was also provided to the appellant by Mitsui. Finally, a bank transfer reflecting the amount of credit was made by Mitsui to the appellant on November 18, 1991. Mr. Fairhead testified that the provisional price that was stipulated on the invoice issued by Mitsui at the time of exportation had no impact on the negotiations of the final price that were ongoing between the three companies.

Mr. Fairhead also described the sequence of events relating to the second transaction. The vehicles subject to this transaction were imported into Canada on September 27, 1992. The shipment included T-100 trucks, a new Toyota line for the 1993 model year, which were produced in September 1992. Mr. Fairhead explained that the first pre-order for the September 1992 production month was placed by the appellant in June 1992. At that time, the appellant did not have any pricing information. The appellant placed its second pre-order in July 1992. On July 30, 1992, there was a meeting between the appellant, TMC and Mitsui to discuss pricing for all 1993 models. In August 1992, the appellant placed its final order for the September 1992 production month. Sales contracts at a preliminary price for the entire September production month were issued by Mitsui on August 5, 1992. Later that month, a price proposal from TMC was received by the appellant. Mr. Fairhead testified that this marked the beginning of the official price negotiations.

On September 3, 1992, the provisional price was communicated to the appellant. Because the T-100 trucks were a new model, the appellant ordered them from the first two production months, September and October. Dealers only began ordering that particular model from November production without any final price having been established. Vehicles produced in September were shipped to Canada on September 15, 1992. Mitsui provided a Canada Customs Invoice at a provisional price. On September 25, 1992, the appellant paid the provisional price, prior to the vehicles actually being imported into Canada. The vehicles arrived in Canada on September 27, 1992. On November 5, 1992, the final price for the vehicles was communicated to the appellant by TMC and Mitsui. On November 10, 1992, the final price was announced to the dealers and, on November 12, 1992, the vehicles were shipped to them.

Mr. Fairhead explained that the appellant does not release the vehicles to the dealers before a final price has been established. In December 1992, Mitsui issued a revised sales contract for the September production month at a final price. Mitsui provided a revised Canada Customs Invoice in order that the value for duty reflect the actual amount paid under the contract. On February 22, 1993, the appellant received a credit note from Mitsui.

Mr. Fairhead explained that the appellant does not have any input in determining the provisional price that is used on the Canada Customs Invoice. The appellant pays that amount realizing that any adjustments, whether up or down, will be made when the final price has been established. Mr. Fairhead also described a situation where the final price, which was only established after importation of the vehicles, was higher than the provisional price. In this case, Mitsui issued a debit note to the appellant and a revised Canada Customs Invoice to Revenue Canada, which accepted the change in price and the payment of additional duties. In cross-examination, Mr. Fairhead explained that a provisional price is used for the first few shipments or first few production months of new model vehicles. Once the final price is known, then that price is included in the sales contract from Mitsui to the appellant. Mr. Fairhead testified that the companies know that they are dealing with a provisional price and not a final price, although there is no language to that effect in the contract.

The appellant's fourth witness, Mr. Dimitris, explained how the purchase of vehicles by the appellant is recorded in its accounting records. He testified that the first entry in the appellant's records is triggered by the vehicles leaving the port in Japan and Mitsui sending the appellant an invoice for those vehicles at a provisional price. Mr. Dimitris noted that ownership passes to the appellant at the point of loading the vehicles on the vessel in Japan for shipment. At this point, the appellant has an asset in inventory and an account payable to Mitsui. The second entry is the payment by the appellant to Mitsui of the amount on the invoice. Mr. Dimitris explained that, at this time, the appellant has inventory for which it has fully paid, subject to any further adjustment. At some time between the purchase of the vehicles and their release to the dealers, the appellant would be made aware of the final price. The third entry in the appellant's records would be the actual wholesale and shipment cost of the vehicles to the dealers. This transaction is recorded at the final price. The fourth and final entry is the receipt of a credit note from Mitsui for the difference between the provisional and final prices. Mr. Dimitris explained that the net effect is that the appellant has recorded a cost of sale equal to the actual price paid for the vehicles. He testified that the recording of the cost of the sales of the vehicles at the final price is an accounting method which is in accordance with generally accepted accounting principles. In cross-examination, Mr. Dimitris testified that the amounts on the initial invoices are always paid prior to the vehicles being imported. He also testified that the difference between the provisional price and the final price is usually very small.

Counsel for the appellant argued that the final price is the "price paid or payable" for the vehicles and, therefore, the price that should be used for determining the value for duty. According to counsel, the evidence shows that there were no rebates granted to the appellant. Rather, the three companies were involved in price negotiations which, at times, did not conclude until after importation of the vehicles. The evidence also shows that the phrase "effective individual sales contract," as used in the Agreement, refers to the final sales contract between Mitsui and the appellant, which provides the actual price which the appellant must pay in consideration for the imported vehicles. Counsel argued that commercial reality and the practical nature of the appellant's transactions clearly dictate that the proper price paid or payable for those vehicles is the final negotiated price. In support of their argument, counsel referred to the definition of the term "price

paid or payable" in subsection 45(1) of the Act. Counsel also referred to the Customs Valuation Code and argued that the term "price paid or payable" must be read in light of the provisions of that code. More particularly, counsel argued that the price paid or payable is the true, actual price or the "aggregate of all payments made or to be made" and not some arbitrary or fictitious value. Finally, counsel argued that the Tribunal's decisions in *Quadra Chemicals Ltd.* v. *The Deputy Minister of National Revenue*[2] and *Nordic Laboratories Inc.* v. *The Deputy Minister of National Revenue for Customs and Excise*[3] are distinguishable from the present case because, in those two cases, there were actual rebates.

Counsel for the respondent argued that the evidence showed that an effective sales contract is concluded within the meaning of the Agreement at the time that TMC accepts an order from Mitsui on behalf of the appellant, in other words, at the time of the initial sales contract or invoice. Counsel argued that the "price paid or payable" is the price paid for the vehicles at the time of export, that is, the price stipulated in the initial sales contract in accordance with the Agreement, which cannot be changed except by written agreement of the parties. According to counsel, the vehicles are sold for export to Canada no later than at the time of the making of the initial sales contract. The evidence clearly shows that the vehicles are sold to the appellant before they are imported into Canada. Counsel, therefore, argued that the transaction value is the price stipulated in the initial sales contract and that any decrease in the price effected after importation of the vehicles must be disregarded in accordance with paragraph 48(5)(*c*) of the Act. In counsel's view, the evidence shows that the provisional price is, in fact, very close to the final price. Counsel argued that the evidence showed that the provisional price is a price which is firmly established before the vehicles are imported into Canada. Thus, any decrease in that price must be disregarded in accordance with paragraph 48(5)(*c*) of the Act. In any event, counsel submitted that the evidence showed that there is no such thing as a provisional price. Counsel argued that the facts in *Quadra Chemicals* and *Nordic Laboratories* were very similar to the facts in the present case and that these decisions should, therefore, be taken into account by the Tribunal. Counsel argued that the Tribunal must not interpret the Customs Valuation Code or any other provision of the *General Agreement on Tariffs and Trade*[4] to contravene the clear statutory provisions of the Act.

The portions of the Act relevant to this appeal read as follows:

> 45.(1) In this section and sections 46 to 55,
>
> "transaction value", in respect of goods, means the value of the goods determined in accordance with subsection 48(4).
>
> [48.](4) The transaction value of goods shall be determined by ascertaining the price paid or payable for the goods when the goods are sold for export to Canada and adjusting the price paid or payable in accordance with subsection (5).
>
> (5) The price paid or payable in the sale of goods for export to Canada shall be adjusted
>
> (*c*) by disregarding any rebate of, or other decrease in, the price paid or payable for the goods that is effected after the goods are imported.

2. Appeal No. AP-93-260, July 26, 1994.
3. Appeal No. AP-91-189, July 20, 1992.
4. Geneva, March 1969, GATT BISD, Vol. IV.

According to subsections 48(1) and (5) of the Act, the value for duty of imported goods is their transaction value or, more precisely, the price paid or payable adjusted by adding and deducting different amounts and, pursuant to paragraph 48(5)(*c*) of the Act, "disregarding any rebate of, or other decrease in, the price paid or payable for the goods that is effected after the goods are imported."

The evidence clearly shows that, although negotiations between the appellant, TMC and Mitsui to establish a final selling price usually have not been completed, the marketplace dictates that the vehicles must be imported into Canada. At the time of exportation and, in some cases, not until some two months after importation, the final selling price to the appellant has not yet been agreed upon. As a result, an estimated selling price or a provisional price is used at the time of exportation for purposes of establishing a value for duty.

The Tribunal is of the view, on the basis of the evidence, that the "price paid or payable" for the vehicles when sold for export to Canada is the final selling price. The price which appears on the Canada Customs Invoice is not necessarily the actual price paid for the vehicles. The evidence shows that this price is often higher or lower than the provisional price depending on the result of the negotiations between the parties. It is clearly not the intent of the parties that the price which appears on the invoice be the final selling price paid or payable for the vehicles.

In support of his argument, counsel for the respondent relied, in part, on the decision in *Quadra Chemicals* for the proposition that reductions in the price paid for the vehicles that occurred after importation should be disregarded for purposes of determining the value for duty. Counsel also relied on the decision in *Nordic Laboratories*. This latter decision was appealed to the Federal Court of Canada - Trial Division.[5] The decision of the Federal Court of Canada was rendered on February 26, 1996, after the date of the hearing of these appeals. The appeal was allowed. The decisions rendered by the Tribunal and the respondent were quashed. The Federal Court of Canada referred to the decision in *Quadra Chemicals* and was of the view that the Tribunal had reached the proper conclusion on the facts which were before it. The following discussion of *Quadra Chemicals* by the Federal Court of Canada is relevant to the present case and supports the Tribunal's decision:

> In Quadra, the Appellant imported nickel sulphate into Canada. Between July 6 and October 3, 1990, the Appellant placed four orders with its supplier requesting the shipment of four containers of nickel sulphate in bags. These orders were made by telex. The telex in respect of the second order, transmitted on July 26, 1990, stated that the applicable prices "were subject to the London Metal Exchange to be determined at the end of July 1990". The telexes in regard to the three other orders simply indicated that the prices were to be determined at the end of July 1990 or at a later date, which was not specified.
>
> At the time of importation, the Appellant estimated the value for duty of the goods at a certain U.S. price per kilogram. Following the importation, the Appellant sought a refund of the duty paid or offered to pay extra duty "depending on whether the adjusted price was lower or higher than the estimated price on which duty was paid". With respect to two of the four orders, the Appellant obtained a refund as the prices were adjusted downward.

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5. *Nordic Laboratories* v. *The Deputy Minister of National Revenue*, unreported, Court File No. T-1050-93, February 26, 1996.

However, with respect to the four orders, the supplier agreed to further reductions in prices because the prices, according to the Appellant, did not render the goods competitive in Canada. The Appellant then sought a further refund of duty based on these reduced prices. The Deputy Minister of National Revenue denied the refunds, "on the ground that the price reductions were negotiated after the importation of the goods".

At the hearing, the Tribunal requested the Deputy Minister to explain why the Appellant had obtained a refund of duty with respect to two orders where the request for refund was based on the order which specified that the applicable prices were "subject to the London Metal Exchange to be determined at the end of July 1990". The explanation given to the Tribunal by a Customs officer involved in the administrative review process was that the refunds of duty were given "because the Appellant was able to prove that certain price adjustments occurred prior to importation".

In concluding its reasons for judgment, the Tribunal stated the following:

> "The Tribunal agrees with counsel for the respondent. The main ground for this appeal is that the price of the imported goods rendered them uncompetitive. This is clearly the reason for the appellant's supplier granting price reductions after the goods were imported into Canada. A Telex dated February 18, 1991, sent by Mr. Christian Godart from MHO to the appellant announces price reductions for the four orders at issue and mentions that MHO shows its support to the appellant by this action. In the Tribunal's view, these concessions granted to the appellant by its supplier are private business matters. Paragraph 48(5)(c) of the Act is clear in that those transactions have no bearing for purposes of determining the value for duty under the Act. Although a contractual arrangement providing that the final price is to be determined on the basis of a commodity market price at a certain date is not a rebate of the kind encompassed by paragraph 48(5)(c) of the Act, the price reductions that were granted to the appellant in this case were not provided for in the purchase orders and occurred after importation. Therefore, the price reductions should be disregarded for purposes of determining the value for duty of the goods using the transaction value."

The Tribunal, in its reasons, deals both with the first and second reductions of prices. With respect to the second reductions, i.e. those clearly granted after the dates of importation in order to render the goods competitive, I am in full agreement with the Tribunal's disposition of the issue, which, in effect, was the sole issue before it. It is clear, on the facts of the case, that, after the goods were imported into Canada, the Appellant approached its supplier to get reductions in prices in order to render the goods competitive. Clearly, the rebate, discount or reduction given to the Appellant was effected after the date of importation. The Tribunal's conclusion is, in my view, unassailable.

The Tribunal then, in *obiter*, commented on the refunds of duty granted to the Appellant in regard to the reductions relating to the adjustment based on the London Metal Exchange price. In the Tribunal's view, those arrangements did not constitute a rebate or a reduction which fell within the purview of paragraph 48(5)(c) of the Act. The words used by the Tribunal in so concluding are crystal clear:

> "... [A] contractual arrangement providing that the final price is to be determined on the basis of a commodity market price at a certain date is not a rebate of the kind encompassed by paragraph 48(5)(c) of the Act, ..."[6]

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6. *Ibid.* at 19-22.

The agreement between the appellant and its supplier in *Quadra Chemicals*, to the effect that the applicable price was to be determined on the basis of the London Metal Exchange price, is, in the Tribunal's view, an arrangement similar to that between the appellant, TMC and Mitsui. In other words, the evidence clearly shows that there existed an understanding between the parties that the price stipulated on the Canada Customs Invoice was a provisional price estimated for purposes of calculating the value for duty and that the final selling price of the vehicles would only be known at the conclusion of the negotiations between the parties. Consequently, the Tribunal is of the view that the credit note given by Mitsui to the appellant does not constitute a rebate of, or other decrease in, the price paid or payable for the goods in issue within the meaning of paragraph 48(5)(*c*) of the Act. The purpose of the credit note was not to give the appellant a rebate nor to decrease the price paid or payable for the vehicles, but simply to reflect the actual selling price of the goods in issue.

For all of the above reasons, the appeals are allowed.

Robert C. Coates, Q.C.
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