

or in part of Cuban articles, and (b) all tobacco which may be of Cuban origin.

[T.D. 81-189, 46 FR 37888, July 23, 1981]

## PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

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AUTHORITY: 19 U.S.C. 66, 1401a, 1500, 1502, 1624;

Subpart B also issued under 19 U.S.C. 1315; Subpart C also issued under 19 U.S.C. 1503; Section 152.3 also issued under 19 U.S.C. 1499;

Section 152.13 also issued under 19 U.S.C. 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)).

SOURCE: T.D. 73-175, 38 FR 17477, July 2, 1973, unless otherwise noted.

### § 152.0 Scope.

This part contains regulations pertaining to the tariff classification and appraisement of imported merchandise. Other applicable provisions are contained elsewhere in this chapter, such as in part 10 for articles conditionally free or subject to a reduced rate of duty, and in part 159 for relief from duties on articles lost, damaged, etc.

### Subpart A—General Provisions

#### § 152.1 Definitions.

The following are general definitions for the purposes of part 152:

(a)–(b) [Reserved]

(c) *Date of exportation.* “Date of exportation,” or the “time of exportation” referred to in section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a), means the actual date the merchandise finally leaves the country of exportation for the United States. If no positive evidence is at hand as to the actual date of exportation, the port director shall ascertain or estimate the date of exportation by all reasonable ways and means in his power, and in so doing may consider dates on bills of lading, invoices, and other information available to him.

(d) *Fair retail value.* “Fair retail value” or “fair market value” as used in Section XXII, Harmonized Tariff Schedule of the United States, and part 148 of this chapter means the price actually paid or payable for all imported merchandise, or if not purchased, the value as otherwise ascertained under 19 CFR 152.100 *et seq.*

[T.D. 73-175, 38 FR 17477, July 2, 1973, as amended by T.D. 87-89, 52 FR 24446, July 1, 1987; T.D. 89-1, 53 FR 51269, Dec. 21, 1988]

#### § 152.2 Notification to importer of increased duties.

If the port director believes that the entered rate or value of any merchandise is too low, or if he finds that the quantity imported exceeds the entered quantity, and the estimated aggregate of the increase in duties on that entry exceeds \$15, he shall promptly notify the importer on Customs Form 29, specifying the nature of the difference on the notice. Liquidation shall be

made promptly and shall not be withheld for a period of more than 20 days from the date of mailing of such notice unless in the judgment of the port director there are compelling reasons that would warrant such action.

[T.D. 73-175, 38 FR 17477, July 2, 1973, as amended by T.D. 82-224, 47 FR 53728, Nov. 29, 1982; T.D. 93-66, 58 FR 44131, Aug. 19, 1993]

**§ 152.3 Merchandise found not to correspond with invoice description.**

When any merchandise not corresponding with the description given in the invoice is found by the examining officer, duties shall be assessed on the merchandise actually found. If the discrepancy appears conclusively to be the result of a mistake and not of any intent to defraud, no proceedings for forfeiture shall be taken. When the entire shipment does not agree with the invoice and there is no evidence of any intent to defraud, a new entry shall be required and the estimated duty paid on the original entry shall be refunded on liquidation as in the case of a nonimportation. (Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

**Subpart B—Classification**

**§ 152.11 Harmonized Tariff Schedule of the United States.**

Merchandise shall be classified in accordance with the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) as interpreted by administrative and judicial rulings.

[T.D. 73-175, 38 FR 17477, July 2, 1973, as amended by T.D. 89-1, 53 FR 51269, Dec. 21, 1988]

**§ 152.12 Applicable rates of duty.**

Rates of duty shall be based on the detailed instructions in §141.69 of this chapter, which provides in general that the rates of duty applicable to merchandise shall be those in effect on the date of entry or withdrawal for consumption, except for certain merchandise covered by an entry for immediate transportation or overcarried and returned to the port of entry.

**§ 152.13 Commingling of merchandise.**

(a) *Notice to importer.* The port director shall give written notice to the im-

porter as promptly as possible after any commingling is discovered.

(b) *Highest rate applicable.* Commingled merchandise shall be assessed with duty at the highest rate or rates applicable to any one kind of merchandise included in the commingling, unless:

(1) The quantity and value of each of the kinds so included can be readily ascertained by the usual method of Customs examination or by one or more of the methods specified in General Note 20, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), or

(2) The conditions specified in General Note 20, HTSUS, are satisfied.

(c) *Time limit.* To obtain the benefit of General Note 20, HTSUS, the importer shall, within 30 days after the date of mailing or personal delivery of the notice provided for in paragraph (a) of this section, take appropriate action as follows:

(1) File with the port director evidence showing performance of the commercial settlement tests specified in General Note 20, HTSUS; or

(2) Perform the segregation under Customs supervision as specified in General Note 20, HTSUS; or

(3) File with the port director documentary proof which will satisfy him that the merchandise is entitled to the lower rate of duty under General Note 20, HTSUS.

(d) *Extension of time limit.* The 30-day limit for filing the evidence specified in General Note 20 or for performing the segregation specified in General Note 20, Harmonized Tariff Schedule of the United States, may be extended by the port director for additional periods of 30 days each, but not beyond 6 months from the date of mailing or personal delivery of the notice provided for in paragraph (a) of this section, if the importer makes written application for each extension and gives satisfactory reasons for its allowance.

[T.D. 73-175, 38 FR 17477, July 2, 1973, as amended by T.D. 89-1, 53 FR 51270, Dec. 21, 1988; T.D. 95-29, 60 FR 18349, Apr. 11, 1995; T.D. 00-81, 65 FR 68887, Nov. 15, 2000; T.D. 02-14, 67 FR 15099, Mar. 29, 2002]