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writing to the port director if in disagreement. This procedure will not affect or replace the administrative ruling procedures contained in part 177 of this chapter, or any other Customs procedures.

[T.D. 81-7, 46 FR 2600, Jan. 12, 1981, as amended by T.D. 84-235, 49 FR 46888, Nov. 29, 1984]

§ 152.104 Transaction value of identical merchandise and similar merchandise.

(a) *General.* The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value under § 152.103 but adjusted under paragraph (e) of this section) of imported merchandise that is—

(1) With respect to the merchandise being appraised, either identical merchandise, or similar merchandise; and

(2) Exported to the United States at or about the time that the merchandise being appraised is exported to the United States.

(b) *Identical merchandise.* Minor differences in appearance will not preclude otherwise conforming merchandise from being considered “identical”. See § 152.102(d).

(c) *Similar merchandise.* The quality of the merchandise, its reputation, and the existence of a trademark will be factors considered to determine whether merchandise is “similar”. See § 152.102(i).

(d) *Commercial level and quantity.* Transaction values determined under this section will be based on sales of identical merchandise, or similar merchandise, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise, or similar merchandise, at either a different commercial level or in different quantities, or both, will be used, but adjusted to take account of that difference. Any adjustment made under this section will be based on “sufficient information”. See § 152.102(j). If in applying this section to any merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, the merchandise will be appraised on the basis of the lower or lowest of those values.

(e) *Adjustments.* (1) Adjustments for identical merchandise, or similar merchandise, because of different commercial levels or quantities, or both, whether leading to an increase or decrease in the value, will be made only on the basis of sufficient information; e.g., valid price lists containing prices referring to different levels or quantities.

(2) *Interpretative note.* If the imported merchandise being valued consists of a shipment of 10 units and the only identical imported merchandise for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller’s price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions for transaction value of identical or similar merchandise is not appropriate.

§ 152.105 Deductive value.

(a) *Merchandise concerned.* For the purposes of deductive value, “merchandise concerned” means the merchandise being appraised, identical merchandise, or similar merchandise.

(b) *Merchandise of the same class or kind.* For the purposes of deductive value, “merchandise of the same class or kind” includes merchandise imported from the same country as well as other countries as the merchandise being appraised.

(c) *Prices.* The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (d) of this section) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States:

(1) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest

aggregate quantity at or about such date.

(2) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

(3) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This provision will apply to appraisement of merchandise only if the importer so elects at the time of filing the entry summary.

(d) *Deductions from price.* The price determined under paragraph (c) of this section will be reduced by an amount equal to:

(1) Any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;

(2) The actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(3) The usual costs and associated costs of transportation and insurance incurred with respect to shipments of the merchandise concerned from the place of importation to the place of delivery in the United States, if those costs are not included as a general expense under paragraph (d)(1) of this section;

(4) The customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of,

the merchandise for which vendors in the United States ordinarily are liable; and

(5) But only in the case of price determined under paragraph (c)(3) of this section, the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to the cost of that processing.

(e) *Profit and general expenses; special rules.* (1) The deduction made for profit and general expenses (taken as a whole) will be based upon the importer's profit and general expenses, unless the profit and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind from all countries, in which case the deduction will be based on the usual profit and general expenses reflected in those sales, as determined from sufficient information. Any State or local tax imposed on the importer with respect to the sale of imported merchandise will be treated as a general expense.

(2) In determining deductions for commissions and usual profit and general expenses, sales in the United States of the narrowest group or range of imported merchandise of the same class or kind, including the merchandise being appraised, for which sufficient information can be provided, will be examined.

(f) *Packing costs.* The price determined under paragraph (c) of this section will be increased, but only to the extent that the costs are not otherwise included, by an amount equal to the packing costs incurred by the importer or the buyer with respect to the merchandise concerned.

(g) *Assists.* For purposes of determining deductive value, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned will be disregarded.

(h) *Unit price in greatest aggregate quantity.* The unit price will be established after a sufficient number of units have been sold to an unrelated person. The unit price to be used when the units have been sold in different quantities will be that at which the total volume sold is greater than the

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total volume sold at any other unit price.

(1) *Interpretative note 1.* Merchandise is sold to an unrelated person from a price list which grants favorable unit prices for purchases made in larger quantities:

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1-10 units ...	\$100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
Over 25 units.	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is \$90.

(2) *Interpretative note 2.* Two sales to unrelated persons occur: in the first sale, 500 units are sold at a price of \$95 each; in the second sale, 400 units are sold at a price of \$90 each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is \$95.

(3) *Interpretative note 3.* Various quantities are sold to unrelated persons at various prices:

(i) SALES

Sale quantity	Unit price
40 units	\$100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(ii) TOTALS

Total quantity sold	Unit price
65	\$90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is \$90.

(i) *Further processing—(1) Quantified data.* If merchandise has undergone further processing after its importation into the United States and the im-

porter elects the method specified in paragraph (c)(3) of this section, deductions made for the value added by that processing will be based on objective and quantifiable data relating to the cost of the work performed. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis for the deduction. That deduction also will reflect amounts for spoilage, waste, or scrap derived from the further processing.

(2) *Loss of identity.* If the imported merchandise loses its identity as a result of further processing, the method specified in paragraph (c)(3) of this section will not be applicable unless the value added by the processing can be determined accurately without unreasonable difficulty for either importers or Customs. If the imported merchandise maintains its identity but forms a minor element of the merchandise sold in the United States, the use of paragraph (c)(3) of this section will be unjustified. The port director shall review each case involving these issues on its merits.

Example. A foreign shipper sells merchandise to a related U.S. importer. The foreign shipper does not sell to any unrelated person. The transaction between the foreign shipper and the U.S. importer is determined to have been affected by the relationship. There is no identical or similar merchandise from the same country of production. The U.S. importer further processes the product and sells the finished product to an unrelated buyer in the U.S. within 180 days of the date of importation. No assists from the unrelated U.S. buyer are involved, and the type of processing involved can be accurately costed.

How should the merchandise be appraised?

The merchandise should be appraised under deductive value with allowances for profit and general expenses, freight and insurance, duties and taxes, and the cost of processing.

[T.D. 81-7, 46 FR 2600, Jan. 12, 1981, as amended by T.D. 85-123, 50 FR 29956, July 23, 1985]

§ 152.106 Computed value.

(a) *Elements.* The computed value of imported merchandise is the sum of:

(1) The cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;