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Committee on Customs Valuation

INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Supplement

LEGISLATION OF THE UNITED STATES

Final Regulations of the United States Customs Services with Respect
to Implementation and Administration of Title II, Sub-Title A,
of the Trade Agreements Act of 1979

*English only

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 152

(T.D. 81-71)

Valuation of Imported Merchandise for Customs Purposes

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to enable the Customs Service ("Customs") to implement and administer the provisions of Title II of Pub. L. 96-39, the "Trade Agreements Act of 1979", relating to the valuation of imported merchandise for customs purposes.

The more significant changes are:

1. To eliminate section 402a, Tariff Act of 1930, as amended (19 U.S.C. 1402), the basis for appraising "Final List" articles.
2. To eliminate the "American Selling Price" basis for valuation.
3. To provide the following five bases—one primary and four secondary—for determining customs value:
 - a. Transaction value of the imported merchandise (the primary basis);
 - b. Transaction value of identical merchandise;
 - c. Transaction value of similar merchandise;
 - d. Deductive value; and
 - e. Computed value.
4. To provide that if Customs rejects the transaction value resulting in an increase in duties, the importer will be notified of the rejection, receive an explanation of the action, and be given 20 days in which to reply if in disagreement.
5. To provide that Customs, upon written request, shall furnish an importer with a written explanation of how the customs value of the imported merchandise was determined.
6. To provide that information submitted by an importer, buyer, or producer regarding the valuation of merchandise will not be rejected on the basis of the accounting method used to prepare the information if the preparation was in accordance with "generally accepted accounting principles."

The amendments are considered to be significant.

EFFECTIVE DATE: January 12, 1981.

FOR FURTHER INFORMATION CONTACT: Thomas Lobred (202-566-2938) or Richard Rosettie (202-566-2790), Office of Commercial Operations, U.S.

Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:**Background**

Public Law 96-39 (93 Stat. 144), the "Trade Agreements Act of 1979", approved July 28, 1979 (the "Act"), incorporates into U.S. law the trade agreements negotiated by the United States in the Tokyo Round of Multilateral Trade Negotiations (MTN) and transmitted to the Congress by the President on June 19, 1979.

Title II of the Act, "Customs Valuation", implements the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade ("the Agreement") relating to customs valuation. Title II makes significant changes in the laws administered by Customs relating to the valuation of imported merchandise.

The United States has entered into a supplementary agreement ("protocol") on customs valuation which would eliminate one of the tests under the Agreement, and Title II, by which related parties can establish an acceptable transaction value, *i.e.*, the use of the transaction value from unrelated parties' sales of identical goods from third countries (section 152.103(j)(2)(i)(C) of the NPRM). The legislation required to approve and implement the protocol to the trade agreement relating to customs valuation, Pub. L. 96-490, was enacted by the Congress and signed into law on December 2, 1980. In addition, the determination necessary for acceptance of the customs valuation agreement and the protocol to that agreement has been made by the United States Trade Representative and published in the Federal Register on December 24, 1980 (45 FR 85239). Accordingly, the aforementioned test has been deleted and other conforming changes have been made in the document.

Effective Dates of Title II

Presidential Proclamation No. 4768, of June 28, 1980, declares that the effective date for the provisions of Title II, except those relating to certain rubber footwear, is July 1, 1980. The amendments made by section 223(b) of the Act relating to certain rubber footwear will become effective on July 1, 1981.

Implementation of Title II, the "new value law," will neither repeal nor amend automatically sections 402 and 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402), with regard to merchandise exported to the United States before the respective effective dates. The new value law will be

applicable to merchandise exported to the United States on or after the applicable effective date, and the value will be determined in accordance with section 402, Tariff Act of 1930, as amended by section 201 of the Act.

However, the "old value law", sections 402 and 402a, Tariff Act of 1930, as amended, will apply to merchandise exported to the United States before the applicable effective date. This would include merchandise in a Customs bonded warehouse, in a foreign-trade zone, or in international transit to the United States before the applicable effective date. Accordingly, sections 10.18 and 10.19, Customs Regulations (19 CFR 10.18, 10.19), relating to the valuation of assembled articles and the elements involved in determining constructed value or cost of production for articles imported under item 807.00, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), will be applicable only if the articles were exported to the United States before July 1, 1980.

Notice of Proposed Rulemaking ("NPRM")

Because of the necessity to continue to administer the "old value law" for an indefinite period while it also implements the "new value law", Customs published a NPRM in the Federal Register on March 31, 1980 (45 FR 20912). That document proposed to amend Part 152, Customs Regulations (19 CFR Part 152), concerning the classification and appraisement of merchandise to provide for a new subpart relating to the "new value law" while retaining the regulations relating to the "old value law."

The preamble of that NPRM provided a detailed description of the specific changes in the valuation provisions administered by Customs and the background and purpose of the proposed regulations amendments and should be read in conjunction with this document.

The NPRM invited interested persons to submit comments on the amendments on or before May 30, 1980. As discussed below, consideration of the numerous comments received and further review of Title II have resulted in a number of changes to the proposed amendments.

Discussion of Comments

The following is a section-by-section analysis of the comments received, presented in ascending numerical order:

1. *Section 152.101(c) Importer's option.*—Customs specifically solicited comments on this section relating to the importer's requesting the application of computed value before deductive value

at the time the entry summary is filed. Many of the commenters responded to this issue, and all but one favored a time other than that of filing the entry summary (e.g., 20 days after filing the entry summary), to make the importer's election of the application of computed before deductive value.

Customs agrees that this is an important and legitimate concern. In order to provide the public the full benefit of this election, Customs considered a variety of proposals in addition to those specifically identified by commenters. Unfortunately, the only certain time which would be known to both Customs and the public other than the date of filing the entry summary is the date of liquidation. The date of liquidation usually is so remote from the importation of the merchandise and documentation of the entry as to be unacceptable.

However, Customs wishes to advise the public that if subsequent events or submissions demonstrate that this time frame creates a burden or establishes a pattern of importers being deprived of the statutory election, Customs would endeavor to make the appropriate modifications. In the interim, Customs will consider any workable suggestions from the public.

2. Section 152.101(d) Explanation to importer.—A number of commenters suggested that the time period proposed for an importer to request an explanation of the valuation of the merchandise, (i.e., within 90 days from the date of liquidation of the entry), should be extended to permit the timely filing of a protest.

In this regard, the Statement of Administrative Action relating to Customs valuation, submitted to and approved by Congress along with the Act, and the proposed regulations make clear that this explanation to the importer is separate from any present administrative procedures of Customs. This result is consistent with the overall design of Title II of the Act that appraisement be the result of consultation between the importer and Customs. As it was envisioned that such consultation would facilitate the determination of appraisements, there was no intent, nor any need, to tie the furnishing of a written explanation to the importer with the formal protest procedure set forth in Part 174, Customs Regulations (19 CFR Part 174). Consequently, to make it clear that this procedure is not tied to the period for filing a protest, the time period has been adopted as proposed. It should be noted that the vast majority of persons who might file a protest would have previously been informed under

proposed section 152.103(m) of the grounds for rejection of transaction value.

In addition, several commenters suggested that section 152.101(d) be reworded to emphasize more strongly the confidentiality of information Customs receives from the public. Customs thinks that the last sentence in the proposed section makes the point adequately, as does present Part 103, Customs Regulations (19 CFR Part 103).

3. Section 152.102(a) Assist.—Some commenters requested that the definition of "assist" contain the limitation that research and development costs for tools, molds, etc., undertaken in the United States not be dutiable.

As this suggestion is contrary to both the Statement of Administrative Action and the Act, we have no authority to adopt it.

4. Section 152.102(b) Commission.—A number of commenters pointed out that Customs treatment of buying and selling commissions was not only confusing but contrary to the language of the Act.

While the language contained in the proposed regulation is consistent with the Act, Customs believes that the point raised is valid. Therefore, section 152.102(b) has been revised by deleting all reference to "buying commission," a term not mentioned in the Act, and substituting the following definition of "selling commission": "Selling commission" means any commission paid to the seller's agent, who is related to or controlled by, or works for or on behalf of, the manufacturer or the seller.

5. Section 152.102(c) Generally accepted accounting principles.—Several commenters recommended that the section indicate that the concept of "generally accepted accounting principles" is not limited to those principles practiced in the United States. Customs agrees, and a phrase has been added to subparagraph (2) of the definition to include that recommendation.

6. Section 152.102(e) Packing costs.—Several commenters wanted the section to specify that the cost of containers and other instruments of international traffic is not included in packing costs.

As that concept is not a new element created by the Act, and is currently stated in the Statement of Administrative Action, Customs has adopted that suggestion.

7. Section 152.102(g) Related persons.—One of the commenters suggested that Customs change the term "partners" in the section to the phrase "legally recognized partners in business."

The language contained in proposed section 152.102(g) is taken from the Act. Further, Customs thinks that the term "partners" means the same under United States law as the phrase "legally recognized partners in business." Accordingly, the requested change has not been adopted.

8. Section 152.103(a)(2) Indirect payment.—Several commenters suggested breaking this section into two paragraphs to illustrate a dichotomy between advertising which is not considered an indirect payment (an exception) as opposed to indirect payments in general.

The section is meant to discuss indirect payments generally, and to emphasize that advertising undertaken by the buyer is not considered to be an indirect payment. Customs does not think another paragraph with a heading of "advertising" would lend more emphasis to the declaratory statement made, and has not adopted the suggestion.

9. Section 152.103(a)(3) Assembled merchandise.—In response to many comments seeking specific clarification of this section, three examples have been added which should be helpful in illustrating the meaning of the section.

10. Section 152.102(a)(4) Rebate.—Several commenters pointed out that this section appeared to restrict Customs treatment of defective merchandise.

Customs has no such intent, and defective merchandise still will be accorded treatment under the provisions of section 158.12, Customs Regulations (19 CFR 158.12), relating to merchandise partially damaged at the time of importation.

Several commenters also suggested that the second example appearing after this section include the correct answer in numerical form. This suggestion has been adopted and the example modified accordingly.

11. "New" section 152.103(a)(5) Foreign inland freight.—Based upon comments received concerning the dutiability of foreign inland freight, a new section has been added to state that foreign inland freight charges will be dutiable to the extent they are included in the price actually paid or payable for the imported merchandise.

12. Section 152.103(e) Apportionment.—A commenter suggested that Customs modify the interpretative note following this section to reflect "generally accepted accounting principles."

As this suggestion has merit, the interpretative note has been modified to reflect that the correctness of any numerical figure the importer asks

Customs to apportion will be used as long as that figure is in accordance with "generally accepted accounting principles."

13. Section 152.103(f) Royalties or license fees.—It was requested that Customs expand this section to include the language of the House Report relating to royalties.

The language in this section tracks that contained in the Statement of Administrative Action. The explanatory language contained in the House Report would be very difficult to transform into regulation and, in definitive terms, would add little or nothing over that set forth in section 152.103(f). Accordingly, Customs has not adopted the request.

Several commenters suggested deletion of the word "unrelated" which appears in the example following this section, as unnecessary.

Although Customs agrees that it is not required in all cases that the buyer be unrelated to the seller, it would be a relevant factor in some cases. Therefore, the language of that example has not been modified.

14. Section 152.103(l)(1) Validation of transaction.—Several commenters noted that the example following the interpretative notes in this section was confusing. To avoid any possible confusion, appropriate modifications have been made.

15. Section 152.103(l)(2)(i) Test values.—A commenter suggested that the word "are" in the second sentence of the section should be changed to "include" to correspond to the language in the Statement of Administrative Action. Customs agrees and has made the appropriate change.

16. Section 152.103(m) Rejection of transaction value.—Many commenters suggested extending the time period provided in the proposed section so that an importer would have more than 20 days to respond to the district director if in disagreement with Customs grounds for rejecting transaction value as the basis of appraisement for the imported merchandise.

The time period proposed is the same as that now provided in section 152.2, Customs Regulations (19 CFR 152.2), relating to notification to importers of increased duties. Long experience with section 152.2 has demonstrated that this time frame works. Additionally, Customs would point out that several avenues exist for presentation of conflicting views to Headquarters for resolution.

17. Section 152.105(c)(3) Prices; further processing.—Many

commenters responded to Customs specific request for comments on the time of the importer's election of the "further processing method" of price appraisal under deductive value. The commenters unanimously urged a time period for the election considerably later than that of the time of filing the entry summary with Customs.

For the same reasons given in the discussion of the importer's option provided in § 152.101(c), Customs is unable to make the requested change.

However, Customs wishes to advise the public that if subsequent events or submissions demonstrate that this time frame creates a burden or establishes a pattern of importers being deprived of the statutory election, Customs would endeavor to make the appropriate modifications. In the interim, Customs will consider any workable suggestions from the public.

One commenter wanted Customs to define the term "further processing" for purposes of this section. As there is no intent on Customs part to establish any other than the ordinary commercial meaning of that term, it would not be appropriate to delineate a precise meaning within the valuation context alone. Moreover, any consideration of the applicability of this section will be determined on a case-by-case basis.

18. Section 152.107 Value if other values cannot be determined or used.—A commenter suggested that this section contain an additional paragraph stating that the time for consideration of the appraisal under deductive value of a price applicable to merchandise which has undergone "further processing" could be extended beyond the 180 days specified in the proposal. It was suggested that the paragraph could be similar to that proposed in section 152.107(c) concerning the flexible administration of the "90 days" sales requirement for merchandise sold in the condition as imported but not sold at or about the date of the appraised merchandise.

Customs cannot adopt the suggestion because (1) the three paragraphs in the proposed section are taken from the provisions of the Valuation Code acceded to by the United States and forming the basis for Title II of the Act (there being no provision for flexible administration of the 180 day period), and (2) because of the 1 year limit for liquidation of entries, any extension of the 6 month period would lead to predictable difficulties for both Customs and importers.

Additional Comments

One commenter suggested that all procedural requirements to implement the provisions of Title II be placed in a separate section of the regulations.

Customs thinks this suggestion has merit; however, it was felt that the spirit of the law, that is, closer cooperation between Customs and the importing community, would be accommodated better if procedural requirements were interspersed among the substantive provisions wherever possible.

Several commenters requested that, in cases where either deductive or computed value is applicable because no identical or similar merchandise exists, Customs always accept the importer's cost figures without considering, where appropriate, goods of the same class or kind.

Customs cannot accept this request because it is contrary to the language of the Act.

Several commenters expressed concern about the effect of the proposed regulations on existing §§ 10.18 and 10.19, Customs Regulations (19 CFR 10.18, 10.19), relating to the valuation of assembled articles and the elements involved in determining constructed value or cost of production under the "old value law".

Customs has included a statement in the portion of this document designated Effective Dates of Title II to clarify that those sections will apply only to appraisement of merchandise exported to the United States before July 1, 1980, the general effective date of the Act.

Two commenters noted that it is very expensive and time-consuming to require the keeping and furnishing of assist data on duty-free merchandise specifically for Customs purposes when such information has no practical use under the Act.

Customs agrees that maintenance of records relating to dutiable assists which are then not applicable to clearly duty-free merchandise, could be burdensome, and the need for maintenance of those records will be scrutinized by Customs on a case-by-case basis.

Finally, Customs notes that a number of comments received were outside the scope of the proposed regulation, that is, they were not concerned with customs valuation. Therefore, it would not be appropriate to deal with them in the context of this document. Included in this group would be those comments concerning the Special Customs Invoice (CF 5515) and matters of tariff

classification, e.g., comments addressing the classification of intangibles such as software and other intellectual properties, classification under item 807.00, TSUS, and the use of tariff classification breakdowns to determine "same class or kind".

Editorial Changes

Upon its own review, Customs has made other nonsubstantive changes in the proposed amendments. Those changes, in addition to the correction of typographical errors and other minor editorial corrections, are listed below by affected section:

1. Section 152.101(d) has been revised by adding the word "after" to the first sentence, immediately following the phrase "within 90 days," and striking the word "of" preceding "liquidation".

2. Section 152.103(e)(4) has been modified by adding an example for clarification relating to cash discounts.

3. Section 152.103(d)(2), Example 1, is too broad in scope. Customs has modified the answer to that example to cover situations in which design work undertaken in the United States is part of the price actually paid or payable for the imported merchandise, and as such, is dutiable. In that circumstance, those charges are dutiable because there is no authority in the Act for a deduction from the price actually paid or payable.

4. Section 152.103(f) has been revised by adding the phrase "to a third party" after the word "buyer" in the last sentence of the section. This change is consistent with the Statement of Administrative Action and was omitted from the proposal inadvertently.

Inapplicability of Delayed Effective Date Provision

Because these final amendments, having been subject to notice and public procedure requirements, implement the valuation provisions of Pub. L. 96-39, the "Trade Agreements Act of 1979", which provisions generally became effective July 1, 1980, it is found that the good cause exists, under 5 U.S.C. 553(d)(5), to dispense with a delayed effective date.

Drafting Information

The principal author of this document was Todd J. Schneider, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Amendment to the Regulations

To reflect these changes, Part 152, Customs Regulations (19 CFR Part 152),

is amended as set forth below.

R. E. Chasen,

Commissioner of Customs.

Approved: December 12, 1980.

Richard J. Davis,

Assistant Secretary of the Treasury.

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

1. Part 152 is amended by adding a new § 152.20 to read as follows:

§ 152.20 Effective date.

The value for appraisement of merchandise exported to the United States before July 1, 1980, or, for articles classified in item 700.80, Tariff Schedules of the United States (19 U.S.C. 1202), before July 1, 1981, will be determined in accordance with this subpart.

2. Part 152 is amended by adding a new Subpart E, "Valuation of Merchandise," to read as follows:

Subpart E—Valuation of Merchandise

Sec.

152.100 Interpretative notes.

152.101 Basis of appraisement.

152.102 Definitions.

152.103 Transaction value.

152.104 Transaction value of identical merchandise and similar merchandise.

152.105 Deductive value.

152.106 Computed value.

152.107 Value if other values cannot be determined or used.

152.108 Unacceptable bases of appraisement.

Authority: R.S. 251, as amended (19 U.S.C. 68); sec. 624, 46 Stat. 759 (19 U.S.C. 1624); and Title II, Pub. L. 96-39, 93 Stat. 194 (July 26, 1979).

Subpart E—Valuation of Merchandise

§ 152.100 Interpretative notes.

The interpretative notes set forth in this subpart have been derived from information contained in the Statement of Administrative Action relating to customs valuation, submitted to and approved by Congress along with the Trade Agreements Act of 1979 (Pub. L. 96-39), and will have the force and effect of regulations issued under this subpart.

§ 152.101 Basis of appraisement.

(a) *Effective date.* The value for appraisement of merchandise exported to the United States on or after July 1, 1980, or, for articles classified under item 700.80, Tariff Schedules of the United States (19 U.S.C. 1202), on or after July 1, 1981, will be determined in accordance with section 402, Tariff Act of 1930 (19 U.S.C. 1401a), as amended by section 201, Trade Agreements Act of 1979.

(b) *Methods.* Imported merchandise will be appraised on the basis, and in the order, of the following:

(1) The transaction value provided for in § 152.103;

(2) The transaction value of identical merchandise provided for in § 152.104, if the transaction value cannot be determined, or can be determined but cannot be used because of the limitations provided for in § 152.103(j);

(3) The transaction value of similar merchandise provided for in § 152.104, if the transaction value of identical merchandise cannot be determined;

(4) The deductive value provided for in § 152.105, if the transaction value of similar merchandise cannot be determined;

(5) The computed value provided for in § 152.106, if the deductive value cannot be determined; or

(6) The value provided for in § 152.107, if the computed value cannot be determined.

(c) *Importer's option.* The importer may request the application of the computed value method before the deductive value method. The request must be made at the time the entry summary for the merchandise is filed with the district director (see § 141.6a(b) of this chapter). If the importer makes the request, but the value of the imported merchandise cannot be determined using the computed value method, the merchandise will be appraised using the deductive value method if it is possible to do so. If the deductive value cannot be determined, the appraised value will be determined as provided for in § 152.107.

(d) *Explanation to importer.* Upon receipt of a written request from the importer within 90 days after liquidation, the district director shall provide a reasonable and concise written explanation of how the value of the imported merchandise was determined. The explanation will apply only to the imported merchandise being appraised and will not serve as authority with respect to the valuation of importations of any other merchandise at the same or a different port of entry. This procedure is for informational purposes only, and will not affect or replace the protest or administrative ruling procedures contained in Parts 174 and 177, respectively, of this chapter, or any other Customs procedures. Under this procedure, Customs will not be required to release any information not otherwise subject to disclosure under the Freedom of Information Act, as amended (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or any other statute (see Part 103 of this chapter).

§ 152.103 Definitions.

As used in this subpart, the following terms will have the meanings indicated:

(a) *Assist* (1) "Assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(2) No service or work to which subparagraph (1)(iv) of this paragraph applies will be treated as an assist if the service or work—

(i) Is performed by an individual domiciled within the United States;

(ii) Is performed by that individual while acting as an employee or agent of the buyer of the imported merchandise; — and

(iii) Is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.

(3) The following apply in determining the value of assists described in subparagraph (1)(iv) of this paragraph—

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value added outside the United States.

(iii) If the assist was purchased or leased by the buyer from an unrelated person, the value of the assist is the cost of the purchase or of the lease.

(b) *Commission*. "Selling commission" means any commission paid to the seller's agent, who is related to or controlled by, or works for or on behalf of, the manufacturer or the seller.

(c) *Generally accepted accounting principles*. (1) "Generally accepted accounting principles" refers to any generally recognized consensus or substantial authoritative support regarding—

(i) Which economic resources and obligations should be recorded as assets and liabilities;

(ii) Which changes in assets and liabilities should be recorded;

(iii) How the assets and liabilities and changes in them should be measured;

(iv) What information should be disclosed and how it should be disclosed; and

(v) Which financial statements should be prepared.

(2) The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the imported merchandise is sought to be established, and the relevant country for the point in contention.

(3) Information submitted by an importer, buyer, or producer in regard to the appraisal of merchandise may not be rejected by Customs because of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles.

(d) *Identical merchandise*. "Identical merchandise" means merchandise identical in all respects to, and produced in the same country and by the same person as, the merchandise being appraised. If identical merchandise cannot be found (or for purposes of related buyer and seller transactions (see § 152.103(j)(2)(i)(A)), regardless of whether identical merchandise can be found), merchandise identical in all respects to, and produced in the same country as, but not produced by the same person as, the merchandise being appraised, may be treated as "identical merchandise". "Identical merchandise" does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or sale for export to the United States of the merchandise, and is not an assist because undertaken within the United States.

(e) *Packing costs*. "Packing costs" means the cost of all containers (exclusive of instruments of international traffic) and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

(f) *Price actually paid or payable*. "Price actually paid or payable" means the total payment (whether direct or indirect, and exclusive of any charges, costs, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise

by the buyer to, or for the benefit of, the seller.

(g) *Related persons*. "Related persons" means: (1) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(2) Any officer or director of an organization, and that organization.

(3) An officer or director of an organization and an officer or director of another organization, if each individual also is an officer or director in the other organization.

(4) Partners.

(5) Employer and employee.

(6) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization, and that organization.

(7) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(h) *Same class or kind*. "Merchandise of the same class or kind" means merchandise (including, but not limited to, identical merchandise and similar merchandise) within a group or range of merchandise produced by a particular industry or industry sector.

(i) *Similar merchandise*. "Similar merchandise" means merchandise produced in the same country and by the same person as the merchandise being appraised, like the merchandise being appraised in characteristics and component material, and commercially interchangeable with the merchandise being appraised. If similar merchandise cannot be found (or for purposes of related buyer and seller transactions (see § 152.103(j)(2)(i)(A)), regardless of whether similar merchandise can be found), merchandise produced in the same country as, but not produced by the same person as, the merchandise being appraised, like the merchandise being appraised in characteristics and component material, and commercially interchangeable with the merchandise being appraised, may be treated as "similar merchandise". "Similar merchandise" does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise, and is not an assist because undertaken within the United States.

(j) *Sufficient information*. "Sufficient information" means information that establishes the accuracy of:

(1) Any amount—

- (i) added under § 152.103(b) to the price actually paid or payable;
- (ii) deducted under § 152.105(d) as profit or general expenses or value from further processing; or
- (iii) added under § 152.106(b) as profit or general expenses; or
- (2) Any difference taken into account under § 152.103(j)(2)(iv); or
- (3) Any adjustment made under § 152.104(d).
- (k) *Unit price in greatest aggregate quantity.* "Unit price at which merchandise is sold in the greatest aggregate quantity" means the unit price at which the "merchandise concerned" is sold to unrelated persons at the first commercial level after importation (in cases to which § 152.105(c)(1) and (2) apply), or after further processing (in cases to which § 152.105(c)(3) applies), at which the sales take place in a total volume greater than the total volume sold at any other unit price and sufficient to establish the unit price.

§ 152.103 Transaction value.

(a) *Price actually paid or payable—(1) General.* In determining transaction value, the price actually paid or payable will be considered without regard to its method of derivation. It may be the result of discounts, increases, or negotiations, or may be arrived at by the application of a formula, such as the price in effect on the date of export in the London Commodity Market. The word "payable" refers to a situation in which the price has been agreed upon, but actual payment has not been made at the time of importation. Payment may be made by letters of credit or negotiable instruments and may be made directly or indirectly.

Example 1. In a transaction with foreign Company X, a U.S. firm pays Company X \$10,000 for a shipment of meat products, packed ready for shipment to the United States. No selling commission, assist, royalty, or license fee is involved. Company X is not related to the U.S. purchaser and imposes no condition or limitation on the buyer.

The customs value of the imported meat products is \$10,000—the transaction value of the imported merchandise.

Example 2. A foreign shipper sold merchandise at \$100 per unit to a U.S. importer. Subsequently, the foreign shipper increased its price to \$110 per unit. The merchandise was exported after the effective date of the price increase. The invoice price of \$100 was the price originally agreed upon and the price the U.S. importer actually paid for the merchandise.

How should the merchandise be appraised?

Actual transaction value of \$100 per unit based on the price actually paid or payable.

Example 3. A foreign shipper sells to U.S. wholesalers at one price and to U.S. retailers at a higher price. The shipment undergoing appraisal is a shipment to a U.S. retailer.

There are continuing shipments of identical and similar merchandise to U.S. wholesalers.

How should the merchandise be appraised? Actual transaction value based on the price actually paid or payable by the retailer.

Example 4. Company X in the United States pays \$2,000 to Y Toy Factory abroad for a shipment of toys. The \$2,000 consists of \$1,850 for the toys and \$150 for ocean freight and insurance. Y Toy Factory would have charged Company X \$2,200 for the toys; however, because Y owed Company X \$350, Y charged only \$1,850 for the toys. What is the transaction value?

The transaction value of the imported merchandise is \$2,200, that is, the sum of the \$1,850 plus the \$350 indirect payment. Because the transaction value excludes C.I.F. charges, the \$150 ocean freight and insurance charge is excluded.

Example 5. A seller offers merchandise at \$100, less a 2% discount for cash. A buyer remits \$98 cash, taking advantage of the cash discount.

The transaction value is \$98, the price actually paid or payable.

(2) *Indirect payment.* An indirect payment would include the settlement by the buyer, in whole or in part, of a debt owed by the seller, or where the buyer receives a price reduction on a current importation as a means of settling a debt owed him by the seller. Activities such as advertising, undertaken by the buyer on his own account, other than those for which an adjustment is provided in § 152.103(b), will not be considered an indirect payment to the seller though they may benefit the seller. The costs of those activities will not be added to the price actually paid or payable in determining the customs value of the imported merchandise.

(3) *Assembled merchandise.* The price actually paid or payable may represent an amount for the assembly of imported merchandise in which the seller has no interest other than as the assembler. The price actually paid or payable in that case will be calculated by the addition of the value of the components and required adjustments to form the basis for the transaction value.

Example 1. The importer previously has supplied an unrelated foreign assembler with fabricated components ready for assembly having a value or cost at the assembler's plant of \$1.80 per unit. The importer pays the assembler 80¢ per unit for the assembly. The transaction value for the assembled unit is \$1.80.

Example 2. Same facts as Example 1 above except the U.S. importer furnishes to the foreign assembler a tooling assist consisting of a tool acquired by the importer at \$1,000. The transportation expenses to the foreign assembler's plant for the tooling assist equal \$100. The transaction value for the assembled unit would be \$1.80 per unit plus a *pro rata* share of the tooling assist valued at \$1,100.

(4) *Rebate.* Any rebate of, or other decrease in, the price actually paid or payable made or otherwise effected between the buyer and seller after the date of importation of the merchandise will be disregarded in determining the transaction value under § 152.103(b).

(5) *Foreign inland freight.* If the price actually paid or payable by the buyer to the seller for the imported merchandise does not include a foreign inland freight charge (an ex-factory price), the foreign inland freight charge will not be added to the price if paid to an unrelated seller. In those situations where the price actually paid or payable for imported merchandise included a charge for foreign inland freight, that charge will be part of the transaction value to the extent it is included in that price.

(b) *Additions to price actually paid or payable.* (1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to—

(i) The packing costs incurred by the buyer with respect to the imported merchandise;

(ii) Any selling commission incurred by the buyer with respect to the imported merchandise;

(iii) The value, apportioned as appropriate, of any assist;

(iv) Any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

(v) The proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

(2) The price actually paid or payable for imported merchandise will be increased by the amounts attributable to the items (and no others) described in paragraphs (b)(1) (i) through (v) of this section to the extent that each amount is not otherwise included within the price actually paid or payable, and is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in this section, the transaction value will be treated as one that cannot be determined.

(3) *Interpretative note.* A royalty is paid on the basis of the price in a sale in the United States of a gallon of a particular product imported by the pound and transformed into a solution after importation. If the royalty is based partially on the imported merchandise and partially on other factors which have nothing to do with the imported merchandise (such as if the imported

merchandise is mixed with domestic ingredients and is no longer separately identifiable, or if the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported merchandise and can be readily quantified, an addition to the price actually paid or payable will be made.

(c) Sufficiency of information.

Additions to the price actually paid or payable will be made only if there is sufficient information to establish the accuracy of the additions and the extent to which they are not included in the price.

(d) Assist. If the value of an assist is to be added to the price actually paid or payable, or to be used as a component of computed value, the district director shall determine the value of the assist and apportion that value to the price of the imported merchandise in the following manner:

(1) If the assist consist of materials, components, parts, or similar items incorporated in the imported merchandise, or items consumed in the production of the imported merchandise, acquired by the buyer from an unrelated seller, the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be the cost of its production. In either case, the value of the assist would include transportation costs to the place of production.

(2) If the assist consists of tools, dies, molds, or similar items used in the production of the imported merchandise, acquired by the buyer from an unrelated seller, the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be cost of its production. If the assist has been used previously by the buyer, regardless of whether it had been acquired or produced by him, the original cost of acquisition or production would be adjusted downward to reflect its use before its value could be determined. If the assist were leased by the buyer from an unrelated seller, the value of the assist would be the cost of the lease. In either case, the value of the assist would include transportation costs to the place of production. Repairs or modifications to an assist may increase its value.

Example 1. A U.S. importer supplied detailed designs to the foreign producer. These designs were necessary to manufacture the merchandise. The U.S. importer bought the designs from an

engineering company in the U.S. for submission to his foreign supplier.

Should the appraised value of the merchandise include the value of the assist?

No, design work undertaken in the U.S. may not be added to the price actually paid or payable.

Example 2. A U.S. importer supplied molds free of charge to the foreign shipper. The molds were necessary to manufacture merchandise for the U.S. importer. The U.S. importer had some of the molds manufactured by a U.S. company and others manufactured in a third country.

Should the appraised value of the merchandise include the value of the molds?

Yes. If is an addition required to be made to transaction value.

(e) Apportionment. (1) The apportionment of the value of assists to imported merchandise will be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles. The method of apportionment actually accepted by Customs will depend upon the documentation submitted by the importer. If the entire anticipated production using the assist is for exportation to the United States, the total value may be apportioned over (i) the first shipment, if the importer wishes to pay duty on the entire value at once, (ii) the number of units produced up to the time of the first shipment, or (iii) the entire anticipated production. In addition to these three methods, the importer may request some other method of apportionment in accordance with generally accepted accounting principles. If the anticipated production is only partially for exportation to the United States, or if the assist is used in several countries, the method of apportionment will depend upon the documentation submitted by the importer.

(2) **Interpretative note.** An importer provides the producer with a mold to be used in the production of the imported merchandise and contracts to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request Customs to apportion the value of the mold over 1,000, 4,000, 10,000 units, or any other figure which is in accordance with generally accepted accounting principles.

(f) Royalties or license fees. Royalties or license fees for patents covering processes to manufacture the imported merchandise generally will be dutiable. Royalties or license fees paid to third parties for use, in the United States, of copyrights and trademarks related to the imported merchandise generally will be considered selling expenses of the buyer and not dutiable. The dutiable status of

royalties or license fees paid by the buyer will be determined in each case and will depend on (1) whether the buyer was required to pay them as a condition of sale of the merchandise for exportation to the United States, and (2) to whom and under what circumstances they were paid. Payments made by the buyer to a third party for the right to distribute or resell the imported merchandise will not be added to the price actually paid or payable for the imported merchandise if the payments are not a condition of the sale of the merchandise for exportation to the United States.

Example. A foreign producer sold merchandise to an unrelated U.S. importer. The U.S. importer pays a royalty to an unrelated third party for the right to manufacture and sell a product made in part from the imported merchandise. The royalty is based on the selling price of the further-manufactured product in the U.S.

Is the license fee part of the appraised value? No. The license fee is not a condition of the sale of the imported merchandise for export to the U.S.

(g) Proceeds of subsequent resale. Additions to the price actually paid or payable will be made for the value of any part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrues directly or indirectly to the seller. Dividends or other payments from the buyer to the seller which do not relate directly to the imported merchandise will not be added to the price actually paid or payable. Whether any addition would be made will depend on the facts of the particular case.

Example. A buyer contracts to import a new product. Not knowing whether the product ultimately will sell in the United States, the buyer agrees to pay the seller initially \$1 per unit with an additional \$1 per unit to be paid upon the sale of each unit in the United States. Assuming the resale price in the United States can be determined in a reasonable period of time, the transaction value of each unit would be \$2. Otherwise, the transaction value could not be determined for want of sufficient information.

(h) Right to reproduce. Charges for the right to reproduce the imported merchandise in the United States will not be added to the price actually paid or payable. The right to reproduce denotes that an idea or an original work is incorporated in, or reflected by, the imported merchandise, and the right is reserved to reproduce that idea or work in other merchandise by using the imported merchandise. The concept of the right to reproduce relates only to the following classes of merchandise: originals or copies of artistic or scientific works; originals or copies of

models and industrial drawings; model machines and prototypes; and plant and animal species.

Example. The importer purchases a painting. By purchasing the painting, the owner possesses the right to resell, lease, or otherwise place it on display. Absent an agreement to the contrary, he does not possess the right to reproduce copies of the painting. Fees paid for the right to reproduce the painting would not be dutiable.

(i) *Exclusions from transaction value.* The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (b) of this section:

(1) Any reasonable cost or charge that is incurred for—

(i) The construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

(ii) The transportation of the merchandise after its importation.

(2) The customs duties and other Federal taxes currently payable on the imported merchandise 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.

Example. A foreign shipper sells a piece of equipment to a U.S. buyer. The total contract price for the equipment includes technical assistance in the U.S. The equipment cannot be purchased without the technical assistance, but the contract provides a breakdown of costs.

Should the appraised value include the technical assistance? No, transaction value does not include any reasonable costs for construction, erection, assembly, maintenance of, or technical assistance, for the imported merchandise after its importation into the U.S., the cost of which can be accurately identified as being separate from the price actually paid or payable for the merchandise to which they relate.

(j) *Limitations on use of transaction value.—(1) In general.* The transaction value of imported merchandise will be the appraised value only if—

(i) There are no restrictions on the disposition or use of the imported merchandise by the buyer, other than restrictions which are imposed or required by law, limit the geographical area in which the merchandise may be resold, or do not affect substantially the value of the merchandise;

(ii) The sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined;

(iii) No part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made under paragraph (b)(1)(v) of this section; and

(iv) The buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable.

(2) *Related person transactions.* (i) The transaction value between a related buyer and seller is acceptable if an examination of the circumstances of sale indicates that their relationship did not influence the price actually paid or payable, or if the transaction value of the imported merchandise closely approximates—

(A) The transaction value of identical merchandise; or of similar merchandise, in sales to unrelated buyers in the United States; or

(B) The deductive value or computed value of identical merchandise, or of similar merchandise; and

(C) Each value referred to in paragraph (j)(2)(i) (A) and (B) of this section that is used for comparison relates to merchandise that was exported to the United States at or about the same time as the imported merchandise.

(ii) In applying the values used for comparison, differences with respect to the sales involved will be taken into account if based on sufficient information supplied by the buyer or otherwise available to Customs and if the differences relate to—

(A) Commercial levels;

(B) Quantity levels;

(C) The costs, commissions, values, fees, and proceeds described in paragraph (b) of this section; and

(D) The costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

(k) *Restrictions and conditions on sale.* (1) A restriction placed on the buyer of imported merchandise that does not affect substantially its value will not prevent transaction value from being accepted as the appraised value.

(i) *Interpretative note.* A seller requires a buyer of automobiles not to sell or exhibit them before a fixed date that represents the beginning of a model year.

(2) The transaction value will not be accepted as the appraised value if the sale of, or the price actually paid or payable for, the merchandise is subject to a condition or consideration for which a value cannot be determined.

(i) *Interpretative note 1.* The seller establishes the price of the imported merchandise on condition that the buyer also will buy other merchandise in specified quantities.

(ii) *Interpretative note 2.* The price of the imported merchandise is dependent upon the price or prices at which the buyer of the merchandise sells other merchandise to the seller of the merchandise.

(iii) *Interpretative note 3.* The price of the imported merchandise is established on the basis of a form of payment extraneous to the merchandise, such as where the merchandise is to be further processed by the buyer, and has been provided by the seller on condition that he will receive a specified quantity of the finished merchandise.

(l) *Related buyer and seller.—(1) Validation of transaction.* The district director shall not disregard a transaction value solely because the buyer and seller are related. There will be related person transactions in which validation of the transaction value, using the procedures contained in § 152.103(j)(2), may not be necessary.

(i) *Interpretative note 1.* Customs may have previously examined the relationship or may already have sufficient detailed information concerning the buyer and seller to be satisfied that the relationship did not influence the price actually paid or payable. In such case, if Customs has no doubts about the acceptability of the price, the price will be accepted without requesting further information from the importer. If Customs does have doubts about the acceptability of the price and is unable to accept the transaction value without further inquiry, the importer will be given an opportunity to supply such further detailed information as may be necessary to enable Customs to examine the circumstances of the sale. In this context, Customs will examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at in order to determine whether the relationship influenced the price.

(ii) *Interpretative note 2.* If it is shown that the buyer and seller, although related, buy from and sell to each other as if they were not related, this will demonstrate that the price has not been influenced by the relationship; and the transaction value will be accepted. If the price has been settled in a manner consistent with the normal pricing practices of the industry in question, or with the way the seller settles prices for sales to buyers who are not related to him, this will demonstrate that the price

has not been influenced by the relationship.

(iii) *Interpretative note 3.* If it is shown that the price is adequate to ensure recovery of all costs plus a profit which is equivalent to the firm's overall profit realized over a representative period of time (e.g., on an annual basis), in sales of merchandise of the same class or kind, this would demonstrate that the price has not been influenced.

Example. A foreign seller sells merchandise to a related U.S. importer. The foreign seller does not sell identical merchandise or similar merchandise to any unrelated parties. The transaction between the foreign seller and the U.S. importer is determined by Customs to be unaffected by the relationship.

How should the merchandise be appraised?

Transaction value based on the price actually paid or payable. A transaction value between a related buyer and seller is acceptable if the relationship did not affect the price actually paid or payable. This is so even if similar merchandise is being sold at a higher price, which includes a higher percentage for profit and general expenses.

(2) *Test values.* (i) The importer or the buyer may demonstrate that the transaction value in a related person transaction is acceptable by showing that the value "closely approximates" any one of the test values provided in § 152.103(j)(2)(i). The factors that will be examined to determine if the transaction value closely approximates a test value include:

(A) The nature of the imported merchandise and the industry;

(B) The season in which the merchandise is imported;

(C) Whether the difference in value is commercially significant; and

(D) Whether the difference in value is attributable to internal transport costs in the country of exportation.

(ii) Because these factors may vary, Customs will not be able to apply a uniform standard, such as a fixed percentage, in each case. A small difference in value in a case involving one type of imported merchandise may be unacceptable, although a large difference in a case involving another type may be acceptable, in determining if the transaction value closely approximates any of the test values. Customs will be consistent in determining if one value "closely approximates" another value. The same approach will be taken if Customs considers a transaction value that is higher than any of the enumerated test values as will be taken if the transaction

value is lower than any of the test values.

Example. In applying any of the test values, if the transaction value in the sale under consideration is rejected because 95 does not closely approximate 100, then a transaction value for the sale of the same merchandise at 105 occurring at or about the same time likewise would have to be rejected. Similarly, if 103 were considered to closely approximate 100, a transaction value of 97 likewise would closely approximate 100.

(iii) If one of the test values provided in § 152.103(j)(2)(i) has been found to be appropriate, the district director shall not seek to determine if the relationship between the buyer and seller influenced the price. If the district director already has sufficient information to be satisfied, without further detailed inquiries, that one of the test values is appropriate, he shall not require the importer to demonstrate that the test value is appropriate.

(m) *Rejection of transaction value.* When Customs has grounds for rejecting the transaction value declared by an importer and that rejection increases the duty liability, the district director shall inform the importer of the grounds for the rejection. The importer will be afforded 20 days to respond in writing to the district 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.

§ 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 section 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.* (3) 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 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	95
11-25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units	30

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:

(a) *Sales*

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

(b) *Totals*

Total quantity sold	Unit price
65	90
80	95
85	100
95	105

In this example, the greatest number of units sold at a particular price is 85; 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 importer 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 district 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.

§ 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;

(2) An amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

(3) Any assist, if its value is not included under paragraph (a) (1) or (2) of this section; and

(4) The packing costs.

(b) *Special rules.* (1) The cost or value of materials under paragraph (a)(1) of this section will not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used.

(2) The amount for profit and general expenses under paragraph (a)(2) of this section will be based upon the producer's profit and general expenses, unless the producer's profit and general

expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States. In that case, the amount under paragraph (a)(2) of this section will be based on the usual profit and general expenses of such producers in those sales, as determined from "sufficient information". See § 152.102(j).

(c) *Profit and general expenses.* The amount for profit and general expenses will be taken as a whole. If the producer's profit figure is low and general expenses high, those figures taken together nevertheless may be consistent with those usually reflected in sales of imported merchandise of the same class or kind.

(1) *Interpretative note 1.* A product is introduced into the United States, and the producer accepts either no profit or a low profit to offset the high general expenses required to introduce the product into this market. If the producer can demonstrate that there is a low profit on sales of the imported merchandise because of peculiar commercial circumstances, the actual profit figures will be accepted provided the producer has valid commercial reasons to justify them and his pricing policy reflects the usual pricing policies in the industry.

(2) *Interpretative note 2.* Producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or they sell merchandise to complement a range of merchandise being produced in the United States and accept a low profit to maintain competitiveness. If the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of merchandise of the same class or kind as the merchandise being valued which are made in the country of exportation for export to the United States, the amount for profit and general expenses will be based upon reliable and quantifiable information other than that supplied by or on behalf of the producer of the merchandise.

(d) *Assists and packing costs.* Computed value also will include an amount equal to the apportioned value of any assists used in the production of the imported merchandise and the packing costs for the imported merchandise. The value of any engineering, development, artwork, design work, and plans and sketches undertaken in the United States will be included in computed value only to the extent that their value has been charged to the producer. Depending on the

producer's method of accounting, the value of assists may be included (duplicated) in the producer's cost of materials, fabrication, and other processing, or in the general expenses. If duplication occurs, a separate amount for the value of the assists will not be added to the other elements as it is not intended that any component of computed value be included twice.

(e) *Merchandise of same class or kind.* Sales for export to the United States of the narrowest group or range of imported merchandise, including the merchandise being appraised, will be examined to determine usual profit and general expenses. For the purpose of computed value, merchandise of the same class or kind must be from the same country as the merchandise being appraised.

Example. A foreign shipper sells merchandise to a related U.S. importer. The foreign shipper does not sell to any unrelated persons. 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. The U.S. importer has requested that the shipment be appraised under computed value. The profit and general expenses figure for the same class or kind of merchandise in the country of exportation for export to the U.S. is known.

How should the merchandise be appraised?

The merchandise should be appraised under computed value, using the company's profit and general expenses if not inconsistent with those usually reflected in sales of merchandise of the same class or kind.

(f) *Availability of information.* (1) It will be presumed that the computed value of the imported merchandise cannot be determined if—

(i) The importer is unable to provide required computed value information within a reasonable time, and/or

(ii) The foreign producer refuses to provide, or is legally prevented from providing, that information.

(2) If information other than that supplied by or on behalf of the producer is used to determine computed value, the district director shall inform the importer, upon written request, of

(i) The source of the information,

(ii) The data used, and

(iii) The calculation based upon the specified data

if not contrary to domestic law regarding disclosure of information. See also § 152.101(d).

§ 152.107 Value if other values cannot be determined or used.

(a) *Reasonable adjustments.* If the value of imported merchandise cannot be determined or otherwise used for the purposes of this subpart, the imported merchandise will be appraised on the basis of a value derived from the methods set forth in § 152.103 through 152.106, reasonably adjusted to the extent necessary to arrive at a value. Only information available in the United States will be used.

(b) *Identical merchandise or similar merchandise.* The requirement that identical merchandise, or similar merchandise, should be exported at or about the same time of exportation as the merchandise being appraised may be interpreted flexibly. Identical merchandise, or similar merchandise, produced in any country other than the country of exportation or production of the merchandise being appraised may be the basis for customs valuation. Customs values of identical merchandise, or similar merchandise, already determined on the basis of deductive value or computed value may be used.

(c) *Deductive value.* The "90 days" requirement for the sale of merchandise referred to in § 152.105(c) may be administered flexibly.

§ 152.106 Unacceptable bases of appraisement.

For the purposes of this subpart, imported merchandise may not be appraised on the basis of—

- (1) The selling price in the United States of merchandise produced in the United States;
- (2) A system that provides for the appraisement of imported merchandise at the higher of two alternative values;
- (3) The price of merchandise in the domestic market of the country of exportation;
- (4) A cost of production, other than a value determined under § 152.106 for merchandise that is identical merchandise, or similar merchandise, to the merchandise being appraised;
- (5) The price of merchandise for export to a country other than the United States;
- (6) Minimum values for appraisement;
- (7) Arbitrary or fictitious values.

(R.S. 251, 46 Stat. 759, Title II, Pub. L. 96-39, 93 Stat. 194 (19 U.S.C. 66, 402, 1624))

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