

§ 152.106

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;

(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 port 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.

§ 152.108 Unacceptable bases of appraisal.

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

(a) The selling price in the United States of merchandise produced in the United States;

(b) A system that provides for the appraisal of imported merchandise at the higher of two alternative values;

(c) The price of merchandise in the domestic market of the country of exportation;

(d) 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;

(e) The price of merchandise for export to a country other than the United States;

(f) Minimum values for appraisal;

(g) Arbitrary or fictitious values.

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

PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

Sec.
158.0 Scope.