

§ 152.102

19 CFR Ch. I (4-1-12 Edition)

§ 152.102 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 paragraph (a)(1)(iv) of this section 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 paragraph (a)(1)(iv) of this section:

(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 con-

trolled 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)(ii); 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.

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