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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 port director shall not seek to determine if the relationship between the buyer and seller influenced the price. If the port 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 port director shall inform the importer of the grounds for the rejection. The importer will be afforded 20 days to respond in writing to the port director if in disagreement. This procedure will not affect or replace the administrative ruling procedures contained in part 177 of this chapter, or any other Customs procedures.

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

§ 152.104 Transaction value of identical merchandise and similar merchandise.

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

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

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

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

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

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

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

(2) *Interpretative note*. If the imported merchandise being valued consists of a shipment of 10 units and the only identical imported merchandise for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being

bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions for transaction value of identical or similar merchandise is not appropriate.

§ 152.105 Deductive value.

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

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

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

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

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

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

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

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

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

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

(4) The customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, the merchandise for which vendors in the United States ordinarily are liable; and

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

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