

HQ 544377

CLA-2 CO:R:C:V 544377 \ B
CATEGORY: Valuation

Peter J. Battaglioli
Deputy Assistant Regional commissioner
Regulatory Audit, Northeast Region
Boston, Massachusetts 02222-1056

RE: Request for Internal Advice on TIE Communications, Inc.

Dear Mr. Battaglioli:

This is in response to your memorandum (AUD-8-0:RA JPG) dated July 6, 1989, requesting internal advice on the valuation of merchandise imported by TIE Communication, Inc. (hereinafter referred to as "TIE") from its subsidiary TIE Communications, Canada, Inc. (hereinafter referred to as "TIE Canada").

FACTS:

You state that TIE imports telephone equipment from TIE Canada to be repaired at the importer's U.S. repair facility, TIE Repair. You indicate that a recent audit of TIE's import activity revealed that TIE Canada's inventory value in its financial statements of equipment sent to the U.S. for repair is 70% of the standard cost of new equipment. Nevertheless, in its Customs declaration, the importer claimed that the defective or damaged equipment was scrap having a value of \$1.00 or \$1.20 per pound.

You further explain that the importer also imports equipment from TIE Canada that was repaired in Canada. The importer declared the value of the restored equipment as a repair/refurbished value. Although it is difficult to discern what this value was based on, it appears that the refurbished price was 50% to 60% of the list price for new equipment.

ISSUE:

(1)What is the proper method of appraisal for the damaged equipment that TIE imported into the U.S. to be repaired?

(2)What is the proper method of appraisal for the repaired/refurbished equipment that TIE imported into the U.S.?

LAW AND ANALYSIS:

The preferred method of appraising merchandise is transaction value, defined in section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA); [19 USC 1401a\(b\)](#) as the "price actually paid or payable" for the merchandise when sold for exportation to the United States, plus certain enumerated additions.

The "price actually paid or payable" is defined in section 402(b)(4)(A) of the TAA as:

The total payment (whether direct or indirect ...) made, for imported merchandise by the buyer to, or for the benefit of, the seller.

You have indicated in conversations with members of my staff that in both the "scrap" importations and the repaired equipment importations there is not a bona fide sale between TIE Canada and TIE. As a result, there is no sale for exportation to the U.S. to establish a transaction value for the merchandise.

In addition, the TAA does not contain a "scrap" value concept. The entry documents indicate that the merchandise entering the U.S. for repair was classified as telephone parts, not scrap. As a result, under the TAA it is the telephone parts that must be appraised.

Should you determine later in your investigation that transaction value may apply to the importations, we have enclosed a copy of Headquarters Letter Ruling (HRL) 543637, dated December 2, 1985. In HRL 543637, the importer purchased and imported parts that were manufactured abroad. The parts were then shipped back out of the U.S. to a foreign subsidiary. Subsequently, some of the parts would break, thereby necessitating their return to the U.S. The invoice prepared by the foreign subsidiary for return of the parts contained a value equal to the original purchase price of the part.

The importer stated that it was possible to determine the date each part was manufactured by tracing the serial number. Therefore, the importer contended that a deduction in the value of the parts should be made depending upon the date of manufacture. The proposed reduction was 5 percent for each year the item had been in use.

We held that under transaction value, when the used parts were returned to the U.S. for repair, the original purchase price should be adjusted downward to reflect reasonable depreciation for the time period that the parts were used abroad. We further held that the 5% reduction for each year of use was reasonable, provided the depreciation rate was in accordance with generally accepted accounting principles. Perhaps this type of arrangement is available in the TIP situation.

Assuming that transaction value does not apply to the TIE situation it is necessary to proceed sequentially through the remaining bases of appraisal. The second appraisal method in order of statutory preference is transaction value of identical and similar merchandise under section 402(c) of the TAA. You indicated in your conversation that you are not aware of any sales of identical or similar merchandise. Given that the importations involve damaged or defective goods, it is unlikely that there are sales of identical or similar defective merchandise for purposes of section 402(c).

Similarly, deductive value under section 402(d) of the TAA cannot be used to appraise the goods. Deductive value requires a value at which the merchandise is resold in the U.S. In this case, you state in your letter that TIE does not sell the repaired telephone equipment to U.S. customers.

In addition, computed value cannot be used to appraise the merchandise. Under computed value the following items are totaled to establish the value of the merchandise: (1) the cost of value of the materials and the fabrication employed in the product; (2) the profit and general expenses equal to the usually reflected in sales of merchandise of the same class as the packing costs. In the present case, you have indicated that to your knowledge, these costs are not available.

Therefore, the only method left for appraising the merchandise is section 402(f) of the TAA. Under section 402(f) the merchandise is appraised on the bases of a value that is derived from section 402(b)-(e) with reasonable necessary adjustments.

You propose to value the "scrap" merchandise at 70% of the standard cost of new equipment. You state that this is the inventory value of the goods in TIE Canada's accounting records, Mr. Gosselin stated in a conversation that in order for TIE Canada to develop a standard cost, in would work up the cost of the parts, the labor and other expenses associated with producing the telephone equipment. It appears that the method the company uses to develop the standard cost is similar to the computed value of appraisal. Based on the cost analysis, the company has assigned a seventy percent of standard cost value to the damaged equipment because thirty percent is the average cost the company estimates that it takes to have the equipment repaired. The thirty percent reduction appears to be a reasonable adjustment that accounts for fact that the equipment is not in working order. The 70% of the standard cost value also appears to be as reasonable value for the merchandise under section 402(f) of the TAA.

You do not contest the importer's valuation of the imported equipment that was repaired in Canada. That is, the importer valued the repaired equipment at 50-60 percent of 80 percent of the list price. This amount is the amount that is on TIE Canada's books as receivable, and the amount that is on TIE Repair's books as payable for the equipment. We agree that this is a reasonable appraisal method for the imported merchandise under section 402(f) of the TAA.

HOLDING:

Absent a bona fide sale at a scrap value or any other value, transaction value cannot be used to appraise the merchandise in the TIE transactions. In addition, as previously discussed, transaction value of identical or similar merchandise, deductive value and computed value cannot be used to appraise the merchandise.

Therefore, section 402(f) of the TAA must be used to appraise the goods. The value of the equipment on TIE Canada's books and TIE Repair's books is a reasonable value, under the circumstances presented, for the equipment under section 402(f) of the TAA.

Sincerely,

John Durant, Director
Commercial Rulings Division