

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Customs Valuation

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VALUATION OF COMPUTER SOFTWARE

As indicated during the Committee's discussion on 11 November 1983 on item F of its agenda, the attached alternative draft decision on the valuation of computer software is presented by the delegation of the Commission of the European Communities, with the agreement of a number of delegations, in order to facilitate further discussion of the problem of the valuation of carrier media bearing software for data processing equipment.

Decision of the Committee on Customs Valuation on the Valuation
of Carrier Media Bearing Software for Data-Processing Equipment

Draft

1. Introduction

- 1.1 The main basis for valuing goods under the Agreement on Implementation of Article VII of the GATT (the Customs Valuation Agreement) is the transaction value, that is to say the price actually paid or payable for the goods, adjusted in accordance with the provisions of Article 8 of the Agreement. It follows, therefore, that the cost or value of data or instructions (software) recorded on carrier media for data-processing equipment may be considered to be includible in the customs value.
- 1.2 The valuation of computer software presents special problems which were recognized in the international customs valuation practices which were superseded by the Customs Valuation Agreement. Under those practices, the value of the software was not, as a general rule, included when valuing the carrier medium.
- 1.3 Following their adoption of the GATT Valuation Agreement, those countries which followed the previous international practice have either changed their rules for valuing carrier media bearing computer software or have maintained their previous practice pending a clarification of the situation. Where practice has been changed, this has resulted in an increase in customs duties charged on carrier media bearing computer software which was not foreseen or intended when the Valuation Agreement was negotiated. In addition, serious practical valuation problems have arisen because of special features of international trade in software.

2. Technical background considerations

- 2.1 In the case of imported carrier media bearing data or instructions for use in automatic data-processing equipment, it is essentially the carrier medium itself, e.g. the tape or the magnetic disc, which is liable to duty under the customs tariff. However, the importer is, in fact, interested in using the instructions or data; the carrier medium is incidental. Indeed, if the technical facilities are available to the parties to the transaction, the software can be transmitted by wire or satellite, in which case the question of customs duties does not arise. In addition, the carrier medium is usually a temporary means of storing the instructions or data; in order to use it, the buyer has to transfer or reproduce the data or instructions into the memory or data base of his own system.
- 2.2 International trade in carrier media bearing data and instructions for use in automatic data-processing equipment is growing at an ever increasing rate and, in many cases, the circumstances of the exchanges make it

extremely difficult to value the goods under the Customs Valuation Agreement. It is often difficult to distinguish between data transfers and programmes for data-processing equipment, the former generally not being subject to duty charges. In addition, programmes for data-processing equipment are often imported without charge and without any clear basis for establishing their value since they are frequently updates or corrections of programmes previously paid for.

3. Decision

- 3.1 Having regard to the fact that one of the objectives of the GATT Valuation Agreement was to eliminate or reduce non-tariff barriers to international trade and to the fact that changes in the valuation treatment of carrier media bearing software were not foreseen or intended when the Customs Valuation Agreement was negotiated and, given that a return to the previous generally accepted international practice would result in the reinstatement of the lower basis of value for carrier media bearing software existing before the conclusion of the Tokyo Round and an elimination of non-tariff barriers which have arisen as a result of the change in valuation practice,

The Committee on Customs Valuation DECIDES as follows:

It would be consistent with the objectives and spirit of the Customs Valuation Agreement for those signatories which are able to do so to adopt the following practice:

In determining the customs value of imported carrier media bearing data or instructions, only the cost or value of the carrier medium itself shall be taken into account. The customs value shall not, therefore, include the cost or value of the data or instructions, provided that this is distinguished from the cost or the value of the carrier medium.

For the purpose of this Decision, the expression "carrier medium" shall not be taken to include integrated circuits, semiconductors and similar devices or articles incorporating such circuits or devices; the expression "data or instructions" shall not be taken to include sound, cinematic or video recordings.

This Decision shall apply from ...

The Decision is adopted on a provisional basis pending a definitive solution to the problem within the framework of the Customs Valuation Agreement or within another framework.