

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

VAL/W/14/Rev.1

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Committee on Customs Valuation

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## VALUATION OF COMPUTER SOFTWARE

### Proposal by the United States

#### Revision

At the May 1982 meeting of the Committee on Customs Valuation, a United States proposal (VAL/W/7) to amend the Agreement with respect to the treatment of computer software was discussed. Subsequent informal discussions revealed that most Parties believed that it would be more appropriate to address the treatment of computer software by way of an agreed Committee Decision interpreting the Agreement. Accordingly, the United States proposes the following Decision for consideration by the Committee:

#### INTRODUCTION

(1) In examining the implementation of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (The Agreement) by the Parties, the Committee noted that a problem had arisen with respect to the valuation of imported carrier media bearing data and instructions for use in automatic data-processing equipment. A report, prepared at the request of the Valuation Committee by the CCC Technical Committee on Customs Valuation, indicated that there was no overall uniformity amongst the Parties in the interpretation of the Agreement in regard to the treatment of such carrier media.

(2) The Committee recognized in this light that the Agreement was open to divergent interpretations. The Committee further recognized that a primary objective of the Agreement was to ensure uniformity in the valuation of goods. It was decided, therefore, to adopt a Decision on the valuation of imported carrier media bearing data and instructions in order to ensure uniformity of treatment.

#### BACKGROUND

(3) 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.

(4) Under generally accepted international practice which existed before the entry into force of the Agreement, the value of data and instructions was generally excluded from the dutiable value of carrier media.

(5) 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 ensure uniform application of the Agreement by the Parties without further clarification. For example, programs can be transmitted electronically or by satellite without any customs involvement at all. Also, as a practical matter, it is difficult to distinguish between data transfers and computer programs, the former generally not being subject to duty charges. In addition, computer programs are often imported without charge and without any clear basis for establishing their value.

(6) In the light of the foregoing, the Parties to the Agreement agree to adopt the following decision.

#### DECISION

"The Parties to the Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade agree as follows:

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..."