

Decision of the GATT Valuation Committee

Decision 1.1 French Translation of the term 'Copyrights' in the Interpretative Note to Article 8.1 (c) of the Agreement

During its First Meeting held on 13 January 1981, the Committee on Customs Valuation agreed that the French translation of the term 'copyrights' in the Interpretative Note to Article 8.1 (c) of the Agreement, which read 'droit de reproduction' be replaced by the term 'droit d'auteur'.

Decision 2.1 Meaning of the Word 'Undertaken' Used in Article 8.1 (b) (iv) of the Agreement

During its Sixth Meeting held on 3 March 1983, the Committee on Customs Valuation agreed that in the context of Article 8.1 (b) (iv) of the Agreement the English word "undertaken" is to be understood as meaning 'carried out'. It noted that the French and Spanish versions of the Agreement were not affected.

Decision 3.1 Treatment of Interest Charges in the Customs Value of Imported Goods

During its Ninth Meeting held on 26 April 1984, the Committee on Customs Valuation adopted the following decision:

The Parties to the Agreement on Implementation of Article VII of the GATT agree as follows:

Charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the Customs value provided that:

- (a) the charges are distinguished from the price actually paid or payable for the goods;
- (b) the financing arrangement was made in writing;
- (c) where required, the buyer can demonstrate that
 - such goods are actually sold at the price declared as the price actually paid or payable, and
 - the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when the finance was provided.

This Decision shall apply regardless of whether the finance is provided by the seller, a bank or another natural or legal person. It shall also apply, if appropriate, where goods are valued under a method other than the transaction value.

Each Party shall notify the Committee of the date from which it will apply the Decision.

Decision 4.1 Valuation of Carrier Media Bearing Software for Data Processing Equipment

During its Tenth Meeting held on 24 September 1984, the Committee on Customs Valuation adopted the following decision:

The Committee on Customs Valuation DECIDES as follows:

It is reaffirmed that transaction value is the primary basis of valuation under the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Agreement) and that its application with regard to data or instructions (software) recorded on carrier media for data processing equipment is fully consistent with the Agreement.

Given the unique situation with regard to data or instructions (software) recorded on carrier media for data processing equipment, and that some Parties have sought a different approach, it would also be consistent with the Agreement for those Parties which wish 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 the 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.

Those Parties adopting the practice referred to in paragraph 2 of this Decision shall notify the Committee of the date of its application.

Those Parties adopting the practice in paragraph 2 of this Decision will do so on a most-favoured-nation (m.f.n.) basis, without prejudice to the continued use by any Party of the transaction value practice.

*** Statement made by the Chairman at the Wetting of the Committee on Customs Valuation of 24 September 1984 Prior to the Adoption (if the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment**

. In (lit: case of imported carrier media bearing data or instructions for use in data processing equipment (software), it is essentially the carrier media 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.

Under the international Customs valuation practices which were superseded by the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Agreement), the value of the software was not, as a general rule, included when valuing the carrier medium. Following their adoption of the 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.

The proposed decision of the Committee on Customs Valuation on the valuation of carrier media hearing software for data processing equipment indicates that transaction value is the primary basis of valuation under the Agreement and that its application with regard to software recorded on carrier media for data processing equipment is fully consistent with the Agreement. It also would provide that given the "unique situation" regarding software just described and the fact that some Parties sought a different approach, it would also be consistent with the Agreement for those Parties which wish to do so to only take account of the cost or value of the carrier medium itself in determining the Customs value of imported carrier media hearing data or instructions.

In taking this decision on the valuation of carrier media hearing software for data processing equipment, it is understood that should any difficulties arise in the implementation and application of the decision, it would be useful for those difficulties to be considered by the Parties to the Agreement.

Decision 5.1 Terms in Article 8.1 (b) (iv): Development

At its 12th Meeting, held on 9-10 May 1985, the Committee on Customs Valuation settled the question relating to the linguistic consistency in the English, French and Spanish texts of the term 'development' in Article H.I (b) (iv) of the Agreement by inserting the following statement in the minutes of the meeting, on the understanding that this would be without prejudice to the rights and obligations under the Agreement and that members of the Committee could revert to the matter should the need arise.

The Parties to the Agreement considered that the terms "development" in English, 'travaux d'etudes' in French and 'creacion y perfeccionamiento' in Spanish in Article 8.1 (b) are understood to exclude 'research' in English, 'recherche' in French and 'investigacion' in Spanish, as stated in paragraph 6 of VAL/W/24/Rev. 1. However, one Signatory, Argentina, considered that, as used in Article 8.1 (b), the Spanish expression 'creacion y perfeccionamiento' could not be interpreted as allowing any part of the value to be excluded from the 'creacion o perfeccionamiento'.