

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

VAL/10

5 November 1984

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Committee on Customs Valuation

COMPENDIUM OF DECISIONS ADOPTED BY THE  
COMMITTEE AS OF 30 SEPTEMBER 1984

This document reproduces the decisions adopted by the Committee concerning the interpretation and administration of the Agreement. It also lists, for reference purposes, the instruments issued by the Technical Committee on Customs Valuation, the texts of which can be found in the publication "Compendium on the GATT Agreement and Texts of the Technical Committee on Customs Valuation" available from the Customs Cooperation Council.

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A. DECISIONS CONCERNING THE INTERPRETATION OF THE AGREEMENT

A.1 MEANING OF WORD "UNDERTAKEN" IN ARTICLE 8.1(b)(iv)  
OF THE ENGLISH TEXT OF THE AGREEMENT

Adopted by the Committee on 3 March 1983 (VAL/M/6, paragraph 18)

The Committee agreed that in the context of Article 8.1(b)(iv) of the Agreement the English word "undertaken" was to be understood as meaning "carried out". It noted that the French and Spanish texts of the Agreement were not affected.

A.2 DECISION ON THE TREATMENT OF INTEREST CHARGES IN THE  
CUSTOMS VALUE OF IMPORTED GOODS (VAL/6/Rev.1)

Adopted by the Committee on 26 April 1984 (VAL/M/9,  
paragraph 38) and rectified (French and Spanish texts only)  
by the Committee on 24 September 1984 (VAL/M/10, paragraph 17)

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.

A.3 DECISION ON THE VALUATION OF CARRIER MEDIA BEARING  
SOFTWARE FOR DATA PROCESSING EQUIPMENT (VAL/8)

Adopted by the Committee on 24 September 1984  
(VAL/M/10, paragraph 7)

The Committee on Customs Valuation DECIDES as follows:

1. 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.

2. 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 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.

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

4. 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.

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\*See paragraph 5 of VAL/M/10.

B. DECISIONS CONCERNING THE ADMINISTRATION OF THE AGREEMENT AND THE WORKINGS OF THE COMMITTEE

B.1 PROCEDURES FOR THE PARTICIPATION OF OBSERVERS

Adopted by the Committee on 13 January 1981  
(VAL/M/1, paragraph 7 and Annex 1)

Taking into account the decision arrived at by the CONTRACTING PARTIES at their thirty-fifth session on 28 November 1979 (document L/4905), the Committee agrees on the following procedures for the participation of observers:

1. Representatives of contracting parties which are not signatories may follow the proceedings of the Committee in an observer capacity.
2. Representatives of non-signatory countries not contracting parties, which participated in the multilateral trade negotiations and which are interested in following the proceedings of the Committee in an observer capacity, should communicate a request to the Director-General of the GATT indicating their desire to do so. The Committee shall decide on each request.
3. Observers may participate in the discussions but decisions shall be taken only by signatories.
4. The Committee may deliberate on confidential matters in special restricted sessions.
5. The Committee may invite, as appropriate, international organizations to follow particular issues of the Committee in an observer capacity. In addition, requests from international organizations to follow particular issues within the Committee in an observer capacity shall be considered on a case-by-case basis by the Committee.
6. In view of its special responsibilities and functions assigned to it under the Agreement and without constituting a precedent, the Customs Co-operation Council is accorded permanent observer status.

B.2 PROCEDURES FOR CIRCULATION OF THE COMMITTEE'S DOCUMENTS

Adopted by the Committee on 13 January 1981  
(VAL/M/1, paragraph 17)

After each meeting, the Chairman will issue under his own responsibility a concise note on the meeting which would be circulated to all contracting parties. The Committee's working documents, minutes, etc. will be issued in the VAL/- series and circulated to all participants; they will be available to all contracting parties upon request. In the case of sensitive documents, when the need for confidentiality arises (as

for instance in a dispute settlement procedure), documents will be issued on an ad hoc basis and have a restricted circulation, to be determined in each case. International organizations will receive the same documentation as other observers when they receive the invitation.

### B.3 PROCEDURES FOR THE DERESTRICTION OF DOCUMENTS

Adopted by the Committee on 13 January 1981  
(VAL/M/1, paragraph 18)

"The Committee agreed on a procedure which was based on customary GATT practice, i.e. that working documents and minutes were never derestricted and that the secretariat should make a proposal annually regarding other documents to be derestricted at the end of the year; these latter documents would be derestricted if no delegation objected to the proposal. The Committee might revert to the question of the derestriction of panel reports and decisions based on these reports at future meetings. Also in accordance with GATT practice, restricted documents would be circulated to governments entitled to receive them for their own, and not for public, use. These documents would also under certain circumstances be circulated to international organizations on the understanding that this was for the internal use of the secretariats of these organizations and that, for instance, the substance of the documents should not be communicated to governments not otherwise entitled to receive them. This proposal corresponded to the decisions taken and practice followed in the other NTM Committees."

### B.4 RESERVATIONS UNDER THE AGREEMENT ON CUSTOMS VALUATION

Adopted by the Committee on 13 January 1981  
(VAL/M/1, paragraph 36 and Annex 2)

1. A reservation made under Article 23 of the Agreement by a government accepting or acceding to the Agreement before 1 January 1981 shall be deemed to be accepted by the other Parties unless the Committee is notified (through the secretariat) by a particular Party to the contrary before 1 February 1981. Upon request of a Party or Parties notified to the secretariat before 1 February 1981, the time-limit shall be extended for another thirty days.

2. Governments which accept or accede to the Agreement on or after 1 January 1981 shall be deemed to accept all reservations previously accepted by the Parties. Reservations made by governments which accept or accede to the Agreement on or after 1 January 1981 shall be deemed to be accepted by the other Parties unless the Committee is notified (through the secretariat) to the contrary by a particular Party before expiry of thirty days following the date on which the Agreement enters into force for the Party making the reservation. Upon request of a Party or Parties notified to the secretariat before the expiry of the period referred to in the preceding sentence, the time-limit shall be extended for a further thirty days.

3. For reservations made under paragraph 3 of the Protocol, the Party having made the reservation shall communicate to the Committee (through the secretariat) in due course a proposal containing the terms and conditions under which it wants to retain the minimum customs values (or similar schemes). This proposal would be discussed by the Committee with the aim of reaching an agreement on the terms and conditions of such reservation. Agreement should be reached as quickly as possible and at any rate not later than the date at which the Party having availed itself of the possibility of Article 21.1 starts implementing the provisions of the Agreement.

4. A reservation shall not come into force if:

- in the case of a reservation made under Article 23 of the Agreement another Party objects to the reservation within the time-limits as specified in paragraphs 1 and 2 or,
- in the case of a reservation made under paragraph 3 of the Protocol, no agreement has been reached on the content (terms and conditions) of the reservation by the time that the Agreement is implemented by the Party in question.

Cases where a minority view about the acceptability or non-acceptability of a reservation exists would be examined in the Committee, at the request of the country wishing to enter the reservation, with a view to seeking a mutually acceptable solution.

5. Reservations made by a developing country in conformity with paragraphs 4 or 5 of the Protocol to the Agreement shall be deemed to be consented to by the other Parties.

B.5 NOTIFICATION AND CIRCULATION OF NATIONAL LEGISLATION  
IN ACCORDANCE WITH ARTICLE 25 OF THE AGREEMENT

Adopted by the Committee on  
13 January 1983 (VAL/M/1, paragraph 37)

- (i) Parties will submit the complete texts of their national legislation (laws, regulations, etc.) on customs valuation in one of the three official GATT languages as soon as possible to the secretariat which will circulate them as Committee documents to the other Parties in the language submitted. If a general interest is expressed in the Committee that the text of a particular Party be available also in other official GATT languages, this text will be translated and circulated as a Committee document. In those cases where the national legislation is not in an official GATT language, the original texts shall also be submitted to the secretariat where they will be open for inspection.
- (ii) It is understood that the texts of the national legislation of developing countries availing themselves of the provisions of Article 21, paragraphs 1 and 2 of the Agreement will be supplied to the Committee before the developing countries begin the application of the provisions of the Agreement and the Protocol.

B.6 CHECKLIST OF ISSUES

Adopted by the Committee on 5 May 1981  
(VAL/M/2, paragraph 52)

"The Committee decided that Parties should respond in writing to the points contained in the revised checklist. Replies submitted by the Parties would be circulated as addenda to the revised checklist which would be reproduced in VAL/2/Rev.1."

C. LIST OF INSTRUMENTS ISSUED BY THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION (AS OF 30 SEPTEMBER 1984)

List of Advisory Opinions

- 1.1 The concept of "sale" in the Agreement.
- 2.1 Acceptability of a price below prevailing market prices for identical goods.
- 3.1 Meaning of "are distinguished" in the Interpretative Note to Article 1 of the Agreement: duties and taxes of the country of importation.
- 4.1 Royalties and licence fees under Article 8.1(c) of the Agreement.
- 4.2 Ditto
- 4.3 Ditto
- 4.4 Ditto
- 4.5 Ditto
- 4.6 Ditto
- 5.1 Treatment of cash discount under the Agreement.
- 5.2 Ditto
- 5.3 Ditto
- 6.1 Treatment of barter or compensation deals under the Agreement.
- 7.1 Acceptability of test values under Article 1.2(b)(i) of the Agreement.
- 8.1 Treatment under the Agreement of credits in respect of earlier transactions.
- 9.1 Treatment of anti-dumping and countervailing duties when applying the deductive method.
- 10.1 Treatment of fraudulent documents.
- 11.1 Treatment of inadvertent errors and of incomplete documentation.
- 12.1 Article 7 - Flexible application.
- 12.2 Article 7 - Hierarchical order.
- 12.3 Article 7 - Use of data from foreign sources.
- 13.1 Scope of the word "Insurance" under Article 8.2(c) of the Agreement.

List of Commentaries

- 1.1 Identical or similar goods for the purpose of the Agreement.
- 2.1 Goods subject to export subsidies or bounties.
- 3.1 Goods sold at dumping prices.
- 4.1 Price review clauses.
- 5.1 Goods returned after temporary exportation for manufacturing, processing or repair.
- 6.1 Treatment of split shipments under Article 1 of the Agreement.
- 7.1 Treatment of storage and related expenses under the provisions of Article 1.
- 8.1 Treatment of package deals.

List of Explanatory Notes

- 1.1 Time element in relation to Articles 1, 2 and 3 of the Agreement.
- 2.1 Commissions and brokerage in the context of Article 8 of the Agreement.
- 3.1 Goods not in accordance with contract.

List of Case Studies

- 1.1 Report on a case study with special reference to Article 8.1(b): engineering, development, artwork, etc.
- 2.1 Application of Article 8.1(d) of the Agreement.

List of Studies

- 1.1 Treatment of used motor vehicles.