

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

VAL/W/14

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Committee on Customs Valuation

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## VALUATION OF COMPUTER SOFTWARE

### Proposal by the United States

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 by the Parties. 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 data and instructions imported on carrier media for use in automatic data processing systems. A report, prepared at the request of the Committee on Customs Valuation by the CCC Technical Committee on Customs Valuation (VAL/W/11), indicates that there is no overall uniformity in the treatment of computer software among the Parties to the Agreement. It was recognized that the provisions of Article 1 of the Agreement are not completely clear on the treatment of computer software.

2. The Committee recognized that the valuation of data and instructions imported on carrier media for use in automatic data processing systems was a case where clarification of the Agreement was necessary in light of the objectives of the Agreement. It was decided, therefore, to adopt a decision on the treatment of data and instructions imported on carrier media.

#### Background

3. The objective of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade is to provide a fair, uniform and neutral system for the valuation of goods for customs purposes. To this end, the Agreement states that the transaction value of the imported goods should be the primary basis for customs valuation.

4. In the case of imported carrier media bearing data or instructions for use in automatic data processing systems, it is essentially the carrier medium itself, e.g., the tape or 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 itself is incidental. Indeed, if the technical facilities are available to the parties to the transaction, the software can be transmitted by wire or via 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.

5. Before the entry into force of the Agreement, the software component was generally not included in dutiable value.

6. International trade in carrier media bearing data and instructions is growing at an ever increasing rate and, in many cases, the circumstances of the exchange make it extremely difficult to ensure uniform application of the Agreement by the Parties without further clarification. For example, software programs can be transmitted electronically or via satellite without any customs involvement whatsoever. Also, as a practical matter, it is difficult to distinguish between data transfers and computer programs; the former not being generally subject to duty charges.

7. In light of the foregoing, the Parties to the Agreement agree to adopt the following decision:

#### DECISION

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

In determining the customs value of imported carrier media (except integrated circuits, other semi-conductor devices and articles incorporating such devices) with data or instructions recorded thereon (other than sound, visual or video recording), only the price actually paid or payable for the carrier medium itself shall be taken into account. The customs value shall not, therefore, include the value of the data or instructions, provided that this is distinguished from the price actually paid or payable.

This decision shall apply from.....