

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Customs Valuation

## INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

### Supplement

### LEGISLATION OF THE UNITED STATES

Notice on United States Valuation of Imported Carrier Media Bearing  
Data or Instructions for Use in Data Processing Equipment.

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\*English only/anglais seulement/inglés solamente.

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(From pages 30558 - 30559)

Customs Service

**U.S. VALUATION OF IMPORTED CARRIER MEDIA BEARING DATA OR  
INSTRUCTIONS FOR USE IN DATA PROCESSING EQUIPMENT**

**AGENCY:** Customs Service, Treasury

**ACTION:** Notice of decision on valuation

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**SUMMARY:** This document advises that Customs has been, and will continue to value imported carrier media bearing data or instructions for use in data processing equipment exclusive of a value element for the data, instructions, or information component contained on such software. A recent decision by the Committee on Customs Valuation of the General Agreement on Tariffs and Trade (GATT) sanctioned the practice of valuing software either inclusive or exclusive of a value element for data, instructions, or information components. Customs has routinely been valuing software only on the value of the carrier medium, and will continue to use this practice.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION**

**Background**

On September 24, 1984, the Committee on Customs Valuation of the General Agreement on Tariffs and Trade (GATT) adopted a decision regarding the customs valuation of carrier media bearing data or instructions for use in data processing equipment (reprinted as Annex A). The decision indicates that the merchandise which is the subject of the decision may be valued either inclusive or exclusive of a value element for the data or instructions. Prior to the adoption of the above decision, Customs had routinely valued the merchandise referred to in the GATT decision only on the value of the carrier medium plus other incidental costs (e.g., recording charges), and exclusive of a valuation element for the data or instructions or for an information component. Because the GATT decision affirms the validity of the U.S. approach to the valuation of carrier media bearing data or instructions for use in data processing equipment, on February 28, 1985, Customs reaffirmed its prior position as set forth below:

On September 24, 1984, the GATT Valuation Committee adopted the attached decision. Customs has previously taken the position that the valuation of software (i.e., data or instructions) recorded on carrier media be based only on a value for the carrier media itself and is not to include a value for an information component. Because the TSUS item under which such importations are most frequently classified (item 724.40, TSUS) carries a specific rate of duty, the valuation of software has been of little concern to Customs field personnel. However, in a small number of cases the valuation of software may become important, either because the TSUS item number under which it is classified carries an ad valorem rate of duty, or because it is not clear whether the merchandise involved is a form of software. Accordingly, we wish to reemphasize our previous position that software be valued only on the basis of the value of the carrier medium. In this regard, for valuation purposes carrier media bearing data or instructions (i.e., software) does not include data or instructions recorded or encoded by means of integrated circuits, semiconductors and similar devices, or articles incorporating such circuits or devices. Likewise, the expression "data or instructions" is not to be interpreted as including sound, cinematic, or video recordings. In view of the above GATT decision, appropriate steps should be taken to ensure that Customs personnel continue their current practice of valuing computer software only on the basis of the value of the carrier media.

Accordingly, Customs will continue to value the merchandise which is the subject of the GATT decisions exclusive of an element for the value of the data or instructions.

**Annex A - General Agreement on Tariffs and Trade, Committee on Customs Valuation; Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment**

Adopted by the Committee on 24 September 1984

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.

Robert f. Schaffer  
Acting Commissioner of Customs.

Approved: July 8, 1985.

John M. Walker, Jr.,  
Assistant Secretary of the Treasury.