DECISIONS TAKEN BY THE COMMITTEE ON CUSTOMS VALUATION

LIST OF DECISIONS

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".

* This Decision was adopted by the WTO Valuation Committee at its first meeting on 12 May 1995.

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.

* This Decision was adopted by the WTO Valuation Committee at its first meeting on 12 May 1995.

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.

* This Decision was adopted by the WTO Valuation Committee at its first meeting on 12 May 1995.

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:

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 instruction (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 the Decision, the expression "carrier medium" shall not be taken to include integrated circuits, semiconductors and similar devices of 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.

* This Decision was adopted by the WTO Valuation Committee at its first meeting on 12 May 1995.

** See Statement on the back page

- **Statement Made by the Chairman at the Meeting of the Committee on Customs Valuation of 24 September 1984 Prior to the Adoption of the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment**

"In the 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 bearing software for data processing equipment indicates that transaction value is the primary bases 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 bearing data or instructions.

In taking this decision on the valuation of carrier media bearing 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

1. 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 8.1 (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.

2. 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 erfeccionamiento" could not be interpreted as allowing any part of the value to be excluded from the "creaciony perfeccionamiento".

* This Decision was adopted by the WTO Valuation Committee at its first meeting on 12 May 1995.

DECISION 6.1*
CASES WHERE CUSTOMS ADMINISTRATIONS HAVE REASONS TO DOUBT THE TRUTH OR ACCURACY OF THE DECLARED VALUE

The Committee on Customs Valuation,

Reaffirming that the transaction value is the primary basis of valuation under the Agreement on Implementation of Article Ⅶ of GATT 1994(hereinafter referred to as the "Agreement"):

Recognizing that the customs administration may have to address cases where it has reason to doubt the truth or accuracy of the particulars or of documents produced by traders in support of a declared value:

Emphasizing that in so doing the customs administration should not prejudice the legitimate commercial interests of traders:

Taking into account Article 17 of the Agreement, paragraph 6 of Annex Ⅲ to the Agreement, and the relevant decisions of the Technical Committee on Customs Valuation:

Decides as follows :

1. When a declaration has been presented and where the customs administration has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the customs administration may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 8. If, after receiving further information, or in the absence of a response, the customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may, bearing in mind the provisions of Article 11, be deemed that the customs value of the imported goods cannot be determined under the provisions of Article 1. Before taking a final decision, the customs administration shall communicate to the importer, in writing if requested, its grounds for doubting the truth or accuracy of the particulars or documents produced and the importer shall be given a reasonable opportunity to respond. When a final decision is made, customs administration shall communicate to the importer in writing its decision and the grounds therefor.

2. It is entirely appropriate in applying the Agreement for one Member to assist another Member on mutually agreed terms.

* This Decision was adopted by the WTO Valuation Committee at its first meeting on 12 May 1995.

DECISION 7.1*
MINIMUM VALUES AND IMPORTS BY SOLE AGENTS SOLE DISTRIBUTORS AND SOLE CONCESSIONAIRES

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Where a developing country makes a reservation to retain officially established minimum values within the terms of paragraph 2 of Annex Ⅲ and show good cause, the Committee shall give the request for the reservation sympathetic consideration.

Where a reservation is consented to, the terms and conditions referred to in paragraph 2 of Annex Ⅲ shall take full account of the development, financial and trade needs of the developing country concerned.

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1. A number of developing countries have a concern that problems may exist in the valuation of imports by sole agents, sole distributors and sole concessionaires. Under paragraph 1 of Article 20, developing countries Members have a period of delay of up to five years prior to the application of the Agreement. In this context, developing country Members availing themselves of this provision could use the period to conduct appropriate studies and to take such other actions as are necessary to facilitate application.

2. In consideration of this, the Committee recommends that the Customs Co-operation Council assist developing country Members, in accordance with the provisions of Annex Ⅱ, to fomulate and conduct studies in areas identified as being of potential concern, including those relating to importation by sole agents, sole distributors and concessionaires.

* This Decision was adopted by the WTO Valuation Committee at its first meeting on 12 May 1995.