

Decision 4.1

Valuation of Software

- Transaction value is the primary basis of valuation under the Agreement
- Its application with regard to data or instructions (software) recorded on carrier media for data processing equipment is fully consistent with the Agreement.

Valuation of 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.
- 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.

Valuation of Software

- 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 :

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- 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.

Valuation of Software

- 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.

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- Those Parties adopting the practice referred to above shall notify the Committee of the date of its application.
- Those Parties adopting the practice 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