

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Customs Valuation

THE TERM "DEVELOPMENT" IN ARTICLE 8.1(b)(iv) OF THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VII

Note by the Secretariat

1. At the last meeting of the Committee on Customs Valuation, the Chairman of the Technical Committee, reporting on the work of the sixth session of that Committee, raised the question of the linguistic consistency in the English, French and Spanish texts of the term "development" in Article 8.1(b)(iv) of the Agreement (VAL/M/8, paragraph 41). The Committee agreed that the secretariat, after consulting with interested delegations, should draw up a note, which first would outline the nature of the linguistic issue, and secondly, if possible, put forward suggestions as to how the Committee might proceed on this matter (VAL/M/8, paragraph 47). The matter is on the draft agenda of the next meeting of the Committee scheduled for 26-27 April 1984.
2. An examination of the terms in the three languages - "development" in English, "travaux d'études" in French and "creación y perfeccionamiento" in Spanish - indicates that, while there may be scope for divergent interpretation (and the fact that this matter has been brought to the attention of the Committee is evidence of this), there is not necessarily any conflict between the terms used in the three languages and there is scope for a common interpretation. This arises because, whereas the term "development" in English has well accepted and fairly well defined meanings in the present context (as outlined in CCC documents 29.993 and 30.684), the French and Spanish usage in this context is less well established and the terms are therefore less precise. It is therefore suggested that the Committee should attempt to establish a common meaning that is consistent with the terms in the three languages. When tackling this question, it has of course to be recognized that the authenticated text in each of the three languages is equally authoritative.
3. The main linguistic issue before the Committee seems to be whether or not the terms "development" in English, "travaux d'études" in French and "creación y perfeccionamiento" in Spanish in Article 8.1(b)(iv) encompass, in whole or in part, the element of "research" in English, "recherche" in French and "investigación" in Spanish. These words for research have the same meaning in each of the three languages and their usage is well established. The fact that they do not figure in the list of elements in Article 8.1(b)(iv) is in itself an indication that the concept is not included.
4. With a view to further clarifying the issue, the drafting history of Article 8.1(b)(iv) as reflected in Multilateral Trade Negotiations documents has been examined. This shows that the first draft of the

Valuation Agreement containing a draft of Article 8.1(b)(iv) (MTN/NTM/W/175/Rev.1) refers to "development" in English, "développement" in French and "perfeccionamiento" in Spanish. (An earlier Brazilian proposal, submitted in English, that had listed the elements presently contained in Article 8.1(b)(iv), had been translated into French and Spanish with the same words.) The words "development", "développement" and "perfeccionamiento" were used respectively in the English, French and Spanish texts of all subsequent draft versions of the Agreement including those attached to the Procès-Verbal of April 1979 (BISD 26S/189) - at that stage there were two, alternative texts of the Agreement contained in MTN/NTM/W/229/Rev.1 and in MTN/NTM/W/229/Rev.1 as amended by MTN/NTM/W/222/Rev.1. In the Procès-Verbal, signatory governments¹ agreed that these texts embodied the results of their negotiations. They also acknowledged "that the texts may be subject to rectifications of a purely formal character that do not affect the substance or meaning of the texts in any way." The substitution in the French text of "travaux d'études" for "développement" and in the Spanish text of "creación y perfeccionamiento" for "perfeccionamiento" took place during this rectification process². Since the terms "development" in English, "développement" in French and "perfeccionamiento" in Spanish clearly do not cover "research", this indicates that the intention of the drafters was not to include "research" in the term "development" in Article 8.1(b)(iv).

5. It is for these above reasons that the secretariat believes that the most appropriate way for the Committee to resolve any linguistic question concerning the terms "development" in English, "travaux d'études" in French and "creación y perfeccionamiento" in Spanish in Article 8.1(b)(iv) is for it to agree that they shall be understood to exclude "research" in English, "recherche" in French and "investigación" in Spanish. The Technical Committee might therefore pursue its work on the practical application of the provision on this basis.

¹The Procès-Verbal was signed in respect of the Valuation Agreement (one or other text) by: Argentina, Australia, Austria, Bulgaria, Canada, Czechoslovakia, European Communities, Finland, Hungary, India, Japan, New Zealand, Norway, Poland, Romania, Spain, Sweden, Switzerland and United States.

²The subsequent negotiations to resolve the problem arising from the existence of two texts of a Valuation Agreement did not affect the language of the present Agreement (the text in MTN/NTM/W/229/Rev.1 as rectified), but resulted in the Protocol to it.